

Special Fuels Tax

Background **T**he term “special fuels” is defined to include all combustible gases and liquids capable of being used in motor vehicles, except gasoline, as defined in KRS 138.210, and liquefied petroleum gas, as defined in KRS 234.100. A tax on special fuels was first enacted in 1952. When the base was changed for gasoline in 1980 to the average wholesale price, the special fuels tax base was changed accordingly. This change provided that the special fuels rate would be a function of the wholesale price of gasoline, and as the price of gasoline rose, the rate on special fuels would rise proportionately. The “supplemental highway user tax” became effective July 1, 1986.

In 1988, the General Assembly made a major change in the special fuels law. The law now requires that the tax be levied on the dealer at the point of receipt of the fuels (as is the case for gasoline) instead of the point of sale by the dealer. Generally, special fuels used for off-highway purposes are subject to a refund of the tax, provided proper applications are filed and other procedures are followed.

The tax is imposed for the privilege of using the highways of the Commonwealth, therefore the receipts are deposited in the Road Fund. For FY07, the special fuels tax collections were \$141.4 million, which was 11.5 percent of total Road Fund tax receipts.

Current Tax Structure The current tax rate is a minimum of 12.1 cents per gallon. As the average wholesale price of gasoline increases above \$1.342 per gallon, the special fuels tax increases accordingly. The current rate for the supplemental highway tax is 2 cents per gallon thereby increasing the total minimum rate on special fuels to 14.1 cents per gallon.

Tax Base The minimum combined tax rate of 14.1 cents per gallon of special fuels applies. The tax becomes a liability of the dealer when the special fuel is received or enters the dealer’s storage facility. The dealer is allowed a deduction of 2.25 percent to cover evaporation, shrinkage, unaccountable losses, collection costs, bad debts, and handling and reporting the tax.

Taxable Unit The unit for levying the special fuels tax is a “per gallon” basis.

Tax Due Returns and payments of the tax are due monthly. The tax must be remitted to the Department of Revenue on or before the twenty-fifth day of the month.

Table 19. Total Special Fuels Tax Expenditures

FY 2008	FY 2009	FY 2010
\$67.7 million	\$73.4 million	\$75.8 million

Tax Expenditures

1. Agricultural Use

Kentucky Revised Statute 138.358(2), effective 1988

A credit is allowed for special fuels used for non-highway agricultural purposes.

FY 2008	FY 2009	FY 2010
\$5.7 million	\$6.1 million	\$6.3 million

2. Bus, Taxicab and Certain Senior Citizen’s Programs Refunds

Kentucky Revised Statute 138.446, effective 1978

Seven-ninths of the tax paid is refunded if the special fuels are used in regularly scheduled operations of city and suburban buses, taxicabs, senior citizen transportation and non-profit buses.

FY 2008	FY 2009	FY 2010
\$428,000	\$465,000	\$480,000

3. Dealer's Monthly Reporting Allowance

Kentucky revised Statute 138.270(1)(b), effective 1958

An allowance of 2.25 percent of the net tax due is allowed a dealer on a timely filed and paid monthly return. This allowance is given to offset the costs of evaporation, shrinkage, unaccountable losses, collection costs, bad debts and handling and reporting the tax.

FY 2008	FY 2009	FY 2010
\$3.6 million	\$3.9 million	\$4.0 million

4. Non-Highway Use

Kentucky Revised Statute 138.344(1), effective 1988, revised 2000

Special fuels used exclusively for non-highway use by qualified purchasers are exempt sales.

FY 2008	FY 2009	FY 2010
\$34.2 million	\$37.2 million	\$38.4 million

5. Railroad Companies

Kentucky Revised Statute 138.240(2)(f), effective 1988

Railroad companies principally engaged in the business of transporting property for others as a common carrier or in the conveyance of persons are exempt.

FY 2008	FY 2009	FY 2010
\$21.8 million	\$23.6 million	\$24.4 million

6. Religious, Charitable or Educational Use

Kentucky Revised Statute 138.358(3), effective 1988

An exemption is allowed for sales to qualifying non-profit religious, charitable or educational organizations for non-highway use.

FY 2008	FY 2009	FY 2010
\$441,000	\$479,000	\$494,000

7. Residential Heating

Kentucky Revised Statute 138.358(1), effective 1988

An exemption is allowed for special fuels used exclusively for heating personal residences.

FY 2008	FY 2009	FY 2010
\$1.2 million	\$1.3 million	\$1.3 million

8. State and Local Government Use

Kentucky Revised Statute 138.358(3), effective 1988

An exemption is allowed for sales to qualifying state and local government agencies for non-highway use.

FY 2008	FY 2009	FY 2010
\$317,000	\$344,000	\$356,000

10. Watercraft

Kentucky Revised Statute 138.455, effective 1960

One hundred percent of the tax paid on special fuels to operate or propel watercraft is refunded to qualified boat dock operators.

FY 2008	FY 2009	FY 2010
\$45,000	\$45,000	\$45,000

Background Kentucky was the twentieth state to enact a tax on cigarettes, which became effective in 1936. The original cigarette excise tax rate was one cent per ten cents of the sales price. Over time, the “two-cents-per-package” tax gradually became a three-cent levy as more and more retailers began to charge above twenty cents per pack of cigarettes.

On July 1, 1960, a proportionate rate of two and one-half cents on each twenty cigarettes sold within the Commonwealth was assessed.

The 1970 General Assembly created the Tobacco Research Trust Fund. The legislation increased the cigarette excise tax by one-half cent per pack, to three cents per pack. The revenue generated by this tax increase was earmarked for the Tobacco Research Trust Fund.

In 1982, the General Assembly provided for a cigarette enforcement fee, in an amount calculated annually by Revenue, to recover applicable costs of enforcing the fair trade law and administering the cigarette tax law. The present rate is one-tenth of one cent per package of twenty cigarettes.

In 1994, the General Assembly enacted the Teen Tobacco Education Fund and provided that one-twentieth of one cent (\$0.0005) of the three-cent-per-pack revenue be used to offset the cost of the education efforts.

In 2000, the General Assembly enacted the Teen Tobacco Enforcement Fund and provided that one-twentieth of one cent of the three-cent-per-pack revenue be deposited in a trust and agency account to offset the costs of enforcement.

In 2005, the General Assembly enacted a cigarette surtax of a proportionate rate of twenty-six cents on each twenty cigarettes. An additional one-cent was enacted and dedicated to the Cancer Research Matching Fund. The two additional surtaxes bring Kentucky’s total tax on a pack of twenty cigarettes to thirty cents.

Additionally, a 7.5 percent gross receipts tax was imposed on other tobacco products and a tax on snuff was imposed at nine and one-half cents per unit.

In 2006, the General Assembly clarified the taxation of other tobacco products by making a distinction between moist snuff and dry snuff. Dry snuff is taxed at 7.5 percent as an other tobacco product (OTP). Moist snuff is taxed as snuff. Additionally, a new wholesale cigarette paper excise tax was created. The tax is twenty-five cents per package of 32 sheets of paper.

For FY07, tobacco tax collections deposited to the General Fund were \$177.4 million and represented 2.1 percent of total General Fund tax receipts.

Current Tax Rate The tax rate, including both the cigarette excise tax and the cigarette surtax, is thirty (30) cents per package of twenty cigarettes. The other tobacco products tax is 7.5 percent of gross receipts. The tax on snuff is nine and one-half cents per unit.

Tax Base Both the cigarette excise tax and the cigarette surtax are paid through the purchase of stamps or meter units from the Department of Revenue. These stamps must be placed on each package of cigarettes as evidence that the tax has been paid. For affixing the tax evidence, the wholesaler is generally allowed the equivalent of a 9.09 percent discount against only the cigarette excise tax when the evidence is purchased.

Tax Due The wholesaler pays the tax at the time the tax stamps or meter units are purchased from the Department of Revenue. A monthly report is required by the twentieth of each month reflecting purchases and trafficking of cigarettes for the preceding month. A monthly report of other tobacco products and snuff is also due by the twentieth day of the succeeding month within which the transaction occurred.

Table 20. Total Tobacco Tax Expenditures

FY 2008	FY 2009	FY 2010
\$1.3 million	\$1.3 million	\$1.3 million

Tax Expenditures**1. Compensation Allowed Wholesaler**

Kentucky Revised Statute 138.146, effective 1982

For affixing the tax evidence to each package of cigarettes, the cigarette wholesaler is allowed an amount of tax evidence equal to thirty cents for each three dollars of tax evidence purchased. This converts to a 9.09 percent discount on the purchase of tax evidence.

FY 2008	FY 2009	FY 2010
\$1.3 million	\$1.3 million	\$1.3 million

EARMARKED FUNDS

Earmarked funds are reserved to be spent only on a particular program. The taxpayer is still liable for the tax, and the state is still collecting these revenues. The fact that the revenues are earmarked for special purposes does not qualify them as tax expenditures.

Earmarked funds are included for informational purposes in this report because they do have an impact on the amount of usable funds collected by the General Fund and the Road Fund.

Table 21. Total Earmarked Funds

FY 2008	FY 2009	FY 2010
\$40.3 million	\$70.5 million	\$72.4 million

Earmarked Funds

1. Thoroughbred Development Fund - Pari-Mutuel Tax

Kentucky Revised Statute 138.510, effective 1990

Three-quarters of one percent (0.75%) of all pari-mutuel wagering at thoroughbred horse tracks under the jurisdiction of the Kentucky Horse Racing Authority, and 2 percent of wagering at receiving tracks in intertrack wagering as well as telephone account wagering, is deducted from the pari-mutuel tax and deposited in this fund.

FY 2008	FY 2009	FY 2010
\$6.8 million	\$6.8 million	\$6.8 million

2. Equine Industry Program Trust and Revolving Fund - Pari-Mutuel Tax*Kentucky Revised Statute 138.510(3), effective 1990*

One-fifth of one percent (0.2%) of the total amount wagered on live racing in Kentucky and .05 percent of the total amount wagered on intertrack wagering are deducted from the pari-mutuel tax and deposited in this fund. The fund is used for the equine industry program at the University of Louisville.

FY 2008	FY 2009	FY 2010
\$490,000	\$490,000	\$490,000

3. Higher Education Equine Trust and Revolving Fund - Pari-Mutuel Tax*Kentucky Revised Statute 138.510(4), effective 1992*

One-tenth of one percent (0.1%) of the total amount wagered in Kentucky is deducted from the pari-mutuel tax to be deposited in this fund. The fund is used for construction, expansion or renovation of facilities or the purchase of equipment for equine programs at state universities.

FY 2008	FY 2009	FY 2010
\$460,000	\$460,000	\$460,000

4. Standardbred Development Fund - Pari-Mutuel Tax*Kentucky Revised Statute 230.265(3), effective 1990*

One percent of all pari-mutuel wagering at harness host tracks under the jurisdiction of the Kentucky Horse Racing Authority, and 2 percent of wagering at receiving tracks in intertrack wagering as well as telephone account wagering, are deducted from the tax and deposited in this fund.

FY 2008	FY 2009	FY 2010
\$180,000	\$180,000	\$180,000

5. Tobacco Enforcement Program - Cigarette Tax

Kentucky Revised Statute 438.335 and 438.337, effective 1996

One-twentieth of one cent of the three-cent per pack state excise tax on cigarettes is earmarked for the Department of Agriculture to enforce the laws aimed at the prevention of sales of tobacco products to minors.

FY 2008	FY 2009	FY 2010
\$590,000	\$590,000	\$590,000

6. Kentucky Transportation Center - Motor Fuels Tax

Kentucky Revised Statute 177.320(4), effective 1986

The Kentucky Transportation Center receives 0.1 percent of all revenues arising from the imposition of taxes on gasoline, special fuels and liquefied petroleum gas. The receipts are limited to \$190,000 in any fiscal year.

FY 2008	FY 2009	FY 2010
\$190,000	\$190,000	\$190,000

7. Tobacco Research Trust Fund - Cigarette Tax

Kentucky Revised Statute 248.540, effective 1970

One-sixth of the tax collected is earmarked for the Tobacco Research Trust Fund.

FY 2008	FY 2009	FY 2010
\$2.7 million	\$2.7 million	\$2.7 million

8. Equine Drug Research - Pari-Mutuel Tax

Kentucky Revised Statute 230.265(3), effective 1982

An amount equal to 0.1 percent of the total amount wagered in Kentucky is deducted from the pari-mutuel tax to be used in financing drug research and testing.

FY 2008	FY 2009	FY 2010
\$450,000	\$450,000	\$450,000

9. Kentucky Aviation Economic Development Fund - Sales Tax

Kentucky Revised Statute 183.525, effective July 1, 2000

All sales and use tax collected on the sale of aircraft fuel is deposited in this fund.

FY 2008	FY 2009	FY 2010
\$5.6 million	\$5.7 million	\$5.8 million

10. Tax Increment Financing - Various Taxes

*Kentucky Revised Statute 65.495, effective July 14, 2000 and
Kentucky Revised Statute 65.703, effective June 21, 2001*

A locality may create a development area and, with state approval, receive payment of part of the increase in tax revenues within the development area to help offset the cost of development. Potentially all taxes could be involved, although sales, property and income taxes are most utilized because of the dollar volume.

FY 2008	FY 2009	FY 2010
\$3.3 million	\$32.8 million	\$34.0 million

11. Equine Breeder Development Funds - Sales Tax

Kentucky Revised Statute 230.800, 230.802 and 230.804, effective June 1, 2005

Sales tax receipts from stud fees for breeding of horses in this state are earmarked for use in creating breeder incentives. The sales tax is deposited into special funds for future disbursement by the Kentucky Horse Racing Authority. Eighty percent of the receipts are dedicated to the “Kentucky Thoroughbred Breeders Incentive Fund”; thirteen percent to the “Kentucky Standardbred Breeders Incentive Fund”; and 7 percent to the “Kentucky Horse Breeders Incentive Fund.”

Kentucky Thoroughbred Breeders Incentive Fund

FY 2008	FY 2009	FY 2010
\$15.6 million	\$16.0 million	\$16.5 million

Kentucky Horse Breeders Incentive Fund

FY 2008	FY 2009	FY 2010
\$2.5 million	\$2.6 million	\$2.7 million

Kentucky Horse Breeders Incentive Fund

FY 2008	FY 2009	FY 2010
\$1.4 million	\$1.5 million	\$1.6 million

12. County Clerk Share for Collection of Sales Tax on Nonresident Sales

Kentucky Revised Statute 139.778, effective January 1, 2007

In return for collecting sales and use taxes due on tangible personal property purchased out of state at the time of registration or titling, county clerks may retain three percent of the tax collected.

FY 2008	FY 2009	FY 2010
\$100,000	\$150,000	\$150,000