138.463 Collection of U-Drive-It tax.

(1) A holder of a permit as required under KRS 281.615 to operate as a U-Drive-It as defined in KRS 281.014 may pay the usage tax as provided in KRS 138.460 or, subject to the provisions of this section, may pay a usage tax of six percent (6%) levied upon the amount of the gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from such holder of the permit.

(2) The provisions of KRS 138.462 and this section shall apply to all rental and leasehold contracts entered into after March 9, 1990.

(3) A holder of a permit shall pay the usage tax as provided in KRS 138.460 unless he shows to the satisfaction of the cabinet that he is regularly engaged in the renting or leasing of motor vehicles to retail customers as a part of an established business. The issuance of a U-Drive-It permit under the provisions of KRS Chapter 281 shall create a rebuttable presumption that the holder of a permit is regularly engaged in renting or leasing. Persons first engaging in the renting or leasing of motor vehicles to retail customers shall, in addition to obtaining a permit required under KRS 281.615, demonstrate to the satisfaction of the cabinet that they are prepared to qualify under the standards set forth in this subsection.

(4) In the event the holder of such permit qualifies under subsection (3) of this section and elects to pay the usage tax by the alternate method as provided in subsection (1) of this section, or is required by subsection (8) of this section to pay by the alternate method, he shall pay the seat tax imposed by KRS 186.281(3) and in addition shall pay the monthly tax authorized by subsection (1) of this section.

(5) The tax authorized by subsection (1) of this section shall be the direct obligation of the holder of the permit but it may be charged to and collected from the customer in addition to the rental or lease charges. The tax due shall be remitted to the cabinet each month on forms and pursuant to regulations promulgated by the cabinet.

(6) (a) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (c) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of such assessment shall be mailed to the taxpayer. The time herein provided may be extended by agreement between the taxpayer and the cabinet.

(b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(c) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

(7) Failure of the holder of the permit to remit the taxes applicable to the rental charges

as provided herein shall be sufficient cause for the Department of Vehicle Regulation to void the permit issued to such holder and the usage tax on each of the motor vehicles which had been registered by the holder under the permit shall be due and payable on the retail price of each such motor vehicle when it was first purchased by the holder.

(8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a holder of a permit operating a fleet of rental passenger cars which has been registered pursuant to an allocation formula approved by the cabinet shall pay the tax by the method provided in this section. The provisions of this section shall apply to all vehicles rented by the holder in this state.

(9) The usage tax reported and paid on every rental or lease of a vehicle registered pursuant to this section shall be based on the fair market rental or lease value of the vehicle. Fair market rental or lease value shall be based on standards established by administrative regulation promulgated by the cabinet. The cabinet may remove a vehicle from the U-Drive-It program without a hearing if it is determined by the cabinet that no taxes have been remitted on that vehicle during the registration period. However, the tax reported and paid to the Transportation Cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement. The burden of proving that the consideration charged by the holder satisfies this subsection is on the holder.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 166, sec. 4, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 55, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 466, sec. 5, effective July 13, 1990; and ch. 476, Pt. VII B, sec. 627, effective July 1, 1990. -- Amended 1988 Ky. Acts ch. 113, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 431, sec. 4, effective January 1, 1987. -- Amended 1982 Ky. Acts ch. 387, sec. 3, effective July 15, 1982. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(2). -- Created 1972 Ky. Acts ch. 184, sec. 2.