

**138.220 State gasoline and special fuel tax -- Supplementary highway user motor fuel tax -- Imposition -- Determination of average wholesale price -- Additional tax or credit for tax-paid inventory.**

- (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 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 five cents (\$0.05) on gasoline or two cents (\$0.02) 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.

- (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 such rules and regulations to properly administer this provision.

**Effective:** March 13, 2009

**History:** Amended 2009 Ky. Acts ch. 8, sec. 2, effective March 13, 2009. -- Amended 2006 Ky. Acts ch. 252, Pt. XVIII, sec. 2, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 354, effective June 20, 2005; and ch. 173, Pt. XVII, sec. 2, effective July 1, 2005. -- Amended 1988 Ky. Acts ch. 285, sec. 2, effective August 1, 1988. -- Amended 1986 Ky. Acts ch. 174, sec. 13, effective July 1, 1986. -- Amended 1980 Ky. Acts ch. 218, sec. 2, effective July 1, 1980. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 6, sec. 1. -- Amended 1972 Ky. Acts ch. 61, sec. 1. -- Amended 1948 Ky. Acts ch. 45, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4281g-2.