

**138.460 Motor vehicle usage tax -- Imposition -- Rate -- Collection -- Refunds.**

- (1) A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.
- (2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be titled or registered:
  - (a) When the fee for titling or registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or
  - (b) Upon the transfer of title or registration of any motor vehicle previously titled or registered in this state.
- (3) The tax imposed by subsection (1) of this section and collected under subsection (2) of this section shall not be collected if the owner provides to the county clerk a signed affidavit of nonhighway use, on a form provided by the department, attesting that the vehicle will not be used on the highways of the Commonwealth. If this type of affidavit is provided, the clerk shall, in accordance with the provisions of KRS Chapter 139, immediately collect the applicable sales and use tax due on the vehicle.
- (4)
  - (a) The tax collected by the county clerk under this section shall be reported and remitted to the department on forms prescribed and provided by the department. The department shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of KRS 138.450 and subsection (3) of this section. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
  - (b) The sales and use tax collected by the county clerk under subsection (3) of this section shall be reported and remitted to the department on forms which the department shall prescribe and provide at no cost. The county clerk shall, for his or her services in collecting the tax, be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
  - (c) Motor vehicle dealers licensed pursuant to KRS Chapter 190 shall not owe or be responsible for the collection of sales and use tax due under subsection (3) of this section.
- (5) A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS Chapter 139, if applicable, in addition to any title, registration, or license fees.
- (6)
  - (a) When a person offers a motor vehicle:
    1. For titling on or after July 1, 2005; or
    2. For registration;

for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. A credit shall not be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

- (b) When a resident of this state offers a motor vehicle for registration for the first time in this state:
  - 1. Upon which the Kentucky sales and use tax was paid by the resident offering the motor vehicle for registration at the time of titling under subsection (3) of this section; and
  - 2. For which the resident provides proof that the tax was paid;a nonrefundable credit shall be given against the tax imposed by subsection (1) of this section for the sales and use tax paid.
- (7) (a) A county clerk or other officer shall not title, register, or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for titling or registration for the first time, unless the seller or his agent delivers to the county clerk a notarized affidavit, if required, and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle.
- (b) If a notarized affidavit is not available, the clerk shall follow the procedures under KRS 138.450(12) for new vehicles, and KRS 138.450(14) or (15) for used vehicles.
- (c) The clerk shall attach the notarized affidavit, if available, or other documentation attesting to the retail price of the vehicle as the department may prescribe by administrative regulation promulgated under KRS Chapter 13A to the copy of the certificate of registration and application for title mailed to the department.
- (8) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six dollars (\$6) upon titling or first registration of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470 or 154.45-090.
- (9) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the department as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.
- (10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the first titling or registration. A person shall not be entitled to a refund unless the person has filed with the department a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.
- (11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the

purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the department a report from the dealer or manufacturer identifying the vehicle that was replaced.

- (12) (a) An owner who has paid the tax levied under this section on a used motor vehicle or U-Drive-It vehicle based upon the retail price as defined in KRS 138.450(16)(a) shall be entitled to a refund of any tax overpayment, plus applicable interest as provided in KRS 131.183, if the owner:
1. Files for a refund with the department within four (4) years from the date the tax was paid as provided in KRS 134.580; and
  2. Documents to the satisfaction of the department that the condition of the vehicle merits a retail price lower than the retail price as defined in KRS 138.450(16)(a).
- (b) The department shall promulgate administrative regulations to develop the forms and the procedures by which the owner can apply for a refund and document the condition of the vehicle. The department shall provide the information to each county clerk.
- (c) The refund shall be based upon the difference between the tax paid and the tax determined to be due by the department at the time the owner titled or registered the vehicle.

**Effective:** September 1, 2009

**History:** Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 113, effective September 1, 2009. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXV, sec. 4, effective January 1, 2007; ch. 251, sec. 4, effective July 12, 2006; and ch. 6, sec. 9, effective March 6, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 386, effective June 20, 2005; and ch. 173, Pt. XIV, sec. 1, effective March 20, 2005. -- Amended 1998 Ky. Acts ch. 600, sec. 4, effective April 14, 1998. -- Amended 1994 Ky. Acts ch. 54, sec. 3, effective July 15, 1994; and ch. 65, sec. 15, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 476, Pt. VII B, sec. 626, effective July 1, 1990. -- Amended 1986 Ky. Acts ch. 496, sec. 18, effective August 1, 1986. -- Amended 1984 Ky. Acts ch. 409, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 375, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 10, sec. 1, effective June 17, 1978; and ch. 384, sec. 283, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 89, sec. 2; ch. 133, sec. 1; ch. 155, sec. 3; and ch. 349, sec. 2, effective July 1, 1976. -- Amended 1974 Ky. Acts ch. 325, sec. 1. -- Amended 1972 Ky. Acts ch. 84, Pt. IV, sec. 2. -- Amended 1968 Ky. Acts ch. 40, Part III, sec. 2. -- Amended 1960 Ky. Acts ch. 186, Art. IV, sec. 3. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4281i-2, 4281i-4, 4281i-5.

**Legislative Research Commission Note** (1/1/2007). This section was amended by 2006 Ky. Acts chs. 6, 251, and 252. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between Acts ch. 6 and chs. 251 and 252, Acts chs. 251 and 252, which were enacted by the General Assembly after Acts ch. 6, prevail under KRS 446.250.

**Legislative Research Commission Note** (3/6/2006). 2006 Ky. Acts ch. 6, sec. 29, provides that this section applies retroactively to July 1, 2005.

**Legislative Research Commission Note** (6/20/2005) 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and

officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.