

## CHAPTER 2

## (HB 144)

AN ACT relating to taxation and declaring an emergency.

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

➔ Section 1. 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. ~~[This tax shall be paid only once, regardless of the number of times the cigarettes may be sold in this state.]~~
- (2) Effective ***April 1, 2009***~~[June 1, 2005]~~, a surtax shall be paid in addition to the tax levied in subsection (1) of this section at a proportionate rate of ***fifty-six cents (\$0.56)***~~[twenty-six cents (\$0.26)]~~ 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~~[, regardless of the number of times the cigarettes may be sold in the state].~~
- (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~~[only once,]~~ 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***~~[, regardless of the number of times the cigarettes may be sold in the state].~~
- (4)~~[(a)]~~ Effective ***April 1, 2009***~~[August 1, 2005]~~, an excise tax shall be imposed upon all wholesalers of other tobacco products at the rate of ***fifteen percent (15%)***~~[seven and one half percent (7.5%)]~~ of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.
 

~~[(b) This excise tax shall be paid only once, regardless of the number of times the tobacco product may be sold in the state.]~~
- (5) Effective ***April 1, 2009***~~[August 1, 2005]~~, a tax shall be imposed upon all wholesalers of snuff at a rate of ***nineteen cents (\$0.19)***~~[nine and one half cents (\$0.095)]~~ per unit. As used in this section unit means a hard container not capable of containing more than one and one-half (1-1/2) ounce. In determining the quantity subject to the tax under this subsection, if a package on which the tax is levied, contains more than an individual unit, the taxable quantity shall be calculated by multiplying the total number of individual units by the rate set in this subsection.~~[The tax imposed under this subsection shall be paid only once, regardless of the number of times the snuff may be sold in this state.]~~
- (6) (a) Effective June 1, 2006, every person licensed under KRS 138.195 to affix tax evidence, every wholesaler required to pay the tax imposed by subsection (4) of this section, and every other person selling cigarette paper at wholesale in this state shall pay an excise tax on the sale of cigarette paper.
 

(b) The tax shall be in the amount of twenty-five cents (\$0.25) per package of thirty-two (32) sheets. For packages of greater or less than thirty-two (32) sheets, the tax shall be calculated at seventy-eight thousandths of one cent (\$0.0078) per sheet.

(c) The tax shall be remitted to the Department of Revenue at the same time and in the same manner as the tax imposed in subsection (4) of this section.

~~[(d) The tax shall be paid only once, regardless of the number of times the cigarette paper may be sold in this state.]~~
- (7) ***The taxes imposed by subsections (1) to (6) of this section shall be paid only once, regardless of the number of times the cigarette, other tobacco product, snuff or cigarette papers may be sold.***
- (8) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.
- ~~(9)~~~~[(8)]~~ 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 2. KRS 138.143 is amended to read as follows:

- (1) Every retailer, *sub-jobber*, resident wholesaler, nonresident wholesaler, and unclassified acquirer shall:
- (a) ~~(1)~~ 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 **March 31, 2009**~~May 31, 2005~~. Inventory of cigarettes in vending machines may be accomplished by:
1. ~~(a)~~ Taking an actual physical inventory;
  2. ~~(b)~~ 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. ~~(c)~~ Using a combination of the methods in prescribed paragraphs (a) and (b) of this subsection;
- (b) ~~(2)~~ File a return with the department ~~of Revenue~~ on or before **April 10, 2009**~~June 10, 2005~~, 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 **March 31, 2009**; and~~May 31, 2005~~;
- ~~(3)~~ Pay a floor stock tax at a rate equal to that imposed by KRS 138.140(2) with the calculation based upon a proportionate rate of one cent (\$0.01) 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 May 31, 2005; and
- ~~(4)~~(c) Pay a floor stock tax at a *proportionate* rate equal to *thirty cents (\$0.30)*~~that imposed by KRS 138.140(2), with the calculation based upon a proportionate rate of twenty-six cents (\$0.26)~~ 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 **March 31, 2009**~~May 31, 2005~~.
- (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 March 31, 2009;*
    2. *File a return with the department on or before April 10, 2009, showing the entire inventory of snuff possessed by them or in their control at 11:59 on March 31, 2009; and*
    3. *Pay a floor stock tax at a proportionate rate equal to nine and one-half cents (\$0.095) on each unit of snuff in their possession or control at 11:59 p.m. on 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. *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.*
      - a. *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.*

*b. 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 ~~taxes~~~~tax~~ imposed by this section ~~may~~~~shall~~ be paid in three (3)~~equal~~ installments.~~with~~ The first installment, *in an amount equal to at least one-third (1/3) of the total amount due, shall*~~to~~ be remitted with the return *provided by the department* on or before ~~April 10, 2009~~~~June 10, 2005~~. 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*~~shall be paid~~ on or before ~~May 10, 2009~~~~July 10, 2005~~, and the third installment, *in an amount equal to the remaining balance, shall be remitted*~~shall be paid~~ on or before ~~June 10, 2009~~~~August 10, 2005~~.
- (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 3. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
- (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
- (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
- (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
  2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
  3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.
- If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;
- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telecommunications service. For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in KRS 139.195 or an ancillary service as defined in KRS 139.195 provided to:
- (a) An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or
  - (b) An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.010. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
    1. Materials which enter into and become an ingredient or component part of the manufactured product;

2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
  - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
  - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
  - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured; and
3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
  - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.010;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
  - (a) As used in this subsection:
    1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
    2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
  - (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.

- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
- (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
  - (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
    1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
    2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;
- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17); **and**
- ~~(23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and~~
- ~~(24) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.~~
- ➔Section 4. Section 3 of this Act takes effect on April 1, 2009.
- ➔Section 5. Whereas the financial stability of the Commonwealth is in jeopardy, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor February 13, 2009.**