

AN ACT relating to the taxation of tobacco products.

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:

- (1) (a) "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.
 - (b) "Chewing tobacco" does not include snuff;
- (2) (a) "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, except tobacco.
 - (b) "Cigarettes" does not include reference tobacco products or electronic cigarettes;
- (3) "Cigarette tax" means the group of taxes consisting of:
 - (a) The tax imposed by KRS 138.140(1)(a);
 - (b) The surtax imposed by KRS 138.140(1)(b); and
 - (c) The surtax imposed by KRS 138.140(1)(c);
- (4) "Department" means the Department of Revenue;
- (5) "Distributor" means any person within this state in possession of tobacco products for resale within this state on which the tobacco products tax imposed under KRS 138.140(2) has not been paid;
- (6) "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;
- (7) "Manufacturer" means any person who manufactures or produces cigarettes or tobacco products within or without this state;
 - (8) "Nonresident wholesaler" means any person who purchases cigarettes directly from the manufacturer and maintains a permanent location outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid;
 - (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;
 - (10) "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;
 - (11) "Reference tobacco products" means tobacco products or cigarettes made by a manufacturer specifically for an accredited state college or university to be held by the college or university until sale or transfer to a laboratory, hospital, medical center, institute, college or university, manufacturer, or other institution;
 - (12) "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 cigarette tax is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence or receives untax-paid cigarettes;

- (13) "Retail distributor" means a retailer who has obtained a retail distributor's license under KRS 138.195;
- (14) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;
- (15) "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;
- (16) "Sale at retail" means a sale to any person for any other purpose other than resale;
- (17) "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;
- (18) (a) "Snuff" means tobacco that:
- 1. Is finely cut, ground, or powdered; and
 - 2. Is not for smoking.
- (b) "Snuff" includes snus;
- (19) "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 cigarette tax 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;
- (20) "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 cigarette taxes;

(21) "Tobacco products" means:

(a) Any smokeless tobacco products, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing, **snorting**, or smoking, or **any combination thereof**; ~~both,~~ or

(b) Any kind or form of tobacco that is suitable to be placed in an individual's oral cavity, except cigarettes; **or**

(c) **Vapor products**;

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

(23) "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;

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

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

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

(27) "Vapor product" has the same meaning as in KRS 438.305; and

~~(28)~~~~(27)~~ "Vending machine operator" means any person who operates one (1) or more cigarette vending machines.

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

(1) (a) 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.

(b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection at a proportionate rate of one dollar and six

cents (\$1.06) on each twenty (20) cigarettes.

- (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection and in addition to the surtax levied by paragraph (b) of this subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.
- (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be paid at the time that the tax imposed by paragraph (a) of this subsection is paid.
- (2) (a) **Prior to August 1, 2020, the following applies:**
- 1.** An excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the following rates:
- a.**~~[1.]~~ Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-half (1-1/2) ounces or portion thereof by net weight sold;
- b.**~~[2.]~~ Upon chewing tobacco at the rate of:
- i.**~~[a.]~~ Nineteen cents (\$0.19) per each single unit sold;
- ii.**~~[b.]~~ Forty cents (\$0.40) per each half-pound unit sold; or
- iii.**~~[c.]~~ 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 sixty-five cents (\$0.65) plus nineteen cents (\$0.19) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold; and
- c.**~~[3.]~~ Upon tobacco products sold, at the rate of fifteen percent (15%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth.
- 2.**~~[(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.

~~3.[(c)]~~ ~~a. [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 untax-paid tobacco products and remitting the tax as provided in this paragraph.

~~b. [2.]~~ A licensed retail distributor of tobacco products shall be subject to the excise tax as follows:

~~i. [a.]~~ On purchases of untax-paid snuff, at the same rate levied by paragraph (a)1. ~~a.~~ of this subsection;

~~ii. [b.]~~ On purchases of untax-paid chewing tobacco, at the same rates levied by paragraph (a) ~~1.b. [2.]~~ of this subsection; and

~~iii. [c.]~~ On purchases of untax-paid tobacco products, except snuff and chewing tobacco, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier.

(b) On August 1, 2020, the following applies:

1. An excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the rate of twenty seven and one-half percent (27.5%) of the actual price for which the distributor sells tobacco products within the Commonwealth.

2. a. 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 untax-paid tobacco products and remitting the tax as provided in this paragraph.

b. A licensed retail distributor of tobacco products shall be subject to the excise tax on purchases of untax-paid tobacco products at the rate of twenty seven and one-half percent (27.5%) of the total purchase price as invoiced by the retail distributor's supplier.

- ~~(c)~~~~(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.

~~(d)~~~~(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.

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

~~(a)~~~~{1}~~ Shall not apply to reference tobacco products; and

~~(b)~~~~{2}~~ Shall be paid only once, regardless of the number of times the cigarettes or tobacco products may be sold.

~~{(b)}~~ The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this section shall be reduced by:

1. Fifty percent (50%) on any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(1); or

2. Twenty five percent (25%) for any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).

(4) A reference tobacco product shall carry a marking labeling the contents as a research cigarette or a research tobacco product to be used only for tobacco-health research and experimental purposes and shall not be offered for sale, sold, or distributed to consumers.

(5) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

~~{(6)}~~ 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.]~~

~~(6)~~~~(7)~~ Any person subject to the taxes imposed under subsections (1) and (2) of this section that:

- ~~(a)~~ Files an application related to a modified risk tobacco product shall report to the department that an application has been filed within thirty (30) days of that filing; and
- ~~(b)~~ Receives an order authorizing the marketing of a modified risk tobacco product shall report to the department that an authorizing order has been received.

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

➔ 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 June 30, 2018. 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 July 10, 2018, 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 June 30, 2018; and~~

~~(c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) 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 June 30, 2018.~~

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

(a) 1. Take a physical inventory of all units of snuff possessed by them or in their control at 11:59 p.m. on **July 31, 2020**~~[March 31, 2009]~~;

2. File a return with the department on or before **August 10, 2020**~~[April 10, 2009]~~, showing the entire inventory of snuff possessed by them or in their control at 11:59 p.m. on **July 31, 2020**~~[March 31, 2009]~~ **both by unit and by value**; and

3. Pay a floor stock tax at a ~~proportionate~~ rate equal to **the difference of twenty seven and one-half percent (27.5%) of the total purchase price less the tobacco products tax previously paid** ~~[nine and one-half cents (\$0.095)]~~ on each unit of snuff in their possession or control at 11:59 p.m. on **July 31, 2020**~~[March 31, 2009]~~; and

(b) 1. ~~[a.]~~ Take a physical inventory of all **units of chewing tobacco** ~~[other tobacco products]~~ possessed by them or in their control at 11:59 p.m. on **July 31, 2020**~~[March 31, 2009]~~;

2. File a return with the department on or before August 10, 2020, showing the entire inventory of chewing tobacco possessed by them or

in their control at 11:59 p.m. on July 31, 2020, both by units and by value; and

3. Pay a floor stock tax at a rate equal to the difference of twenty seven and one-half percent (27.5%) of the total purchase price less the tobacco products tax previously paid on each unit of chewing tobacco in their possession or control at 11:59 p.m. on July 31, 2020; and

(c)[b.] 1. Take a physical inventory of all remaining tobacco products possessed by them or in their control at 11:59 p.m. on July 31, 2020;

2. File a return with the department on or before August 10, 2020[April 10, 2009], showing the entire inventories of remaining [other] tobacco products possessed by them or in their control at 11:59 p.m. on July 31, 2020[March 31, 2009]; and

3.[e.] Pay a floor stock tax at a proportionate rate equal to twelve and one-half percent (12.5%) [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 July 31, 2020, [March 31, 2009] which were subject to the fifteen percent (15%) tax rate prior to August 1, 2020;

4. Pay a floor stock tax at a rate equal to twenty seven and one-half percent (27.5%) on the purchase price of vapor products in their possession or control at 11:59 p.m. on July 31, 2020.

(2) (a) [2.—a.] As used in this subsection[paragraph], "purchase price" means the actual amount paid for the [other] tobacco products subject to the tax imposed by this subsection[paragraph].

(b) [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 August 1, 2020[April 1, 2009], for the same category

of ~~[other]~~ tobacco product.

(c) ~~[e.]~~ 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 ***fifteen percent (15%)***~~[seven and one-half percent (7.5%)].~~

- (3) (a) The 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, 2020***~~[July 10, 2018]~~. 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, 2020***~~[August 10, 2018]~~. The third installment, in an amount equal to the remaining balance, shall be remitted on or before ***October 10, 2020***~~[September 10, 2018]~~.
- (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. This Act takes effect at 11:59 p.m. on July 31, 2020.