

1 AN ACT relating to revenue.

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

3 ➔Section 1. KRS 224.60-130 is amended to read as follows:

4 (1) The Energy and Environment Cabinet, Department for Environmental Protection,
5 Division of Waste Management, shall:

6 (a) Establish by administrative regulation the policy, guidelines, and procedures
7 to administer the financial responsibility and petroleum storage tank accounts
8 of the petroleum storage tank environmental assurance fund. In adopting
9 administrative regulations to carry out this section, the division may
10 distinguish between types, classes, and ages of petroleum storage tanks. The
11 division may establish a range of amounts to be paid from the fund, or may
12 base payments on methods such as pay for performance, task order, or firm
13 fixed pricing, which are designed to provide incentives for contractors to more
14 tightly control corrective action costs, and shall establish criteria to be met by
15 persons who contract to perform corrective action to be eligible for
16 reimbursement from the fund. The criteria may include the certification of
17 individuals, partnerships, and companies. Criteria shall be established to
18 certify laboratories that contract to perform analytical testing related to the
19 underground storage tank program. Owners and operators shall have all
20 required analytical testing performed by a certified laboratory to be eligible
21 for fund participation. Persons who contract with petroleum storage tank
22 owners or operators shall not be paid more than the amount authorized by the
23 division for reimbursement from the fund for the performance of corrective
24 action. At a minimum, the division shall promulgate administrative
25 regulations ***in accordance with KRS Chapter 13A*** that will ***ensure***~~insure~~ an
26 unobligated balance in the fund adequate to meet financial assurance
27 requirements and corrective action requirements of KRS 224.60-135(2) and

- 1 (4). If the unobligated balance in the fund is not adequate to meet the
2 requirements of this paragraph, the division shall obligate funds necessary to
3 meet these requirements;
- 4 (b) Establish by administrative regulation the criteria to be met to be eligible to
5 participate in the financial responsibility and petroleum storage tank accounts
6 and to receive reimbursement from these accounts. The division may establish
7 eligibility criteria for the petroleum storage tank account based upon the
8 financial ability of the petroleum storage tank owner or operator. Owners or
9 operators seeking coverage under the petroleum storage tank account shall file
10 for eligibility and for financial assistance with the division. To ensure cost
11 effectiveness, the division shall promulgate administrative regulations *in*
12 *accordance with KRS Chapter 13A* specifying the circumstances under which
13 prior approval of corrective action costs shall be required for those costs to be
14 eligible for reimbursement from the fund. In promulgating administrative
15 regulations to carry out this section, the division may distinguish between
16 types, classes, and ages of petroleum storage tanks and the degree of
17 compliance of the facility with any administrative regulations of the cabinet
18 promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- 19 (c) Establish a financial responsibility account within the fund which may be
20 used by petroleum storage tank owners and operators to demonstrate financial
21 responsibility as required by administrative regulations of the cabinet or the
22 federal regulations applicable to petroleum storage tanks, consistent with the
23 intent of the General Assembly as set forth in KRS 224.60-120(5). The
24 account shall receive four-tenths of one cent (\$0.004) from the one and four-
25 tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received
26 in this state pursuant to KRS 224.60-145. To be eligible to use this account to
27 demonstrate compliance with financial responsibility requirements of the

1 cabinet or federal regulations, or to receive reimbursement from this account
2 for taking corrective action and for compensating third parties for bodily
3 injury and property damage, the petroleum storage tank owner or operator
4 shall meet the eligibility requirements established by administrative regulation
5 promulgated by the division;

6 (d) Establish a small operator assistance account within the fund which may be
7 used by the division to make or participate in the making of loans, to purchase
8 or participate in the purchase of the loans, which purchase may be from
9 eligible lenders, or to insure loans made by eligible lenders;

10 (e) Establish a petroleum storage tank account within the fund to be used to pay
11 the costs of corrective action due to a release from a petroleum storage tank
12 not eligible for reimbursement from the financial responsibility account.
13 Reimbursements of corrective action projects performed under the petroleum
14 storage tank account shall be carried out on or before July 15, ~~2034~~²⁰²⁸.
15 Any corrective action costs incurred after this date shall not be eligible for
16 reimbursement under the petroleum storage tank account. The account shall
17 receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on
18 each gallon of gasoline and special fuels received in this state pursuant to
19 KRS 224.60-145. This account shall not be used to compensate third parties
20 for bodily injury and property damage. Within three (3) months after July 15,
21 2004, the division shall develop a plan to address the payment of claims and
22 completion of corrective action at facilities eligible for reimbursement from
23 this account. The division shall establish a ranking system to be used for the
24 distribution of amounts from this account for the purpose of corrective action.
25 In promulgating administrative regulations to carry out this section, the
26 division shall consider the financial ability of the petroleum storage tank
27 owner or operator to perform corrective action and the extent of damage

- 1 caused by a release into the environment from a petroleum storage tank;
- 2 (f) Hear complaints brought before the division regarding the payment of claims
- 3 from the fund in accordance with KRS 224.10-410 to 224.10-470;
- 4 (g) Establish and maintain necessary offices within this state, appoint employees
- 5 and agents as necessary, and prescribe their duties and compensation;
- 6 (h) Employ, in accordance with the procedures found in KRS 45A.690 to
- 7 45A.725 for awarding personal service contracts, a qualified actuary to
- 8 perform actuarial studies, as directed by the division, for determining an
- 9 appropriate reserve in the financial responsibility account and the petroleum
- 10 storage tank account sufficient to satisfy the obligations in each account for all
- 11 eligible facilities and to satisfy future liabilities and expenses necessary to
- 12 operate each account. The division shall, by administrative regulation, set the
- 13 entry level for participation in the fund;
- 14 (i) Authorize expenditures from the fund to carry out the purpose of KRS
- 15 224.60-105 to 224.60-160, including reasonable costs of administering the
- 16 fund, the procurement of legal services, and the procurement of analytical
- 17 testing services when necessary to confirm the accuracy of analytical testing
- 18 results obtained by a petroleum storage tank owner or operator. The
- 19 expenditures shall be paid from the appropriate account;
- 20 (j) Establish a small operators' tank removal account within the fund to reimburse
- 21 the reasonable cost of tank system removal for small owners and operators.
- 22 The account shall not be used when an owner or operator is removing the tank
- 23 with the intention of replacing or upgrading the tank. In promulgating
- 24 administrative regulations to carry out this paragraph, the division may
- 25 distinguish among owners and operators based on income and types and
- 26 classes of tanks. The division shall not place a limit on the number of tanks
- 27 that an owner or operator has in order to be eligible to participate in the

- 1 program and receive reimbursement under this paragraph;
- 2 (k) Establish by administrative regulation the policy, guidelines, and procedures
3 to perform financial audits of any petroleum storage tank owner or operator
4 receiving reimbursement from the fund or any entity contracting or
5 subcontracting to provide corrective action services for facilities eligible for
6 fund reimbursement. Financial audits shall be limited to those files, records,
7 computer records, receipts, and other documents related to corrective action
8 performed at a facility where the costs of corrective action have been
9 reimbursed by the fund. Files, records, computer records, receipts, and other
10 documents related to corrective action reimbursed by the fund shall be subject
11 to a financial audit for a period of three (3) years after the date of final
12 reimbursement from the fund. Results of the audits shall be protected from
13 disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may
14 be contracted for or personnel may be employed as needed to implement the
15 requirements of this paragraph;
- 16 (l) Be authorized to enter and inspect any facility intending to seek
17 reimbursement for the cost of corrective action to determine the
18 reasonableness and necessity of the cost of corrective action. The division
19 may collect soil or water samples or require storage tank owners or operators
20 to split samples with the division for analytical testing. Refusal to allow entry
21 and inspection of a facility or refusal to allow the division to collect or split
22 samples shall make the facility ineligible for fund participation;
- 23 (m) Have inspectors on site at all tank system removals. Failure to comply with
24 this provision shall make the facility ineligible for fund participation. A
25 petroleum storage tank owner or operator may request through certified mail
26 that the division schedule an inspector to be present at an upcoming tank
27 removal. If the request is made at least two (2) weeks before the time for the

1 removal and an inspector fails to be present at the time scheduled, the tank
2 removal may proceed without making the facility ineligible for fund
3 participation unless the owner is notified by the division no later than ten (10)
4 days prior to the proposed date that an inspector is not available on the
5 proposed date, in which event a representative of the division shall contact the
6 operator and schedule a new date. If no inspector is present at the rescheduled
7 date, the removal may then proceed without penalty; and

8 (n) Establish that the deadline for submission of final reimbursement requests
9 under the petroleum storage tank account is two (2) years after receipt of a no
10 further action letter.

11 (2) The division may advise the cabinet on the promulgation of administrative
12 regulations concerning petroleum storage tanks.

13 (3) The division may sue and be sued in its own name.

14 (4) The division may transfer funds from the petroleum storage tank account to the
15 small operator tank removal account as needed to satisfy the obligations, future
16 liabilities, and expenses necessary to operate that account. The division may
17 transfer funds to the financial responsibility account as needed to maintain within
18 that account sufficient funds to demonstrate financial responsibility and to ensure
19 payment of claims as provided in subsection (1)(c) of this section.

20 ➔Section 2. KRS 224.60-142 is amended to read as follows:

21 (1) To be eligible to participate in the fund, the owner of any petroleum storage tank
22 containing motor fuels installed and placed in operation after July 15, 2004, shall
23 register the petroleum storage tank with the cabinet as required by KRS 224.60-105
24 prior to applying for participation in the financial responsibility account.

25 (2) The owner of any petroleum storage tank containing motor fuels currently existing,
26 or removed from the ground after January 1, 1974, shall register the petroleum
27 storage tank containing motor fuels with the cabinet prior to applying to the fund,

1 and shall register the petroleum storage tank containing motor fuels by July 15,
2 2031~~[2025]~~. Owners or operators may submit affidavits and applications relevant to
3 current petroleum storage tank accounts through July 15, 2031~~[2025]~~.

4 ➔Section 3. KRS 224.60-145 is amended to read as follows:

- 5 (1) Except as provided in subsection (2) of this section, there is established a petroleum
6 environmental assurance fee to be paid by dealers on each gallon of gasoline and
7 special fuels received in this state.
- 8 (2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358
9 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a
10 statement supporting a claimed exemption, an additional statement shall not be
11 required for claiming exemption from the fee.
- 12 (3) The fee shall be reported and paid to the Department of Revenue at the same time
13 and in the same manner as is required for the reporting and payment of the gasoline
14 and special fuels taxes as provided by law.
- 15 (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent
16 (\$0.014) for each gallon. Four-tenths of a cent (\$0.004) per gallon shall be
17 deposited in the financial responsibility account and one cent (\$0.01) shall be
18 deposited in the petroleum storage tank account.
- 19 (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year
20 thereafter, the state budget director shall review the balance of each account to
21 determine if a surplus exists. "Surplus" means funds in excess of the amounts
22 necessary to satisfy the obligations in each account for all eligible facilities, to
23 satisfy future liabilities and expenses necessary to operate each account, and to
24 maintain an appropriate reserve in the financial responsibility account to
25 demonstrate financial responsibility and compensate for third-party claims. The
26 state budget director shall report the determination to the Interim Joint Committee
27 on Appropriations and Revenue. After a determination that a surplus exists, the

1 surplus shall be transferred to a restricted account and retained until appropriated by
2 the General Assembly.

3 (6) All provisions of law related to the Department of Revenue's administration and
4 enforcement of the gasoline and special fuels tax and all other powers generally
5 conveyed to the Department of Revenue by the Kentucky Revised Statutes for the
6 assessment and collection of taxes shall apply with regard to the fee levied by KRS
7 224.60-105 to 224.60-160.

8 (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to
9 any person who paid the fee provided they are entitled to a refund of motor fuel tax
10 under KRS 138.344 to KRS 138.355 and to any person who paid the fee on
11 transactions exempted under KRS 224.60-145(2).

12 (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606,
13 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142,
14 and this section to the contrary, the small operator assistance account and small
15 operator tank removal account established under KRS 224.60-130 shall continue in
16 effect until July 15, 2031~~[2025]~~, and thereafter until all eligible claims related to
17 tanks registered by that date are resolved, and sufficient money shall be allocated to
18 and maintained in that account to assure prompt payment of all eligible claims, and
19 to provide for removal of tanks for eligible owners and operators as directed by this
20 chapter.

21 ➔Section 4. KRS 224.50-868 is amended to read as follows:

22 (1) As used in this section:

23 (a) "Motor vehicle" means every vehicle intended primarily for use and operation
24 on the public highways that is self-propelled, including a low-speed motor
25 vehicle as defined in KRS 186.010;

26 (b) "Semitrailer" means any vehicle:

27 1. Designed:

- 1 a. As temporary living quarters for recreation, camping, or travel; or
- 2 b. For carrying persons or property;
- 3 2. Designed for being drawn by a motor vehicle; and
- 4 3. Constructed that:
- 5 a. Some part of its weight; or
- 6 b. Some part of its load;
- 7 rests upon or is carried by another vehicle; and
- 8 (c) "Trailer" means any vehicle:
- 9 1. Designed:
- 10 a. As temporary living quarters for recreation, camping, or travel; or
- 11 b. For carrying persons or property;
- 12 2. Designed for being drawn by a motor vehicle; and
- 13 3. Constructed that:
- 14 a. No part of its weight; and
- 15 b. No part of its load;
- 16 rests upon or is carried by another vehicle.
- 17 (2) (a) 1. Prior to July 1, 2018, a person purchasing a new motor vehicle tire in
- 18 Kentucky shall pay to the retailer a one dollar (\$1) fee at the time of the
- 19 purchase of that tire. The fee shall not be subject to the Kentucky sales
- 20 tax.
- 21 2. Beginning July 1, 2018, but prior to July 1, 2020, a fee is hereby
- 22 imposed upon a retailer at the rate of two dollars (\$2) for each new
- 23 motor vehicle tire sold in Kentucky. The fee shall be subject to the
- 24 Kentucky sales tax.
- 25 3. Beginning July 1, 2020, but prior to July 1, ~~2026~~[2024], a fee is hereby
- 26 imposed upon a retailer at the rate of two dollars (\$2) for each new
- 27 motor vehicle, trailer, or semitrailer tire sold in Kentucky. The fee shall

- 1 be subject to the Kentucky sales tax.
- 2 4. A retailer may pass the fee imposed by this paragraph on to the
- 3 purchaser of the new tire.
- 4 (b) 1. A new tire is a tire that has never been placed on a motor vehicle, trailer,
- 5 or semitrailer wheel rim.
- 6 2. A new tire is not a tire placed on a motor vehicle, trailer, or semitrailer
- 7 prior to its original retail sale or a recapped tire.
- 8 (3) When a retailer sells a new motor vehicle tire in Kentucky to replace another tire,
- 9 the tire that is replaced becomes a waste tire subject to the waste tire program. The
- 10 retailer shall encourage the purchaser of the new tire to leave the waste tire with the
- 11 retailer or meet the following requirements:
- 12 (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);
- 13 (b) Deliver the waste tire to a person registered in accordance with the waste tire
- 14 program; or
- 15 (c) Reuse the waste tire for its original intended purpose or an agricultural
- 16 purpose.
- 17 (4) (a) A retailer shall report to the Department of Revenue on or before the
- 18 twentieth day of each month the number of new motor vehicle tires sold
- 19 during the preceding month and the number of waste tires received from
- 20 customers that month.
- 21 (b) The report shall be filed on forms and contain information as the Department
- 22 of Revenue may require.
- 23 (c) The retailer shall be allowed to retain an amount equal to five percent (5%) of
- 24 the fees due, provided the amount due is not delinquent at the time of
- 25 payment.
- 26 (5) A retailer shall:
- 27 (a) Accept from the purchaser of a new tire, if offered, for each new motor

- 1 vehicle tire sold, a waste tire of similar size and type; and
- 2 (b) Post notice at the place where retail sales are made that state law requires:
- 3 1. The retailer to accept, if offered, a waste tire for each new motor vehicle
- 4 tire sold and that a person purchasing a new motor vehicle tire to replace
- 5 another tire shall comply with subsection (3) of this section; and
- 6 2. The two dollar (\$2) new tire fee is used by the state to oversee the
- 7 management of waste tires, including cleaning up abandoned waste tire
- 8 piles and preventing illegal dumping of waste tires.
- 9 (6) A retailer shall comply with the requirements of the recordkeeping system for waste
- 10 tires established by KRS 224.50-874.
- 11 (7) A retailer shall transfer waste tires only to a person who presents a letter from the
- 12 cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid
- 13 waste disposal facility permit issued by the cabinet, unless the retailer is delivering
- 14 the waste tires to a destination outside Kentucky and the waste tires will remain in
- 15 the retailer's possession until they reach that destination.
- 16 (8) The cabinet shall, in conjunction with the Waste Tire Working Group, develop the
- 17 informational fact sheet to be made publicly available on the cabinet's ~~website~~website
- 18 ~~site~~ and available in print upon request. The fact sheet shall identify ways to
- 19 properly dispose of the waste tire and present information on the problems caused
- 20 by improper waste tire disposal.