

1 AN ACT relating to taxation of vapor products and making an appropriation  
2 therefor.

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

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

5 As used in KRS 138.130 to 138.205:

- 6 (1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked  
7 and includes loose leaf chewing tobacco, plug chewing tobacco, and twist  
8 chewing tobacco.
- 9 (b) "Chewing tobacco" does not include snuff;
- 10 (2) (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or  
11 any substitute for tobacco, irrespective of size or shape and whether or not the  
12 tobacco is flavored, adulterated, or mixed with any other ingredient, the  
13 wrapper or cover of which is made of paper or any other substance or  
14 material, except tobacco.
- 15 (b) "Cigarettes" does not include reference tobacco products or electronic  
16 cigarettes;
- 17 (3) "Cigarette tax" means the group of taxes consisting of:
- 18 (a) The tax imposed by KRS 138.140(1)(a);  
19 (b) The surtax imposed by KRS 138.140(1)(b); and  
20 (c) The surtax imposed by KRS 138.140(1)(c);
- 21 (4) "Department" means the Department of Revenue;
- 22 (5) "Distributor" means any person within this state in possession of tobacco products  
23 for resale within this state on which the tobacco products tax imposed under KRS  
24 138.140(2) has not been paid;
- 25 (6) **"Electronic cigarette" means any device, whether manufactured, distributed,**  
26 **marketed, or sold as an e-cigarette, e-cigar, e-pipe, or similar product and every**  
27 **variation thereof, regardless of shape or size, that contains a heating element,**

1 battery, electronic circuit, power source, or other electronic, chemical, or  
2 mechanical means used to produce vapor from nicotine or any other substance,  
3 the use of which simulates smoking;

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

- 5 (a) Containing at least four (4) ounces but not more than eight (8) ounces of  
6 chewing tobacco by net weight;
- 7 (b) Produced by the manufacturer to be sold to consumers as a half-pound unit  
8 and not produced to be divided or sold separately; and
- 9 (c) Containing one (1) individual container, pouch, or package;

10 (8)~~(7)~~ "Manufacturer" means any person who manufactures or produces cigarettes or  
11 tobacco products within or without this state;

12 (9)~~(8)~~ "Nonresident wholesaler" means any person who purchases cigarettes directly  
13 from the manufacturer and maintains a permanent location outside this state where  
14 Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is  
15 reported and paid;

16 (10)~~(9)~~ "Person" means any individual, firm, copartnership, joint venture, association,  
17 municipal or private corporation whether organized for profit or not, the  
18 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or  
19 any other group or combination acting as a unit;

20 (11)~~(10)~~ "Pound unit" means a consumer-sized container, pouch, or package:

- 21 (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces  
22 of chewing tobacco by net weight;
- 23 (b) Produced by the manufacturer to be sold to consumers as a pound unit and not  
24 produced to be divided or sold separately; and
- 25 (c) Containing one (1) individual container, pouch, or package;

26 (12)~~(11)~~ "Reference tobacco products" means tobacco products or cigarettes made by a  
27 manufacturer specifically for an accredited state college or university to be held by

1 the college or university until sale or transfer to a laboratory, hospital, medical  
2 center, institute, college or university, manufacturer, or other institution;

3 ~~(13)~~~~(12)~~ "Resident wholesaler" means any person who purchases at least seventy-five  
4 percent (75%) of all cigarettes purchased by the wholesaler directly from the  
5 manufacturer on which the cigarette tax is unpaid, and who maintains an established  
6 place of business in this state where the wholesaler attaches cigarette tax evidence  
7 or receives untax-paid cigarettes;

8 ~~(14)~~~~(13)~~ "Retail distributor" means a retailer who has obtained a retail distributor's  
9 license under KRS 138.195;

10 ~~(15)~~~~(14)~~ "Retailer" means any person who sells to a consumer or to any person for any  
11 purpose other than resale;

12 ~~(16)~~~~(15)~~ "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,  
13 offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco  
14 products, and distribution in any manner or by any means whatsoever;

15 ~~(17)~~~~(16)~~ "Sale at retail" means a sale to any person for any other purpose other than  
16 resale;

17 ~~(18)~~~~(17)~~ "Single unit" means a consumer-sized container, pouch, or package:

- 18 (a) Containing less than four (4) ounces of chewing tobacco by net weight;  
19 (b) Produced by the manufacturer to be sold to consumers as a single unit and not  
20 produced to be divided or sold separately; and  
21 (c) Containing one (1) individual container, pouch, or package;

22 ~~(19)~~~~(18)~~ (a) "Snuff" means tobacco that:

- 23 1. Is finely cut, ground, or powdered; and  
24 2. Is not for smoking.

25 (b) "Snuff" includes snus;

26 ~~(20)~~~~(19)~~ "Sub-jobber" means any person who purchases cigarettes from a resident  
27 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS

1 138.195 on which the cigarette tax has been paid and makes them available to  
2 retailers for resale. No person shall make cigarettes available to retailers for resale  
3 unless the person certifies and establishes to the satisfaction of the department that  
4 firm arrangements have been made to regularly supply at least five (5) retail  
5 locations with Kentucky tax-paid cigarettes for resale in the regular course of  
6 business;

7 ~~(21)~~~~(20)~~ "Tax evidence" means any stamps, metered impressions, or other indicia  
8 prescribed by the department by administrative regulation as a means of denoting  
9 the payment of cigarette taxes;

10 ~~(22)~~~~(21)~~ "Tobacco products" means:

11 (a) Vapor products; and

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

16 ~~(23)~~~~(22)~~ "Tobacco products tax" means the tax imposed by KRS 138.140(2);

17 ~~(24)~~~~(23)~~ "Transporter" means any person transporting untax-paid cigarettes obtained  
18 from any source to any destination within this state, other than cigarettes transported  
19 by the manufacturer thereof;

20 ~~(25)~~~~(24)~~ "Unclassified acquirer" means any person in this state who acquires cigarettes  
21 from any source on which the cigarette tax has not been paid, and who is not a  
22 person otherwise required to be licensed under KRS 138.195;

23 ~~(26)~~~~(25)~~ "Untax-paid cigarettes" means any cigarettes on which the cigarette tax  
24 imposed by KRS 138.140 has not been paid;

25 ~~(27)~~~~(26)~~ "Untax-paid tobacco products" means any tobacco products on which the  
26 tobacco products tax imposed by KRS 138.140 has not been paid;~~and~~

27 ~~(28)~~ "Vapor products" means any liquid nicotine solution or other material

1       *containing nicotine that is intended to be used with or in an electronic cigarette*  
2       *whether sold with an electronic cigarette for a single price or sold separately; and*

3       (29)[(27)] "Vending machine operator" means any person who operates one (1) or more  
4       cigarette vending machines.

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

- 6       (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate  
7       rate of three cents (\$0.03) on each twenty (20) cigarettes.
- 8       (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in  
9       paragraph (a) of this subsection at a proportionate rate of one dollar and six  
10      cents (\$1.06) on each twenty (20) cigarettes.
- 11      (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this  
12      subsection and in addition to the surtax levied by paragraph (b) of this  
13      subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)  
14      cigarettes. The revenues from this surtax shall be deposited in the cancer  
15      research institutions matching fund created in KRS 164.043.
- 16      (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be  
17      paid at the time that the tax imposed by paragraph (a) of this subsection is  
18      paid.
- 19      (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of  
20      selling tobacco products in this state at the following rates:
- 21           1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-  
22           half (1-1/2) ounces or portion thereof by net weight sold;
- 23           2. Upon chewing tobacco at the rate of:
- 24               a. Nineteen cents (\$0.19) per each single unit sold;
- 25               b. Forty cents (\$0.40) per each half-pound unit sold; or
- 26               c. Sixty-five cents (\$0.65) per each pound unit sold.
- 27           If the container, pouch, or package on which the tax is levied contains

1 more than sixteen (16) ounces by net weight, the rate that shall be  
2 applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus  
3 nineteen cents (\$0.19) for each increment of four (4) ounces or portion  
4 thereof exceeding sixteen (16) ounces sold;~~and~~

5 3. Upon vapor products sold, at the rate of four cents (\$0.04) per each  
6 fluid milliliter of nicotine solution or portion thereof contained  
7 therein; and

8 4. Upon tobacco products sold, at the rate of fifteen percent (15%) of the  
9 actual price for which the distributor sells tobacco products, except  
10 snuff;~~and~~ chewing tobacco, and vapor products within the  
11 Commonwealth.

12 (b) The net weight posted by the manufacturer on the container, pouch, or  
13 package or on the manufacturer's invoice shall be used to calculate the tax due  
14 on snuff or chewing tobacco.

15 (c) 1. A retailer located in this state shall not purchase tobacco products for  
16 resale to consumers from any person within or outside this state unless  
17 that person is a distributor licensed under KRS 138.195(7)(a) or the  
18 retailer applies for and is granted a retail distributor's license under KRS  
19 138.195(7)(b) for the privilege of purchasing untax-paid tobacco  
20 products and remitting the tax as provided in this paragraph.

21 2. A licensed retail distributor of tobacco products shall be subject to the  
22 excise tax as follows:

23 a. On purchases of untax-paid snuff, at the same rate levied by  
24 paragraph (a)1. of this subsection;

25 b. On purchases of untax-paid chewing tobacco, at the same rates  
26 levied by paragraph (a)2. of this subsection;~~and~~

27 c. On purchases of untax-paid vapor products, at the same rate

1 levied by paragraph (a)3. of this subsection; and

2 d. On purchases of untax-paid tobacco products, except snuff, ~~and~~  
 3 chewing tobacco, and vapor products, fifteen percent (15%) of the  
 4 total purchase price as invoiced by the retail distributor's supplier.

5 (d) 1. The licensed distributor that first possesses tobacco products for sale to a  
 6 retailer in this state or for sale to a person who is not licensed under  
 7 KRS 138.195(7) shall be the distributor liable for the tax imposed by  
 8 this subsection except as provided in subparagraph 2. of this paragraph.

9 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco  
 10 products to another distributor licensed under KRS 138.195(7)(a)  
 11 without payment of the excise tax. In such case, the purchasing licensed  
 12 distributor shall be the distributor liable for the tax.

13 3. A licensed distributor or licensed retail distributor shall:

14 a. Identify and display the distributor's or retail distributor's license  
 15 number on the invoice to the retailer; and

16 b. Identify and display the excise tax separately on the invoice to the  
 17 retailer. If the excise tax is included as part of the product's sales  
 18 price, the licensed distributor or licensed retail distributor shall list  
 19 the total excise tax in summary form by tax type with invoice  
 20 totals.

21 4. It shall be presumed that the excise tax has not been paid if the licensed  
 22 distributor or licensed retail distributor does not comply with  
 23 subparagraph 3. of this paragraph.

24 (e) No tax shall be imposed on tobacco products under this subsection that are not  
 25 within the taxing power of this state under the Commerce Clause of the  
 26 United States Constitution.

27 (3) (a) The taxes imposed by subsections (1) and (2) of this section:

- 1           1.    Shall not apply to reference tobacco products; and
- 2           2.    Shall be paid only once, regardless of the number of times the cigarettes
- 3                 or tobacco products may be sold.
- 4       (b)   The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
- 5                 section shall be reduced by:
- 6           1.    Fifty percent (50%) on any product as to which a modified risk tobacco
- 7                 product order is issued under 21 U.S.C. sec. 387k(g)(1); or
- 8           2.    Twenty-five percent (25%) for any product as to which a modified risk
- 9                 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- 10   (4)   A reference tobacco product shall carry a marking labeling the contents as a
- 11                 research cigarette or a research tobacco product to be used only for tobacco-health
- 12                 research and experimental purposes and shall not be offered for sale, sold, or
- 13                 distributed to consumers.
- 14   (5)   The department may prescribe forms and promulgate administrative regulations to
- 15                 execute and administer the provisions of this section.
- 16   (6)   The General Assembly recognizes that increasing taxes on tobacco products should
- 17                 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The
- 18                 relative taxes on tobacco products proposed in this section reflect the growing data
- 19                 from scientific studies suggesting that although smokeless tobacco poses some
- 20                 risks, those health risks are significantly less than the risks posed by other forms of
- 21                 tobacco products. Moreover, the General Assembly acknowledges that some in the
- 22                 public health community recognize that tobacco harm reduction should be a
- 23                 complementary public health strategy regarding tobacco products. Taxing tobacco
- 24                 products according to relative risk is a rational tax policy and may well serve the
- 25                 public health goal of reducing smoking-related mortality and morbidity and
- 26                 lowering health care costs associated with tobacco-related disease.
- 27   (7)   Any person subject to the taxes imposed under subsections (1) and (2) of this



1 section that:

2 (a) Files an application related to a modified risk tobacco product shall report to  
3 the department that an application has been filed within thirty (30) days of that  
4 filing; and

5 (b) Receives an order authorizing the marketing of a modified risk tobacco  
6 product shall report to the department that an authorizing order has been  
7 received.

8 (8) Upon receipt of the information required by subsection (7)(b) of this section, the  
9 department shall reduce the tax imposed on the modified risk tobacco product as  
10 required by subsection (3)(b) of this section on the first day of the calendar month  
11 following the expiration of forty-five (45) days following receipt of the information  
12 required by subsection (7)(b) of this section.

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

14 (1)~~Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and~~  
15 ~~unclassified acquirer shall:~~

16 (a)~~Take a physical inventory of all cigarettes in packages bearing Kentucky tax~~  
17 ~~stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or~~  
18 ~~in their control at 11:59 p.m. on June 30, 2018. Inventory of cigarettes in~~  
19 ~~vending machines may be accomplished by:~~

20 1.~~Taking an actual physical inventory;~~

21 2.~~Estimating the cigarettes in vending machines by reporting one-half~~  
22 ~~(1/2) of the normal fill capacity of the machines, as reflected in~~  
23 ~~individual inventory records maintained for vending machines; or~~

24 3.~~Using a combination of the methods prescribed in subparagraphs 1. and~~  
25 ~~2. of this paragraph;~~

26 (b)~~File a return with the department on or before July 10, 2018, showing the~~  
27 ~~entire wholesale and retail inventories of cigarettes in packages bearing~~

1 Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps  
 2 possessed by them or in their control at 11:59 p.m. on June 30, 2018; and  
 3 (c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) on each  
 4 twenty (20) cigarettes in packages bearing a Kentucky tax stamp and  
 5 unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on  
 6 June 30, 2018.

7 ~~(2)~~ Every retailer and sub-jobber shall:

- 8 (a) 1. Take a physical inventory of each category of vapor products  
 9 possessed by them or in their control at 11:59 p.m. on June 30, 2019;  
 10 2. File a return with the department on or before July 10, 2019, showing  
 11 the entire inventory of vapor products possessed by them or in their  
 12 control at 11:59 pm. on June 30, 2019; and  
 13 3. Pay a floor stock tax at a proportionate rate equal to four cents (\$0.04)  
 14 per fluid milliliter of nicotine contained in all vapor products in their  
 15 possession or control at 11:59 p.m. on June 30, 2019.
- 16 ~~1. Take a physical inventory of all units of snuff possessed by them or in~~  
 17 ~~their control at 11:59 p.m. on March 31, 2009;~~  
 18 ~~2. File a return with the department on or before April 10, 2009, showing~~  
 19 ~~the entire inventory of snuff possessed by them or in their control at~~  
 20 ~~11:59 p.m. on March 31, 2009; and~~  
 21 ~~3. Pay a floor stock tax at a proportionate rate equal to nine and one-half~~  
 22 ~~cents (\$0.095) on each unit of snuff in their possession or control at~~  
 23 ~~11:59 p.m. on March 31, 2009; and~~
- 24 (b) 1. a. Take a physical inventory of all other tobacco products possessed  
 25 by them or in their control at 11:59 p.m. on March 31, 2009;  
 26 b. File a return with the department on or before April 10, 2009,  
 27 showing the entire inventories of other tobacco products possessed

1 by them or in their control at 11:59 p.m. on March 31, 2009; and  
 2 e. ~~Pay a floor stock tax at a proportionate rate equal to seven and~~  
 3 ~~one half percent (7.5%) on the purchase price of other tobacco~~  
 4 ~~products in their possession or control at 11:59 p.m. on March 31,~~  
 5 ~~2009.~~

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

9 b. ~~If the retailer or sub-jobber cannot determine the actual amount~~  
 10 ~~paid for each item of other tobacco product, the retailer or sub-~~  
 11 ~~jobber may use as the purchase price the amount per unit paid as~~  
 12 ~~reflected on the most recent invoice received prior to April 1,~~  
 13 ~~2009, for the same category of other tobacco product.~~

14 c. ~~To prevent double taxation, if the invoice used by the retailer or~~  
 15 ~~sub-jobber to determine the purchase price of the other tobacco~~  
 16 ~~product does not separately state the tax paid by the wholesaler,~~  
 17 ~~the retailer or sub-jobber may reduce the amount paid per unit by~~  
 18 ~~seven and one half percent (7.5%).]~~

19 ~~(2)~~~~(3)~~ (a) The taxes imposed by this section may be paid in three (3) installments.  
 20 The first installment, in an amount equal to at least one-third (1/3) of the total  
 21 amount due, shall be remitted with the return provided by the department on  
 22 or before July 10, 2019~~[2018]~~. The second installment, in an amount that  
 23 brings the total amount paid to at least two-thirds (2/3) of the total amount  
 24 due, shall be remitted on or before August 10, 2019~~[2018]~~. The third  
 25 installment, in an amount equal to the remaining balance, shall be remitted on  
 26 or before September 10, 2019~~[2018]~~.

27 (b) Interest shall not be imposed against any outstanding installment payment not

1 yet due from any retailer, sub-jobber, resident wholesaler, nonresident  
 2 wholesaler, or unclassified acquirer who files the return and makes payments  
 3 as required under this section.

4 (c) Any retailer~~[,] or~~ sub-jobber~~[,] resident wholesaler, nonresident wholesaler, or~~  
 5 ~~unclassified acquirer]~~ who fails to file a return or make a payment on or  
 6 before the dates provided in this section shall, in addition to the tax, pay  
 7 interest at the tax interest rate as defined in KRS 131.010(6) from the date on  
 8 which the return was required to be filed.

9 ➔SECTION 4. A NEW SECTION OF KRS 138.130 to 138.205 IS CREATED  
 10 TO READ AS FOLLOWS:

11 **All moneys received from the taxes imposed upon vapor products under Sections 2 and**  
 12 **3 of this Act shall be deposited in the Kentucky permanent pension fund established in**  
 13 **Section 5 of this Act.**

14 ➔Section 5. KRS 42.205 is amended to read as follows:

15 (1) There is hereby established within the Finance and Administration Cabinet the  
 16 Kentucky permanent pension fund for the purpose of addressing the  
 17 Commonwealth's unfunded pension liabilities. The proceeds contained in this fund  
 18 shall be used only for contributions to the Commonwealth's pension funds.

19 (2) The fund may receive:

20 (a) State appropriations;

21 (b) The net proceeds from the sale of real property owned by the Commonwealth  
 22 or any agency thereof;~~and]~~

23 (c) Any settlements or judgments resulting from litigation in which the  
 24 Commonwealth or any of its agencies is a party, after costs of litigation and  
 25 mandatory deductions or restitution to consumers have been deducted; **and**

26 **(d) Tax revenue from the taxes imposed upon vapor products under Sections 2**  
 27 **and 3 of this Act.**

1 (3) Any unallotted or unencumbered balances in the fund shall be invested pursuant to  
2 KRS 42.500.

3 (4) Income earned from the investments shall be credited to and become part of the  
4 fund.

5 (5) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall  
6 not lapse but shall be carried forward to the next fiscal year. All amounts in the fund  
7 shall remain in the fund and shall not be expended or appropriated without the  
8 express authority in an enacted biennial budget bill.

9 ➔Section 6. This Act takes effect at 11:59 p.m. on June 30, 2019.