

STATEMENT OF EMERGENCY
103 KAR 43:340E.

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1), KRS 11.065, KRS 12.020, KRS 12.040, KRS 12.250, KRS 12.270, KRS 42.012, KRS 45.301, KRS 131.020; 131.130, and KRS 138.226, in order to meet an imminent threat to the public health, safety, or welfare.

The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon.

This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022.

Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

The Secretary of the Kentucky Transportation Cabinet reports that the freeze will have no material impact on the Transportation Cabinet budget, and will not impact any planned or ongoing work.

Under KRS 138.226, the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and may prescribe and adopt administrative regulations relating to the administration of those taxes. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws of the Commonwealth. Under KRS 42.012, the Secretary of the Finance and Administration Cabinet is the chief financial officer of the Commonwealth and the adviser of the Governor in financial matters, and must at all times protect the financial interests of Kentucky.

This administrative regulation must be filed as soon as possible to protect Kentuckians from the increase in the gas tax, and also to provide notification of the average wholesale price of gasoline and special fuels to dealers licensed in the Commonwealth of Kentucky. Under KRS 138.220(4) the Department of Revenue must notify licensed dealers at least twenty (20) days in advance of July 1, 2022. This emergency administrative regulation will

not be replaced by an ordinary administrative regulation as future market conditions may affect the necessity of an administrative regulation.

ANDY BESHEAR, Governor

THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(New Emergency Administrative Regulation)

103 KAR 43:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value.

RELATES TO: KRS 131.020, 131.130, 138.210, 138.220, 138.226, 138.228, 138.290

STATUTORY AUTHORITY: KRS 11.065, 12.020, 12.040, 12.050, 12.250, 12.270, 42.012, 45.301, 131.020, 131.130, 138.210; 138.220, 138.226, 138.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.226 provides that the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and authorizes the Department of Revenue to prescribe and, adopt administrative regulations relating to the administration of those taxes. The department determines and adjusts the average wholesale price of gasoline rounded to the nearest one-tenth of one cent (\$0.001) used for calculating the excises taxes imposed under KRS 138.220 to be paid by a dealer receiving gasoline or special fuel. This emergency administrative regulation establishes the average wholesale price of gasoline as determined by the department effective July 1, 2022, and is being promulgated in order to meet an imminent threat to the public health, safety, or welfare. The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon. This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022. Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

Section 1. Definitions.

- (1) "Annual survey value" has the same meaning as provided under KRS 138.210(3)
- (2) "Average wholesale price" has the same meaning as provided under KRS 138.210(4).
- (3) "Dealer" has the same meaning as provided under KRS 138.210(6).
- (4) "Gasoline" has the same meaning as provided under KRS 138.210(11).
- (5) "Received" has the same meaning as provided under KRS 138.210(15).
- (6) "Special fuels" has the same meaning as provided under KRS 138.210(18).

Section 2. Average Wholesale Price of Gasoline and Annual Survey Value. Effective July 1, 2022, the average wholesale price of gasoline and the annual survey value under KRS

138.228 shall be two dollars and seventeen and seven-tenths cents (\$2.177) per gallon, which is the average wholesale price of gasoline and the annual survey value for fiscal year 2021-2022.

Section 3. Excise Taxes on Gasoline. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on gasoline, including liquified petroleum, received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on gasoline, including liquified petroleum, for fiscal year 2021-2022. When combined with the five cents (\$0.05) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on gasoline is twenty-six cents (\$0.26) per gallon.

Section 4. Excise Taxes on Diesel Fuel and Other Special Fuel. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on special fuel received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on special fuel for fiscal year 2021-2022. When combined with the two cents (\$0.02) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on special fuel is twenty-three cents (\$0.23) per gallon.

Section 5. Relief from Penalties. No dealer shall be found in violation of the reporting requirements under KRS 138.240 to 138.260, or subject to the civil penalties imposed under KRS 138.290, for computing and reporting the gasoline and special fuel tax and supplemental highway user motor fuel tax imposed under KRS 138.220 in accordance with this regulation.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 2, 2022

FILED WITH LRC: June 2, 2022 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2022, at 10:00 a.m., at 501 High Street, 11th Floor Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-9565, Gary.Morris@ky.gov.