GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2005 REGULAR SESSION

HOUSE BILL NO. 494

MONDAY, FEBRUARY 28, 2005

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to motor fuels taxes.

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

1 Section 1. KRS 134.580 is amended to read as follows:

2 (1) As used in this section, unless the context requires otherwise:

3 (a) "Agency" means the agency of state government which administers the tax to
4 be refunded or credited.

5 (b) "Overpayment" or "payment where no tax was due" means the tax liability
6 under the terms of the applicable statute without reference to the
7 constitutionality of the statute.

8 (2) When money has been paid into the State Treasury in payment of any state taxes,
9 except ad valorem taxes, whether payment was made voluntarily or involuntarily,
10 the appropriate agency shall authorize refunds or credits, to the person who paid the
11 tax, or to his heirs, personal representatives or assigns, of any overpayment of tax
12 and any payment where no tax was due. When a bona fide controversy exists
13 between the agency and the taxpayer as to the liability of the taxpayer for the
14 payment of tax claimed to be due by the agency, the taxpayer may pay the amount
15 claimed by the agency to be due, and if an appeal is taken by the taxpayer from the
16 ruling of the agency within the time provided by KRS 131.340 and it is finally
17 adjudged that the taxpayer was not liable for the payment of the tax or any part
18 thereof, the agency shall authorize the refund or credit as the Kentucky Board of
19 Tax Appeals or courts may direct.

20 (3) Refunds or credits shall be authorized with interest as provided in KRS 131.183.
21 The refunds authorized by this section shall be made in the same manner as other
22 claims on the State Treasury are paid. They shall not be charged against any
23 appropriation, but shall be deducted from tax receipts for the current fiscal year.

24 (4) Nothing in this section shall be construed to authorize the agency to make or cause
25 to be made any refund except within four (4) years of the date prescribed by law for

1 the filing of a return including any extension of time for filing the return, or the date
2 the money was paid into the State Treasury, whichever is the later, except in any
3 case where the assessment period has been extended by written agreement between
4 the taxpayer and the cabinet, the limitation contained in this subsection shall be
5 extended accordingly. Nothing in this section shall be construed as requiring the
6 agency to authorize any refund or credit to a taxpayer without demand from the
7 taxpayer, if in the opinion of the agency the cost to the state of authorizing the
8 refund or credit would be greater than the amount that should be refunded or
9 credited.
10 (5) This section shall not apply to any case in which the statute may be held
11 unconstitutional, either in whole or in part.
12 (6) In cases in which a statute has been held unconstitutional, taxes paid thereunder
13 may be refunded to the extent provided by KRS 134.590, and by the statute held
14 unconstitutional.
15 ***(7) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the***
16 ***person holds an unrevoked refund permit issued by the cabinet before the***
17 ***purchase of gasoline or special fuels and that permit entitles the person to apply***
18 ***for a refund under KRS 138.344 to 138.355.***
19 Section 2. KRS 224.60-145 is amended to read as follows:
20 (1) Except as provided in subsection (2) of this section, there is established a petroleum
21 environmental assurance fee to be paid by dealers on each gallon of gasoline and
22 special fuels received in this state.
23 (2) All deductions detailed in KRS 138.240(2) ***and all credits detailed in KRS***
24 ***138.358***[~~, gasoline and special fuels sold for agricultural purposes, and special fuels~~
25 ~~sold exclusively to heat a personal residence~~] are exempt from the fee. If a dealer
26 has on file, pursuant to KRS Chapter 138, a statement supporting a claimed
27 exemption, an additional statement shall not be required for claiming exemption

1 from the fee.

2 (3) The fee shall be reported and paid to the Revenue Cabinet at the same time and in
3 the same manner as is required for the reporting and payment of the gasoline and
4 special fuels taxes as provided by law.

5 (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent
6 ($0.014) for each gallon. Four-tenths of a cent ($0.004) per gallon shall be
7 deposited in the financial responsibility account and one cent ($0.01) shall be
8 deposited in the petroleum storage tank account.

9 (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year
10 thereafter, the state budget director shall review the balance of each account to
11 determine if a surplus exists. "Surplus" means funds in excess of the amounts
12 necessary to satisfy the obligations in each account for all eligible facilities, to
13 satisfy future liabilities and expenses necessary to operate each account, and to
14 maintain an appropriate reserve in the financial responsibility account to
15 demonstrate financial responsibility and compensate for third-party claims. The
16 state budget director shall report the determination to the Interim Joint Committee
17 on Appropriations and Revenue. After a determination that a surplus exists, the
18 surplus shall be transferred to a restricted account and retained until appropriated by
19 the General Assembly.

20 (6) All provisions of law related to the Revenue Cabinet's administration and
21 enforcement of the gasoline and special fuels tax and all other powers generally
22 conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the
23 assessment and collection of taxes shall apply with regard to the fee levied by KRS
24 224.60-105 to 224.60-160.

25 (7) The Revenue Cabinet shall refund the fee imposed by KRS 224.60-145(1) to any
26 person who paid the fee provided they are entitled to a refund of motor fuel tax
27 under KRS 138.344 to KRS 138.355 and to any person who paid the fee on

1 transactions exempted under KRS 224.60-145(2).

2 (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606,
3 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142,
4 and this section to the contrary, the small operator assistance account and small
5 operator tank removal account established under KRS 224.60-130 shall continue in
6 effect until July 15, 2008, and thereafter until all eligible claims related to tanks
7 registered by that date are resolved, and sufficient money shall be allocated to and
8 maintained in that account to assure prompt payment of all eligible claims, and to
9 provide for removal of tanks for eligible owners and operators as directed by this
10 chapter.

11 Section 3. KRS 138.240 is amended to read as follows:

12 (1) Every gasoline dealer and every special fuels dealer, or the treasurer or other proper
13 officer or agent of every such dealer, shall, by the twenty-fifth day of each month,
14 transmit to the Revenue Cabinet reports on the forms the cabinet may prescribe, of
15 the total number of gallons of gasoline and special fuel received in this state during
16 the next preceding calendar month. This report shall include the following
17 information:

18 (a) An itemized statement of the number of gallons received that have been
19 produced, refined, manufactured, or compounded by the dealer in this state
20 during the next preceding calendar month; and

21 (b) An itemized statement of the number of gallons received by the dealer in this
22 state from any source during the next preceding calendar month, as shown by
23 shippers' invoices, other than the gasoline and special fuel falling within the
24 provisions of paragraph (a) of this subsection, together with a statement
25 showing the date of receipt, the name of the person from whom purchased, the
26 date of receipt of each shipment, the point of origin and the point of
27 destination, the quantity of each purchase or shipment, the name of the carrier,

the initials and number of each tank car, the date of receipt, and the number of gallons contained in each car if shipped by rail or the name and owner of the boat, ship, truck, transport, barge, or vessel if shipped by water.

(2) The reports required by subsection (1) of this section shall also contain an itemized statement of the number of gallons received by the dealer during the preceding calendar month of:

(a) ***Bulk sales of*** gasoline ***or bulk sales of***[~~and~~] special fuels sold to the United States government[~~, including sales or deliveries to others who sell or deliver the gasoline or special fuels to the United States government,~~] for use exclusively in equipment or vehicles owned or leased by the United States government;

(b) Gasoline and special fuels sold for delivery in this state in transport truck, tank car, or cargo lots to licensed bonded dealers. The statement shall give a record of all such transport truck, tank car, or cargo sales, giving the date of shipment, the number of gallons contained in each shipment, the name of owner and license number of truck if shipped by transport truck, the initials and number of the tank car if shipped by rail, the name and owner of the boat, barge, or vessel, and the number of gallons contained therein if shipped by water, and the name of the person to whom sold, point of shipment, and point of delivery;

(c) Gasoline and special fuels lost through accountable losses;

(d) Gasoline and special fuel exported from this state to any other state in transport truck, tank car or cargo lots;

(e) Gasoline or special fuel delivered upon or immediately adjacent to a river or stream, if:

1. The gasoline or special fuel is or will be delivered into the fuel supply tank of a commercial ship or vessel which has a valid certificate of

1 documentation issued by the United States Coast Guard; and
2 2. All the fuel will be used exclusively in the operation of a commercial
3 ship or vessel.
4 (f) Special fuel delivered to a railroad company principally engaged in the
5 commercial transportation of property for others as a common carrier or in the
6 conveyance of persons for hire, if the railroad company is the holder of a
7 Kentucky motor fuels tax refund permit and certifies that the fuel is to be used
8 exclusively for the purpose of powering locomotives and unlicensed company
9 vehicles or equipment for nonhighway use. Railroad company as used herein
10 shall not include any company described in KRS 136.120(4)(a) in effect on
11 August 1, 1988; and
12 (g) Special fuels used in unlicensed vehicles or equipment by licensed special
13 fuels dealers for nonhighway purposes related to the distribution of gasoline or
14 special fuels to others.
15 (3) All gasoline and special fuel gallons received or distributed by a dealer from marine
16 terminal, refinery or pipeline terminal storage in this state shall be reported at sixty
17 (60) degrees Fahrenheit.
18 Section 4. KRS 138.280 is amended to read as follows:
19 (1) The reports required by KRS 138.240 shall be accompanied by a certified or
20 cashier's check, payable to the State Treasurer, for the amount of tax due for the
21 preceding calendar month, computed as provided in KRS 138.270; except that the
22 cabinet may waive this requirement and accept the dealer's check ***or allow for***
23 ***remittance of the tax owed to the cabinet by electronic fund transfer*** where the
24 dealer is of sound financial condition and has established a good record of
25 compliance with the requirements of KRS 138.210 to 138.340.
26 (2) By virtue of the allowance provided by KRS 138.270 to dealers for collecting and
27 remitting the tax, every dealer is a trust officer of the state.

1 ***(3) The cabinet shall promulgate administrative regulations establishing electronic***
2 ***fund transfer requirements for the payment of taxes due for the preceding***
3 ***calendar month and computed as provided by KRS 138.270.***
4 Section 5. KRS 138.320 is amended to read as follows:
5 (1) To procure the license required by KRS 138.310, every dealer or transporter so
6 required shall file with the Revenue Cabinet an application in such form and
7 containing such information as the cabinet may deem necessary.
8 (2) If the dealer or transporter is a corporation organized under the laws of another
9 state, it shall file with its application a certified copy of the certificate or license
10 issued by the Secretary of State of this state showing that the corporation is
11 authorized to transact business in this state.
12 (3) At the time of filing application for a license, a ***financial instrument as defined in***
13 ***KRS 138.210(15)***[~~bond of the character stipulated~~] and in the amount provided for
14 in KRS 138.330 shall be filed with the cabinet. No license shall be issued upon any
15 application unless accompanied by this ***financial instrument***[~~bond~~].
16 (4) If application for such a license is filed by any person whose license has at any time
17 previously been canceled for cause by the cabinet, or if the cabinet is of the opinion
18 that the application is not filed in good faith, or that the application is filed by some
19 person as a subterfuge for the real person in interest whose license or registration
20 has previously been canceled for cause by the cabinet, the cabinet may, after a
21 hearing of which the applicant has been given five (5) days' notice in writing, and in
22 which the applicant shall have the right to appear in person or by counsel and
23 present testimony, refuse to issue a license to that person.
24 (5) The application in proper form having been accepted for filing, and the ***financial***
25 ***instrument***[~~bond~~] having been accepted and approved, the cabinet shall issue to the
26 applicant a license, subject to cancellation as provided by KRS 138.340. The license
27 shall not be assignable, and shall be valid only for the person in whose name it is

1 issued, and shall be displayed conspicuously in the principal place of business of the
2 dealer in this state.
3 (6) The cabinet shall keep and file all applications and ***financial instruments***[~~bonds~~],
4 with an alphabetical index thereof, together with a record of all licensed dealers or
5 transporters. The cabinet shall publish and keep currently up to date a list of
6 licensed dealers and transporters, and transmit a copy of list and all revisions
7 thereof to all licensed dealers and transporters.
8 (7) All licenses shall be valid and remain in full force and effect until suspended or
9 revoked for cause or otherwise canceled.

Speaker-House of Representatives

President of the Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date March 18, 2005