

CHAPTER 155**(HB 356)**

AN ACT relating to revenue and taxation.

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

Section 1. KRS 138.870 is amended to read as follows:

As used in KRS 138.870 to 138.889, unless the context requires otherwise:

- (1) "Marijuana" means marijuana, whether real or counterfeit, as defined in KRS 218A.010.
- (2) "Controlled substance" means any controlled substance, whether real or counterfeit, as defined in KRS 218A.010 or any regulation promulgated thereunder, except that it shall not include marijuana.
- (3) "**Offender**~~[Dealer]~~" means a person who engages in this state in a taxable activity as defined in subsection (4) of this section.
- (4) "Taxable activity" means producing, cultivating, manufacturing, importing, transporting, distributing, acquiring, purchasing, storing, selling, using, or otherwise possessing, *in violation of KRS Chapter 218A*, more than five (5) marijuana plants with foliage, 42.5 grams of marijuana which has been detached from the plant on which it grew, seven (7) grams of any controlled substance, or fifty (50) or more dosage units of any controlled substance which is not sold by weight. The weight or dosage units in this subsection shall include the weight of marijuana or the weight or dosage units of the controlled substance, whether pure, impure, or diluted. A quantity of a controlled substance is diluted if it consists of a detectable quantity of a pure controlled substance and any excipients or fillers.
- (5) "Dosage unit" means a tablet, capsule, vial, or ampule of a controlled substance or, in cases of mass volume or diluted quantities, the proper dose or quantity of a controlled substance to be taken all at one (1) time or in fractional amounts within a given period, as defined and adopted by the United States Pharmacopeia.
- (6) "Possessing" includes either actual possession or constructive possession, or a combination of both actual and constructive possession. Mere possession or ownership of real estate or an interest therein does not establish constructive possession.

Section 2. KRS 138.872 is amended to read as follows:

- (1) A tax is hereby levied on each **offender**~~[dealer]~~ engaging in a taxable activity in this state. The tax shall be paid at the following rates:
 - (a) One thousand dollars (\$1,000) per plant, whether growing or detached from the soil, on each marijuana plant with foliage;
 - (b) Three dollars and fifty cents (\$3.50) on each gram, or portion thereof, of marijuana which has been detached from the plant on which it grew;
 - (c) Two hundred dollars (\$200) on each gram, or portion thereof, of controlled substances; and
 - (d) Two thousand dollars (\$2,000) on each fifty (50) dosage units, or portion thereof, of a controlled substance that is not sold by weight.

- (2) For the purpose of calculating the tax levied pursuant to subsections (1)(b), (1)(c), and (1)(d) of this section, the quantity shall be measured by the weight of the marijuana or controlled substance, whether pure, impure, or diluted, or by dosage units when a controlled substance is not sold by weight.
- (3) **An offender**~~[A dealer]~~ lawfully engaged in a taxable activity shall be exempt from the tax imposed by this section if the **offender**~~[dealer]~~ is not in violation of any law which authorizes him to engage in the activity.

Section 3. KRS 138.874 is amended to read as follows:

- (1) Except as provided in KRS 138.870 to 138.889, no **offender**~~[dealer]~~ shall engage in this state in a taxable activity unless the tax imposed pursuant to KRS 138.872 has been paid as evidenced by the affixing of a tax stamp, label, or other tax indicia to the marijuana or controlled substance as prescribed by the Revenue Cabinet. The tax shall be due and payable immediately upon the occurrence of the taxable activity in this state. If **an offender**~~[a dealer]~~ engages in a taxable activity in this state involving marijuana or a controlled substance on which a tax stamp, label, or other tax indicia evidencing payment of the tax imposed pursuant to KRS 138.872 has not already been affixed, the **offender**~~[dealer]~~ shall immediately permanently affix the required tax stamp, label, or other tax indicia.
- (2) Tax stamps, labels, or other tax indicia required to be affixed to marijuana or controlled substances shall be purchased from the Revenue Cabinet. The purchaser shall pay one hundred percent (100%) of the face value for each tax stamp, label, or other tax indicia at the time of the purchase. The Revenue Cabinet shall maintain an inventory of tax stamps, labels, or other tax indicia in denominations it deems necessary to facilitate compliance by taxpayers with the provisions of this section. No purchaser of tax stamps, labels, or other tax indicia pursuant to this section shall be required to give his name, address, or otherwise identify himself to the Revenue Cabinet.
- (3) Each tax stamp, label, or other tax indicia shall be used only once and shall expire one (1) year after issuance by the Revenue Cabinet to the original purchaser thereof.

Section 4. KRS 138.878 is amended to read as follows:

Nothing in KRS 138.870 to 138.889, including payment of the tax, shall in any manner provide immunity for **an offender**~~[a dealer]~~ from criminal prosecution pursuant to Kentucky law.

Section 5. KRS 138.880 is amended to read as follows:

- (1) Each **Commonwealth's attorney or county attorney**~~[law enforcement agency]~~ in this state **who obtains a conviction of, or a guilty or Alford plea**~~[which seizes]~~ from, **an offender for violating KRS Chapter 218A**~~[a dealer]~~~~more than five (5) marijuana plants with foliage, forty-two and one-half (42.5) grams of marijuana which has been detached from the plant on which it grew, seven (7) grams of any controlled substance, or fifty (50) or more dosage units of any controlled substance which is not sold by weight]~~ shall, within seventy-two (72) hours after the **conviction or the plea**~~[seizure]~~, notify the Revenue Cabinet in writing **if the offender has not paid**~~[of each seizure if]~~ the tax imposed by KRS 138.872~~[has not been paid]~~ as evidenced by the absence of the tax stamps, labels, or other official tax indicia required to be affixed to the marijuana or controlled substance **that was the subject of the conviction or plea**. The weight or dosage units prescribed in this subsection shall include the weight of the marijuana or the weight or dosage units of the controlled substance,

whether pure, impure, or diluted. The notice required in this subsection shall be submitted in the manner prescribed by the Revenue Cabinet and shall include:

- (a) The name, address, and Social Security number of the *offender*~~{dealer}~~ from whom the *conviction or plea*~~{seizure}~~ was *obtained*~~{made}~~;
 - (b) The type and quantity of the items *that were the subject of the conviction or plea*~~{seized}~~;
 - (c) Any information developed during the course of the investigation regarding any real or personal properties owned by the *offender*~~{dealer}~~ from whom the *conviction or plea*~~{seizure}~~ was *obtained*~~{made}~~; and
 - (d) Other information the Revenue Cabinet may require to facilitate the assessment and collection of the tax due pursuant to KRS 138.872.
- (2) To facilitate collection of the tax due pursuant to KRS 138.872, the *Commonwealth's attorney or county attorney*~~{law enforcement agency}~~ shall, as an authorized agent of the Revenue Cabinet, simultaneously file a copy of the notice required pursuant to subsection (1) of this section with:~~{:}~~
- (a) The county clerk of the county in which the *conviction or the guilty or Alford plea*~~{seizure}~~ was *entered*~~{made}~~;
 - (b) The county clerk of the county in which the *offender*~~{dealer from whom the seizure was made}~~ resides if different from the county in which the *conviction or plea*~~{seizure}~~ was *entered*~~{made}~~;
 - (c) The county clerk of any other county in which the *Commonwealth's attorney or county attorney*~~{police agency}~~ reasonably believes the *offender*~~{dealer}~~ from whom the *conviction or plea*~~{seizure}~~ was *obtained*~~{made}~~ owns real or personal property; and
 - (d) Each financial institution or other custodian the *Commonwealth's attorney or county attorney*~~{police agency}~~ reasonably believes possesses any funds, safe deposit box, or other assets owned in whole or in part by the *offender*~~{dealer}~~ from whom the *conviction or plea*~~{seizure}~~ was *obtained*~~{made}~~.
- (3) The notice required by subsection (2) of this section shall be a lien in favor of the Commonwealth pursuant to KRS 134.420 to secure payment of the tax, penalty, and interest due. The tax shall be and remain a lien upon the property, and all property subsequently acquired, and may be enforced as other liens on similar property are enforced. The lien may be released only upon written notice from the Revenue Cabinet that:
- (a) The tax, penalty and interest due pursuant to KRS 138.872 and 138.889 have been paid;
 - (b) A bond has been given to the Revenue Cabinet as provided in KRS 131.150; or
 - (c) The tax, penalty, and interest are determined by the Revenue Cabinet not to be due.
- (4) The county clerk recording or releasing a state tax lien pursuant to this section shall be entitled to the fee prescribed therefor by KRS 64.012.
- (5) *Except as necessary to accept taxes that the offender voluntarily pays under KRS 138.874, the Revenue Cabinet shall not require a bond or otherwise attempt to collect the tax due under KRS 138.874 until the offender's taxable activity results in a conviction or a guilty*

or Alford plea for a violation of KRS Chapter 218A. However, the Revenue Cabinet may impose a notice of lien on issuance of a warrant or indictment, which shall be released upon acquittal or dismissal of the case.

Section 6. KRS 138.882 is amended to read as follows:

- (1) ~~The assessment provisions of KRS 131.150 shall apply with regard to any dealer who fails to comply with requirements for affixing official tax stamps, labels, or other tax indicia evidencing payment of the tax imposed pursuant to KRS 138.872.~~
- (2) The tax, penalty, and interest assessed by the Revenue Cabinet pursuant to KRS 138.872 and 138.889 shall be deemed prima facie valid and correctly determined and assessed. The burden shall be upon the taxpayer in any judicial or administrative proceeding in this state to show their incorrectness or invalidity.
- (2) ~~(3)~~ The collection provisions of KRS 131.500, and any other remedy provided by the laws of the Commonwealth for collection of a tax administered by the Revenue Cabinet, shall apply with respect to the collection of the tax, penalty, and interest imposed by KRS 138.872 and 138.889, but it shall not be necessary for the Revenue Cabinet to await the expiration of the times specified in KRS 131.500 to levy upon and sell any property or rights to property found within the Commonwealth belonging to the *offender* ~~dealer~~ failing to pay the tax, penalty, or interest due pursuant to KRS 138.872 and 138.889.
- (3) ~~(4)~~ No person shall bring an action in any court to restrain or delay the assessment or collection of any tax, penalty, or interest imposed by KRS 138.872 and 138.889.
- ~~(5) The suppression of evidence on any grounds by a court in a criminal case involving an activity taxable under KRS 138.870 to 138.889, or the dismissal of criminal charges in such a case shall not affect any assessment made pursuant to KRS 138.872 and 138.889.~~
- (4) ~~(6)~~ Notwithstanding any provision of KRS 138.870 to 138.889, or any other provision of law, collection of any tax, penalty, or interest under KRS 138.872 and 138.889 or imposition of any revenue liens arising as a result of KRS 138.880 shall not interfere with any forfeiture of money or any other type or kind of property under the drug forfeiture laws of this state, or with any distribution of property or funds under the drug forfeiture laws of this state. Regardless of the order in which proceedings are begun, forfeiture of money or any other type or kind of property and distribution of property and funds under the drug forfeiture laws of this state shall take precedence over any proceedings to collect the tax, penalty, or interest due pursuant to KRS 138.872 and 138.889.

Section 7. KRS 138.884 is amended to read as follows:

For the purpose of determining the correctness of any return; determining the amount of tax that should have been paid; determining whether or not the *offender* ~~dealer~~ should have made a return or paid tax; or collecting any tax, penalty, or interest under KRS 138.872 and 138.889, the Revenue Cabinet may examine, or cause to be examined, any books, papers, records, or memoranda that may be relevant to making any determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the *offender* ~~dealer~~ or another person. The Revenue Cabinet may require the attendance of any person having knowledge or information that may be relevant; compel the production of books, papers, records, or memoranda by persons required to attend; take testimony on matters material to the determination; and administer oaths or affirmations. The Revenue Cabinet may issue subpoenas which may be served by authorized agents of the Revenue Cabinet to compel the attendance of witnesses or the

production of documents, books, papers, records, bank records, and any other writing or memoranda.

Section 8. KRS 138.886 is amended to read as follows:

- (1) The provisions of KRS 138.870 to 138.889 shall not inculcate any person or otherwise cause any person to incriminate himself in violation of his constitutional rights and, notwithstanding the exceptions provided in KRS 131.190 or any other law, neither the Revenue Cabinet nor any public employee may reveal facts contained in any report required by KRS 138.870 to 138.889, nor shall any information contained in any report filed pursuant to KRS 138.870 to 138.889 be used against *an offender*~~[a dealer]~~ in any criminal proceeding, except in connection with a proceeding involving the tax, penalty, or interest due under KRS 138.872 and 138.889, unless the information is independently obtained. Further, possession of any tax stamp, label, or other tax indicia evidencing payment of tax pursuant to KRS 138.874 shall not be used against any person in any criminal proceeding.
- (2) Any person violating this section shall be guilty of a Class B misdemeanor.
- (3) This section shall not prohibit the Revenue Cabinet from publishing statistics that do not disclose the identity of *offenders*~~[dealers]~~ or the contents of particular returns or reports.

Section 9. KRS 138.889 is amended to read as follows:

- (1) Any *offender*~~[dealer]~~ violating KRS 138.870 to 138.889 shall, in addition to paying the tax imposed pursuant to KRS 138.872, pay a penalty equal to one hundred percent (100%) of the tax due and interest at the tax interest rate as defined in KRS 131.010(6) on the principal amount of the tax during the period in which the tax is due and unpaid.
- (2)
 - (a) Any *offender*~~[dealer]~~ failing to affix the appropriate tax stamps, labels, or other tax indicia to any marijuana or controlled substance as required by KRS 138.874 is guilty of a Class C felony and, upon conviction, may be punished as provided in the Kentucky Penal Code. The penalty shall be cumulative to any other penalty or crime. Jurisdiction and venue for prosecution of this crime shall be in the Franklin Circuit Court.
 - (b) Notwithstanding any other provision of the criminal laws of this state, an indictment may be found and filed upon any criminal offense specified in this section within six (6) years after the commission of the offense.

Approved March 20, 2001