

AN ACT relating to tobacco excise taxes and making an appropriation thereof.

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

➔Section 1. KRS 138.130 is amended to read as follows:

As used in KRS 138.130 to 138.205, unless the context requires otherwise:

- (1) "Department" means the Department of Revenue;
- (2) "Manufacturer" means any person who manufactures or produces cigarettes, or tobacco products within or without this state;
- (3) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;
- (4) "Sale at retail" means a sale to any person for any other purpose other than resale;
- (5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco. "Cigarettes" shall not mean reference cigarettes *or electronic cigarettes*;
- (6) "Reference cigarettes" means cigarettes made by a manufacturer specifically for a state public university to be held by the university until sale or transfer to a laboratory, hospital, medical center, institute, college or university, manufacturer, or other institution. A reference cigarette package shall carry a marking labeling the contents as research cigarettes to be used only for tobacco-health research and experimental purposes, which shall not be offered for sale, sold, or distributed to consumers;
- (7) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco products, and distribution in any manner or by any means whatsoever;
- (8) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by administrative regulation as a means of denoting the payment

of tax;

- (9) "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular;
- (10) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.140(1), (2), and (3) is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes;
- (11) "Nonresident wholesaler" means any person who purchases cigarettes directly from the manufacturer and maintains a permanent location or locations outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid;
- (12) "Sub-jobber" means any person who purchases cigarettes from a resident wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS 138.195 on which the tax imposed by KRS 138.140(1), (2), and (3) has been paid and makes them available to retailers for resale. No person shall make cigarettes available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes for resale in the regular course of business;
- (13) "Vending machine operator" means any person who operates one (1) or more cigarette vending machines;
- (14) "Transporter" means any person transporting untax-paid cigarettes obtained from any source to any destination within this state, other than cigarettes transported by

the manufacturer thereof;

(15) "Unclassified acquirer" means any person in this state who acquires cigarettes from any source on which the tax imposed by KRS 138.140(1), (2), and (3) has not been paid, and who is not a person otherwise required to be licensed under the provisions of KRS 138.195;

(16) "Tobacco products" means:

(a) Electronic cigarettes; and

(b) Any smokeless tobacco products, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in an individual's oral cavity, except:

~~1.(a)~~ Cigarettes; and

~~2.(b)~~ Reference cigarettes;

(17) "Distributor" means any person within this state in possession of tobacco products for resale within this state on which the tax imposed under KRS 138.140(4) has not been paid;

(18) "Retail distributor" means a retailer who has obtained a retail distributor's license under KRS 138.195(7)(b);

(19) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked and includes loose leaf chewing tobacco, plug chewing tobacco, and twist chewing tobacco, but "chewing tobacco" does not include snuff;

(20) "Single unit" means a consumer-sized container, pouch, or package:

(a) Containing less than four (4) ounces of chewing tobacco by net weight;

(b) Produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately; and

(c) Containing one (1) individual container, pouch, or package;

(21) "Half-pound unit" means a consumer-sized container, pouch, or package:

- (a) Containing at least four (4) ounces but not more than eight (8) ounces of chewing tobacco by net weight;
 - (b) Produced by the manufacturer to be sold to consumers as a half-pound unit and not produced to be divided or sold separately; and
 - (c) Containing one (1) individual container, pouch, or package;
- (22) "Pound unit" means a consumer-sized container, pouch, or package:
- (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces of chewing tobacco by net weight;
 - (b) Produced by the manufacturer to be sold to consumers as a pound unit and not produced to be divided or sold separately; and
 - (c) Containing one (1) individual container, pouch, or package; ~~and~~
- (23) (a) "Snuff" means tobacco that:
- 1. Is finely cut, ground, or powdered; and
 - 2. Is not for smoking.
- (b) "Snuff" includes snus; and
- (24) (a) "Electronic cigarette" means any device, regardless of shape or size, that:**
- 1. Contains a heating element, battery, electronic circuit, power source, or other electronic, chemical, or mechanical means; and**
 - 2. Can be used to deliver a vapor of nicotine or any other substance; the use of which simulates smoking.**
- (b) "Electronic cigarette" includes but is not limited to:**
- 1. The device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or similar product, and every variation thereof;**
 - 2. Any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in the device; and**
 - 3. Any component of the device or related product, that may be sold with**

or without the device.

➔Section 2. KRS 138.140 is amended to read as follows:

- (1) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents (\$0.03) on each twenty (20) cigarettes.
- (2) Effective August 1, 2016~~[April 1, 2009]~~, a surtax shall be paid in addition to the tax levied in subsection (1) of this section at a proportionate rate of one dollar and six cents (\$1.06)~~[fifty six cents (\$0.56)]~~ on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid. The revenues from one cent (\$0.01) of this surtax shall be deposited in the fund created in KRS 222.221 to be used by the Cabinet for Health and Family Services in the distribution of smoking cessation products to both juveniles and adults.
- (3) ~~[Effective June 1, 2005,]~~A surtax shall be paid in addition to the tax levied in subsection (1) of this section and in addition to the surtax levied by subsection (2) of this section, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. This tax shall be paid at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid. The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.
- (4) (a) Effective August 1, 2016~~[August 1, 2013]~~, an excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the following rates:
 1. Upon snuff at the rate of twenty-three cents (\$0.23)~~[nineteen cents (\$0.19)]~~ per each one and one-half (1-1/2) ounces or portion thereof by net weight sold;
 2. Upon chewing tobacco at the rate of:
 - a. Twenty-three cents (\$0.23)~~[Nineteen cents (\$0.19)]~~ per each

- single unit sold;
- b. **Forty-eight cents (\$0.48)**~~[Forty cents (\$0.40)]~~ per each half-pound unit sold; or
- c. **Seventy-eight cents (\$0.78)**~~[Sixty five cents (\$0.65)]~~ per each pound unit sold.

If the container, pouch, or package on which the tax is levied contains more than sixteen (16) ounces by net weight, the rate that shall be applied to the unit shall equal the sum of **seventy-eight cents (\$0.78)**~~[sixty five cents (\$0.65)]~~ plus **twenty-three cents (\$0.23)**~~[nineteen cents (\$0.19)]~~ for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold; and

3. Upon tobacco products sold, at the rate of **eighteen percent (18%)**~~[fifteen percent (15%)]~~ of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth.
- (b) The net weight posted by the manufacturer on the container, pouch, or package or on the manufacturer's invoice shall be used to calculate the tax due on snuff or chewing tobacco.
- (c) 1. A retailer located in this state shall not purchase tobacco products for resale to consumers from any person within or outside this state unless that person is a distributor licensed under KRS 138.195(7)(a) or the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b) for the privilege of purchasing untaxed tobacco products and remitting the tax as provided in this paragraph.
2. A licensed retail distributor of tobacco products shall be subject to the excise tax as follows:
- a. On purchases of untaxed snuff, at the same rate levied by

- paragraph (a)1. of this subsection;
- b. On purchases of untaxed chewing tobacco, at the same rates levied by paragraph (a)2. of this subsection; and
 - c. On purchases of untaxed tobacco products, except snuff and chewing tobacco, **eighteen percent (18%)**~~[fifteen percent (15%)]~~ of the total purchase price as invoiced by the retail distributor's supplier.
- (d) 1. The licensed distributor that first possesses tobacco products for sale to a retailer in this state or for sale to a person who is not licensed under KRS 138.195(7) shall be the distributor liable for the tax imposed by this subsection except as provided in subparagraph 2. of this paragraph.
2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco products to another distributor licensed under KRS 138.195(7)(a) without payment of the excise tax. In such case, the purchasing licensed distributor shall be the distributor liable for the tax.
3. A licensed distributor or licensed retail distributor shall:
- a. Identify and display the distributor's or retail distributor's license number on the invoice to the retailer; and
 - b. Identify and display the excise tax separately on the invoice to the retailer. If the excise tax is included as part of the product's sales price, the licensed distributor or licensed retail distributor shall list the total excise tax in summary form by tax type with invoice totals.
4. It shall be presumed that the excise tax has not been paid if the licensed distributor or licensed retail distributor does not comply with subparagraph 3. of this paragraph.
- (e) No tax shall be imposed on tobacco products under this subsection that are not

within the taxing power of this state under the Commerce Clause of the United States Constitution.

- (5) The taxes imposed by subsections (1) to (4) of this section shall be paid only once, regardless of the number of times the cigarettes, or tobacco products may be sold.
- (6) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.
- (7) The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.

➔Section 3. KRS 138.143 is amended to read as follows:

- (1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and unclassified acquirer shall:
 - (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on July 31, 2016~~[March 31, 2009]~~. Inventory of cigarettes in vending machines may be accomplished by:
 1. Taking an actual physical inventory;
 2. Estimating the cigarettes in vending machines by reporting one-half (1/2) of the normal fill capacity of the machines, as reflected in

- individual inventory records maintained for vending machines; or
3. Using a combination of the methods prescribed in subparagraphs 1. and 2. of this paragraph;
- (b) File a return with the department on or before **August 10, 2016**~~[April 10, 2009]~~, showing the entire wholesale and retail inventories of cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on **July 31, 2016**~~[March 31, 2009]~~; and
 - (c) Pay a floor stock tax at a proportionate rate equal to **fifty cents (\$0.50)**~~[thirty cents (\$0.30)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on **July 31, 2016**~~[March 31, 2009]~~.
- (2) Every retailer and sub-jobber shall:
- (a) ~~[1.]~~ Take a physical inventory of all units of snuff, **chewing tobacco, electronic cigarettes, and all other types of tobacco products** possessed by them or in their control at 11:59 p.m. on **July 31, 2016**~~[March 31, 2009]~~;
 - (b)**~~[2.]~~ File a return with the department on or before **August 10, 2016**~~[April 10, 2009]~~, showing the entire inventory of snuff, **chewing tobacco, electronic cigarettes, and all other forms of tobacco products** possessed by them or in their control at 11:59 p.m. on **July 31, 2016**~~[March 31, 2009]~~; and
 - (c)**~~[3.]~~ Pay a floor stock tax at a proportionate rate equal to:
 - 1. Four cents (\$0.04)**~~[nine and one-half cents (\$0.095)]~~ on each unit of snuff;
 - 2. Four cents (\$0.04) on each single unit of chewing tobacco;**
 - 3. Eight cents (0.08) on each half-pound unit of chewing tobacco;**

4. Thirteen cents (\$0.13) on each pound unit of chewing tobacco;

5. Eighteen percent (18%) of the actual amount paid for the electronic cigarettes; and

6. Five percent (5%) of the actual amount paid for all other types of tobacco products;

in their possession or control at 11:59 p.m. on July 31, 2016[March 31, 2009; and

~~(b) 1. a. Take a physical inventory of all other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009;~~

~~b. File a return with the department on or before April 10, 2009, showing the entire inventories of other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009; and~~

~~c. Pay a floor stock tax at a proportionate rate equal to seven and one half percent (7.5%) on the purchase price of other tobacco products in their possession or control at 11:59 p.m. on March 31, 2009.~~

~~2. a. As used in this paragraph, "purchase price" means the actual amount paid for the other tobacco products subject to the tax imposed by this paragraph.~~

~~b. If the retailer or sub-jobber cannot determine the actual amount paid for each item of other tobacco product, the retailer or sub-jobber may use as the purchase price the amount per unit paid as reflected on the most recent invoice received prior to April 1, 2009, for the same category of other tobacco product.~~

~~c. To prevent double taxation, if the invoice used by the retailer or sub-jobber to determine the purchase price of the other tobacco~~

~~product does not separately state the tax paid by the wholesaler, the retailer or sub-jobber may reduce the amount paid per unit by seven and one-half percent (7.5%)].~~

- (3) (a) The ***floor stock tax***~~[taxes]~~ imposed by this section may be paid in three (3) installments. The first installment, in an amount equal to at least one-third (1/3) of the total amount due, shall be remitted with the return provided by the department on or before ***August 10, 2016***~~[April 10, 2009]~~. The second installment, in an amount that brings the total amount paid to at least two-thirds (2/3) of the total amount due, shall be remitted on or before ***September 10, 2016***~~[May 10, 2009]~~. The third installment, in an amount equal to the remaining balance, shall be remitted on or before ***October 10, 2016***~~[June 10, 2009]~~.
- (b) Interest shall not be imposed against any outstanding installment payment not yet due from any retailer, sub-jobber, resident wholesaler, nonresident wholesaler, or unclassified acquirer who files the return and makes payments as required under this section.
- (c) Any retailer, sub-jobber, resident wholesaler, nonresident wholesaler, or unclassified acquirer who fails to file a return or make a payment on or before the dates provided in this section shall, in addition to the tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the return was required to be filed.

➔Section 4. KRS 138.165 is amended to read as follows:

- (1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-paid cigarettes held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.
- (2) Whenever any peace officer of this state, or any representative of the department,

finds any untax-paid cigarettes within the borders of this state in the possession of any person other than a licensee authorized to possess untax-paid cigarettes by the provisions of KRS 138.130 to 138.205, such cigarettes shall be immediately seized and stored in a depository to be selected by the officer or agent. At the time of seizure, the officer or agent shall deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face that any inquiry concerning any goods seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky. Immediately upon seizure, the officer or agent shall notify the commissioner of the department~~[of Revenue]~~ of the nature and quantity of the goods seized. Any seized goods shall be held for a period of twenty (20) days and if after such period no person has claimed the cigarettes as his property, the commissioner shall cause the same to be exposed to public sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale, from the sale shall be paid into the Kentucky State Treasury for general fund purposes.

- (3) It is declared to be the legislative intent that any vending machine used for dispensing cigarettes on which Kentucky cigarette tax has not been paid is contraband and subject to seizure and forfeiture. In the event any peace officer or agent of the department finds any vending machine within the borders of this state dispensing untax-paid cigarettes, he shall immediately seize the vending machine and store the same in a safe place selected by him. He shall thereafter proceed as provided in subsection (2) of this section and the commissioner of the department~~[of Revenue]~~ shall cause the vending machine to be sold, and the proceeds applied, as set out in subsection (2) of this section.
- (4) No cigarettes, on which the tax imposed by KRS 138.130 to 138.205 has not been paid, shall be transported within this state by any person other than a manufacturer or a person licensed under the provisions of KRS 138.195. It is declared to be the

legislative intent that any motor vehicle used to transport any such cigarettes by other persons is contraband and subject to seizure and forfeiture. If any peace officer or agent of the department finds any such motor vehicle, the vehicle shall be seized immediately and stored in a safe place. The peace officer or agent of the department shall thereafter proceed as provided in subsection (2) of this section and the commissioner of the department~~[of Revenue]~~ shall cause the motor vehicle to be sold, and the proceeds applied, as set out in subsection (2) of this section.

- (5) The owner or any person having an interest in any goods, machines or vehicles seized as provided under subsections (1) to (4) of this section may apply to the commissioner of the department~~[of Revenue]~~ for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the department~~[of Revenue]~~ that the owner was without fault in the possession, dispensing, or transportation of the untax-paid cigarettes, the department~~[of Revenue]~~ shall remit the forfeiture. If the department~~[of Revenue]~~ determines that the possession, dispensing, or transportation of untax-paid cigarettes was willful or intentional, the department~~[of Revenue]~~ may nevertheless remit the forfeiture on condition that the owner pay a penalty to be prescribed by the department~~[of Revenue]~~ of not more than fifty percent (50%) of the value of the property forfeited. All taxes due on untax-paid cigarettes shall be paid in addition to the penalty, if any.
- (6) Any party aggrieved by an order entered hereunder may appeal to the Kentucky Board of Tax Appeals in the manner provided by law.