GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 374

FRIDAY, MARCH 6, 2009

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

RECEIVED AND FILED
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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY P. Kinsolving

AN ACT relating to motor fuels taxes and declaring an emergency.

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

1 ➔Section 1. KRS 138.210 is amended to read as follows:

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

3 (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel
4 through wrecking of transportation conveyance, explosion, fire, flood or other
5 casualty loss, or contaminated and returned to storage. The loss shall be reported
6 within thirty (30) days after discovery of the loss to the department in a manner and
7 form prescribed by the department, supported by proper evidence which in the sole
8 judgment of the department substantiates the alleged loss or contamination and
9 which is confirmed in writing to the reporting dealer by the department. The
10 department may make any investigation deemed necessary to establish the bona fide
11 claim of the loss;

12 (2) "Gasoline dealer" or "special fuels dealer" means any person who is:

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

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

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

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

21 (e) In the case of gasoline, receiving or accepting delivery within this state of
22 gasoline for resale within this state in amounts of not less than an average of
23 one hundred thousand (100,000) gallons per month during any prior
24 consecutive twelve (12) months' period, when in the opinion of the
25 department, the person has sufficient financial rating and reputation to justify

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

1 of being used for the generation of power in an internal combustion engine to
2 propel vehicles of any kind upon the public highways, including diesel fuel,
3 and dyed diesel fuel used exclusively for nonhighway purposes in off-highway
4 equipment and in nonlicensed motor vehicles, except that it does not include
5 gasoline, aviation jet fuel, kerosene unless used wholly or in combination with
6 special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS
7 234.100;
8 (c) "Diesel fuel" means any liquid other than gasoline that, without further
9 processing or blending, is suitable for use as a fuel in a diesel powered
10 highway vehicle. Diesel fuel does not include unblended kerosene, No. 5, and
11 No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval
12 Distillate MILL-F-166884;
13 (d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United
14 States Environmental Protection Agency rules for high sulfur diesel fuel, or is
15 dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant
16 to any other requirements subsequently set by the United States
17 Environmental Protection Agency or the Internal Revenue Service;
18 (5) "Received" or "received gasoline" or "received special fuels" shall have the
19 following meanings:
20 (a) Gasoline and special fuels produced, manufactured, or compounded at any
21 refinery in this state or acquired by any dealer and delivered into or stored in
22 refinery, marine, or pipeline terminal storage facilities in this state shall be
23 deemed to be received when it has been loaded for bulk delivery into tank cars
24 or tank trucks consigned to destinations within this state. For the purpose of
25 the proper administration of this chapter and to prevent the evasion of the tax
26 and to enforce the duty of the dealer to collect the tax, it shall be presumed
27 that all gasoline and special fuel loaded by any licensed dealer within this state

1 into tank cars or tank trucks is consigned to destinations within this state,
2 unless the contrary is established by the dealer, pursuant to rules and
3 regulations prescribed by the department; and
4 (b) Gasoline and special fuel acquired by any dealer in this state, and not
5 delivered into refinery, marine, or pipeline terminal storage facilities, shall be
6 deemed to be received when it has been placed into storage tanks or other
7 containers for use or subject to withdrawal for use, delivery, sale, or other
8 distribution. Dealers may sell gasoline or special fuel to licensed bonded
9 dealers in this state in transport truckload, carload, or cargo lots, withdrawing
10 it from refinery, marine, pipeline terminal, or bulk storage tanks, without
11 paying the tax. In such instances, the licensed bonded dealer purchasing the
12 gasoline or special fuel shall be deemed to have received such fuel at the time
13 of withdrawal from the seller's storage facility and shall be responsible to the
14 state for the payment of the tax thereon;
15 (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured,
16 compounded, or otherwise prepared for use;
17 (7) "Storage" means all gasoline and special fuel produced, refined, distilled,
18 manufactured, blended, or compounded and stored at a refinery storage or delivered
19 by boat at a marine terminal for storage, or delivered by pipeline at a pipeline
20 terminal, delivery station, or tank farm for storage;
21 (8) "Transporter" means any person who transports gasoline or special fuel on which
22 the tax has not been paid or assumed;
23 (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less
24 than twenty thousand (20,000) gallons owned or operated at one (1) location by a
25 single owner or operator for the purpose of storing gasoline or special fuel for resale
26 or delivery to retail outlets or consumers;
27 (10) "Average wholesale price" ***means***~~[shall mean]~~:

1 (a) The weighted average per gallon wholesale~~[tank wagon]~~ price of gasoline, ***as***
2 ***determined by the Department of Revenue from information furnished by***
3 ***licensed gasoline dealers or from information available through***
4 ***independent statistical surveys of gasoline prices. Dealers shall furnish to***
5 ***the department within twenty (20) days following the end of the first month***
6 ***of each calendar quarter, the information regarding wholesale selling***
7 ***prices for the previous month as required by the department. The "average***
8 ***wholesale price" shall be determined*** exclusive of***:***
9 ***1.*** The nine cents ($0.09) per gallon federal tax in effect on January 1,
10 1984***;***~~[,]~~
11 ***2.*** Any increase in the federal gasoline tax after July 1, 1984***;***~~[,]~~ and
12 ***3.*** Any fee on imported oil imposed by the Congress of the United States
13 after July 1, 1986~~[, as determined by the Department of Revenue from~~
14 ~~information furnished by licensed gasoline dealers or from information~~
15 ~~available through independent statistical surveys of gasoline prices.~~
16 ~~Dealers shall furnish within twenty (20) days following the end of the~~
17 ~~first month of each calendar quarter, the information regarding~~
18 ~~wholesale selling prices for the previous month required by the~~
19 ~~department]~~; ***and***
20 (b) ***1. The Department of Revenue shall determine the "average wholesale***
21 ***price" on a quarterly basis, and shall adjust the "average wholesale***
22 ***price" used in determining the tax rate under Section 2 of this Act as***
23 ***provided in subparagraph 2. of this paragraph.*** Notwithstanding ***the***
24 ***provisions of this subparagraph and*** the provisions of paragraph (a) of
25 this subsection, for purposes of the taxes levied in KRS 138.220,
26 138.660, and 234.320, in no case shall ***the*** "average wholesale price" be
27 ***set at***~~[deemed to be]~~ less than one dollar and ***seventy-eight and six-***

1 ***tenths cents ($1.786)***[~~ thirty-four and two-tenths cents ($1.342)~~] per
2 gallon.
3 ***2. The "average wholesale price" adjustment for each fiscal year shall***
4 ***not***[~~, and in no case shall "average wholesale price" be deemed to be~~
5 ~~more than one dollar and fifty cents ($1.50) per gallon on or before June~~
6 ~~30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not~~
7 ~~be deemed to increase more than ten percent (10%) over the "average~~
8 ~~wholesale price" at the close of fiscal year 1981-82; in each subsequent~~
9 ~~fiscal year the "average wholesale price" shall not be deemed to~~]
10 increase more than ten percent (10%) over the "average wholesale price"
11 at the close of the previous fiscal year;
12 (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled
13 by an internal combustion engine and licensed for operation and operated upon the
14 public highways and any trailer or semitrailer attached to or having its front end
15 supported by the motor vehicles;
16 (12) "Public highways" means every way or place generally open to the use of the public
17 as a matter or right for the purpose of vehicular travel, notwithstanding that they
18 may be temporarily closed or travel thereon restricted for the purpose of
19 construction, maintenance, repair, or reconstruction;
20 (13) "Agricultural purposes" means purposes directly related to the production of
21 agricultural commodities and the conducting of ordinary activities on the farm;
22 (14) "Retail filling station" means any place accessible to general public vehicular traffic
23 where gasoline or special fuel is or may be placed into the fuel supply tank of a
24 licensed motor vehicle; and
25 (15) "Financial instrument" means a bond issued by a corporation authorized to do
26 business in Kentucky, a line of credit, or an account with a financial institution
27 maintaining a compensating balance.

1 ➔Section 2. KRS 138.220 is amended to read as follows:

2 (1) ***(a)*** An excise tax at the rate of nine percent (9%) of the average wholesale price

3 rounded to the ***nearest one-tenth of one cent ($0.001)***[~~third decimal when~~

4 ~~computed on a per gallon basis~~] shall be paid on all gasoline and special fuel

5 received in this state. ***The tax shall be paid on a per gallon basis.***

6 ***(b) The average wholesale price shall be determined and adjusted as provided***

7 ***in subsection (10) of Section 1 of this Act.***

8 ***(c)*** For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365,

9 the amount calculated under this subsection shall be reduced by the amount

10 calculated in subsection (3) of this section.

11 ***(d)*** Except as provided by KRS Chapter 138, no other excise or license tax shall

12 be levied or assessed on gasoline or special fuel by the state or any political

13 subdivision of the state.

14 ***(e)*** The tax herein imposed shall be paid by the dealer receiving the gasoline or

15 special fuel to the State Treasurer in the manner and within the time specified

16 in KRS 138.230 to 138.340 and all such tax may be added to the selling price

17 charged by the dealer or other person paying the tax on gasoline or special fuel

18 sold in this state.

19 ***(f)*** Nothing herein contained shall authorize or require the collection of the tax

20 upon any gasoline or special fuel after it has been once taxed under the

21 provisions of this section, unless such tax was refunded or credited.

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

23 hereby levied a supplemental highway user motor fuel tax to be paid in the

24 same manner and at the same time as the tax provided in subsection (1) of this

25 section.

26 ***(b) The***[~~Such~~] tax shall be calculated, starting with the quarter beginning July 1,

27 1986, by taking the excise tax resulting from the calculation provided for in

1 subsection (1) of this section and adjusting ***the***[~~such~~] tax calculated, for each
2 quarter, to reflect decreases in the average wholesale price, as defined in KRS
3 138.210(10)[~~(a)~~]. The adjustment shall be made by calculating the difference
4 between the average wholesale price computed for the quarter beginning
5 October 1, 1985, as provided for in subsection (4) of this section, and the
6 average wholesale price computed for the quarter beginning July 1, 1986 and
7 each succeeding quarter, as provided for in subsection (4) of this section.
8 ***(c) If there is***[~~In the event of~~] a decrease in the average wholesale price computed
9 for the quarter beginning October 1, 1985, and ending December 31, 1985,
10 and the average wholesale price computed for the quarter beginning July 1,
11 1986, and each succeeding quarter, the excise tax shall be adjusted upward for
12 that quarter. The upward adjustment shall equal one-half (1/2) of the decrease
13 between the two (2) quarterly periods, rounded to the third decimal.
14 ***(d)*** In no case shall the adjustment provided by this subsection result in a
15 supplemental highway user motor fuel tax greater than five cents ($0.05) on
16 gasoline or two cents ($0.02) on special fuel and, notwithstanding any
17 adjustment which may be calculated as provided by this subsection, in no case
18 shall the supplemental highway user motor fuel tax for any quarter be less
19 than the previous quarter.
20 ***(e)*** The supplemental highway user motor fuel tax provided by this subsection
21 and the provisions of subsections (1) and (3) of this section shall constitute the
22 tax on motor fuels imposed by KRS 138.220.
23 (3) Effective July 1, 2005, one cent ($0.01), and effective July 1, 2006, two and one-
24 tenth cents ($0.021), of the tax collected under subsection (1) of this section shall be
25 excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds
26 identified in this subsection shall be deposited into the state road fund.
27 (4) Effective with the calendar quarter beginning July 1, 1980, the department shall

1 determine on a consistent basis the average wholesale price for each calendar
2 quarter, on the basis of sales data accumulated for the first month of the preceding
3 quarter. Notification of the average wholesale price shall be given to all licensed
4 dealers at least twenty (20) days in advance of the first day of each calendar quarter.
5 (5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average
6 wholesale price becomes effective, shall be subject to additional tax or appropriate
7 tax credit to reflect the increase or decrease in the average wholesale price for the
8 new quarter. The department shall promulgate such rules and regulations to properly
9 administer this provision.
10 ➔Section 3. Whereas the price of motor fuels has fluctuated significantly and the
11 potential impact on the road fund is significant, an emergency is declared to exist, and
12 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
13 becoming a law.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3-13-09