

## CHAPTER 97

( HB 361 )

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, unless the context requires otherwise:

- (1) "Department" means the Department of Revenue;~~[-]~~
- (2) "Manufacturer" means any person who manufactures or produces cigarettes~~[-, snuff]~~, or~~[- other]~~ 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;~~[-]~~
- (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***~~[-, other]~~ tobacco products~~[-, or snuff]~~, 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~~[-, other tobacco products, or snuff]~~ purchased by the wholesaler directly from the manufacturer on which the tax provided for in ***subsections (1), (2), and (3) of Section 2 of this Act***~~[KRS 138.130 to 138.205]~~ is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes,~~[-, other tobacco products, or snuff]~~
- (11) "Nonresident wholesaler" means any person who purchases cigarettes~~[-, other tobacco products, or snuff]~~ 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~~[-, other tobacco products, or snuff]~~ from a ***resident*** wholesaler, ***nonresident wholesaler, or unclassified acquirer*** licensed under KRS 138.195 on which the tax imposed by ***subsections (1), (2), and (3) of Section 2 of this Act***~~[KRS 138.140]~~ has been paid and makes them available to retailers for resale. No person shall~~[- be deemed to]~~ make cigarettes~~[-, other tobacco products, or snuff]~~ 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~~[-, other tobacco products, or snuff]~~ for resale in the regular course of business;~~[-]~~
- (13) "Vending machine operator" means any person who operates one (1) or more cigarette~~[-, other tobacco products, or snuff]~~ vending machines;~~[-]~~

- (14) "Transporter" means any person transporting untax-paid cigarettes~~[-, other tobacco products, or snuff]~~ obtained from any source to any destination within this state, other than cigarettes~~[-, other tobacco products, or snuff]~~ transported by the manufacturer thereof;~~[-]~~
- (15) "Unclassified acquirer" means any person in this state who acquires cigarettes~~[-, other tobacco products, or snuff]~~ from any source on which the tax imposed by *subsections (1), (2), and (3) of Section 2 of this Act*~~[KRS 138.140]~~ 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 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:*
- (a) *Cigarettes; and*
  - (b) *Reference cigarettes;*~~["Other tobacco products" means:~~
    - (a) ~~Cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;~~
    - (b) ~~Cavendish, plug and twist tobacco, fine cut, and other chewing tobacco; or~~
    - (c) ~~Shorts, dry snuff, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking. "Other tobacco products" does not include cigarettes as defined in subsection (5) of this section, reference cigarettes, or moist snuff taxed under the provisions of KRS 138.140(5).]~~
- (17) *"Distributor" means any person within this state in possession of tobacco products for resale within this state on which the tax imposed under subsection (4) of Section 2 of this Act has not been paid;*~~["Wholesale sale" means a sale made for the purpose of resale in the regular course of business.]~~
- (18) *"Retail distributor" means a retailer who has obtained a retail distributor's license under subsection (7)(b) of Section 3 of this Act;*
- (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*~~["Cigarette paper" means paper or a similar material suitable for use by consumers to wrap or roll tobacco into the form of a cigarette].~~

➔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 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 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.
- (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, 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 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. *Nineteen cents (\$0.19) per each single unit sold;*
    - b. *Forty cents (\$0.40) per each half-pound unit sold; or*
    - 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*
  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.*
- (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 subsection (7)(a) of Section 3 of this Act or the retailer applies for and is granted a retail distributor's license under subsection (7)(b) of Section 3 of this Act 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, 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 subsection (7) of Section 3 of this Act 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 subsection (7)(a) of Section 3 of this Act may sell tobacco products to another distributor licensed under subsection (7)(a) of Section 3 of this Act 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* ~~Effective April 1, 2009, an excise tax shall be imposed upon all wholesalers of other tobacco products at the rate of fifteen percent (15%) of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.~~
  - ~~(5) Effective April 1, 2009, a tax shall be imposed upon all wholesalers of snuff at a rate of nineteen cents (\$0.19) 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.~~
  - ~~(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 ten 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.~~
  - ~~(5)(7)}~~ The taxes imposed by subsections (1) to (4) ~~(6)}~~ of this section shall be paid only once, regardless of the number of times the cigarettes, ~~or other~~ tobacco *products* ~~[product, snuff, or cigarette papers]~~ may be sold.
  - ~~(6)(8)}~~ The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.
  - ~~(7)(9)}~~ 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 138.195 is amended to read as follows:
- (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.
  - (b) *No person shall act as a distributor of tobacco products without first obtaining a license from the department as set out in this section.*

- (2) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received. Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid. Such a license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (3) Each sub-jobber shall secure a separate license for each place of business from which Kentucky tax-paid cigarettes are made available to retailers, whether such place of business is located within or without this state. Such license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (4) Each vending machine operator shall secure a license for the privilege of dispensing Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of twenty-five dollars (\$25) for each year or portion thereof for which such license is secured. No vending machine shall be operated within this Commonwealth without having prominently affixed thereto the name of its operator, together with the license number assigned to such operator by the department. The department shall prescribe by regulation the manner in which the information shall be affixed to the vending machine.
- (5) Each transporter shall secure a license for the privilege of transporting cigarettes within this state. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured. No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing the name and address of the consignor and consignee, the date acquired by the transporter, the name and address of the transporter, the quantity of cigarettes being transported, together with the license number assigned to such transporter by the department.
- (6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured.
- (7)
  - (a)
    1. *Each distributor shall secure a license for the privilege of selling tobacco products in this state. Each license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each year or portion thereof for which the license is secured.*
    2.
      - a. *A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.*
      - b. *An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products in this state. The license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars (\$450) for each year or portion thereof for which the license is secured.*
    3. *The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars (\$500) for each year or portion thereof for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.*
  - (b) *The department may, upon application, grant a retail distributor's license to a retailer for the privilege of purchasing tobacco products from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars (\$100) for each year or portion thereof for which the license is secured.*
- (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of such person's business is so diversified as to justify such requirement.

- (9) (a) ~~(8)~~ The department may by regulation require any person licensed under the provisions of this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of such licensees, and to protect the revenues of the state.
- (b) Failure on the part of such licensee to comply with the provisions of KRS 138.130 to 138.205 or any regulations promulgated thereunder, or to permit an inspection of premises, machines or vehicles by an authorized agent of the department at any reasonable time shall be grounds for the revocation of any license issued by the department, after due notice and a hearing by the department.
- (c) The commissioner of the department ~~of Revenue~~ may assign a time and place for such hearing and may appoint a conferee who shall conduct a hearing, receive evidence and hear arguments.
- (d) ~~The~~ ~~Such~~ conferee shall thereupon file a report with the commissioner together with a recommendation as to the revocation of such license.
- (e) From any revocation made by the commissioner of the department ~~of Revenue~~ on such report, the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law.
- (f) Any person whose license has been revoked for the willful violation of any provision of KRS 138.130 to 138.205 shall not be entitled to any license provided for in this section, or have any interest in any such license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of one (1) year after such revocation.
- (10) ~~(9)~~ No license issued pursuant to the provisions of this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.
- (11) ~~(10)~~ Every manufacturer located or doing business in this state and the first person to import cigarettes ~~or other tobacco products, or snuff~~ from a foreign manufacturer shall keep written records of all shipments of cigarettes ~~or other tobacco products, or snuff~~ to persons within this state, and shall submit to the department monthly reports of such shipments. ***All books, records, invoices, and documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.***
- (12) ~~(11)~~ No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untaxed cigarettes.
- (13) (a) ~~(12)~~ ***Licensed distributors*** ~~Wholesalers~~ of ~~other~~ tobacco products ~~and snuff~~ shall pay and report the tax levied by ***subsection (4)(a) of Section 2 of this Act*** ~~KRS 138.140(4) and (5)~~ on or before the twentieth day of the calendar month following the month in which the possession or title of the ~~other~~ tobacco products ~~or smokeless tobacco products~~ are transferred from the ***licensed distributor*** ~~wholesaler~~ to retailers or consumers in this state, ***as the case may be.***
- (b) ***Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products from a person who is not a distributor licensed under subsection (7)(a) of Section 3 of this Act shall report and pay the tax levied by subsection (4)(c)2. of Section 2 of this Act on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.***
- (c) ***If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.***
- (d) The department ~~of Revenue~~ shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (14) ~~(13)~~ A tax return shall be filed for each reporting period whether or not tax is due.

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

- (1) (a) ***Every manufacturer, whether located in this state or outside this state, that ships tobacco products to a distributor, retailer, retail distributor, or any other person located in this state shall file a report with the department on or before the twentieth day of each month identifying all such shipments made by the manufacturer during the preceding month. The department, within its discretion, may allow a manufacturer to file the report for periods other than monthly.***
- (b) ***The reports shall identify:***

1. *The names and addresses of the persons in this state to whom the shipments were made;*
  2. *The quantities of tobacco products shipped, by type of product and brand; and*
  3. *Any other information the department may require.*
- (2) *Each licensed distributor and each licensed retail distributor shall keep in each licensed place of business complete and accurate records for that place of business, including:*
- (a) *Itemized invoices of:*
    1. *Tobacco products purchased, manufactured, imported, or caused to be imported into this state from outside this state, or shipped or transported to other distributors or retailers in this state or outside this state, including type of product and brand;*
    2. *All sales of tobacco products, including sales of tobacco products manufactured or produced in this state, including type of product and brand; and*
    3. *All tobacco products transferred to retail outlets owned or controlled by the licensed distributor, including type of product and brand; and*
  - (b) *Any other records required by the department.*
- (3) *Each retailer of tobacco products shall keep complete and accurate records of all purchases of tobacco products, including invoices that identify:*
- (a) *The distributor's name and address;*
  - (b) *The name, quantity, and purchase price of the product purchased;*
  - (c) *The license number of the distributor licensed under subsection (7) of Section 3 of this Act; and*
  - (d) *The excise tax as required by subsection (4)(d)3. of Section 2 of this Act.*
- (4) *All books, records, invoices, and documents required by this section shall be preserved, in a form prescribed by the department, for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.*

➔SECTION 5. A NEW SECTION OF KRS 138.130 TO 138.205 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid tobacco products 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)
  - (a) *If a retailer, who is not a licensed retail distributor, purchases tobacco products from a licensed distributor and the purchase invoice does not contain the separate identification and display of the excise tax required by subsection (4)(d)3. of Section 2 of this Act, the retailer shall, within twenty-four (24) hours, notify the department in writing.*
  - (b) *The notification shall include the name and address of the person from whom the tobacco products were purchased and a copy of the purchase invoice.*
  - (c) *The tobacco products for which the required information was not included on the invoice shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the proper notice as required by this subsection.*
  - (d) *After the fifteen (15) day period, the retailer may pay the tax due on the tobacco products described in paragraph (c) of this subsection according to administrative regulations promulgated by the department, and after which may proceed to sell the tobacco products.*
- (3) *If a retailer, who is not a licensed retail distributor, purchases tobacco products for resale from a person not licensed under subsection (7) of Section 3 of this Act which is prohibited by subsection (4)(c) of Section 2 of this Act, the retailer may not sell those tobacco products until the retailer applies for and is granted a retail distributor's license under subsection (7)(b) of Section 3 of this Act.*
- (4) *If upon examination the department determines that the retailer has failed to comply with the provisions of subsection (3) of this section, the retailer shall pay all tax and interest and applicable penalties due and the following shall apply:*

- (a) *For the first offense, an additional penalty shall be assessed equal to ten percent (10%) of the tax due;*
- (b) *For a second offense within three (3) years or less of the first offense, an additional penalty shall be assessed equal to twenty-five percent (25%) of the tax due; and*
- (c) *For a third offense or subsequent offense within three (3) years or less of the first offense, the tobacco products shall be contraband and subject to seizure and forfeiture as provided in subsection (5) of this section.*
- (5) (a) *Whenever a representative of the department finds contraband tobacco products within the borders of this state, the tobacco products shall be immediately seized and stored in a depository to be determined by the representative.*
- (b) *At the time of seizure, the representative shall deliver to the person in whose custody the tobacco products are found a receipt for the seized products. The receipt shall state on its face that any inquiry concerning any tobacco products seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.*
- (c) *Immediately upon seizure, the representative shall notify the commissioner of the nature and quantity of the tobacco products seized. Any seized tobacco products shall be held for a period of twenty (20) days, and if after that period no person has claimed the tobacco products as his or her property, the commissioner shall cause the tobacco products to be destroyed.*
- (6) *All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be contraband and subject to seizure and forfeiture as follows:*
  - (a) *The department's representative shall seize the property and store the property in a safe place selected by the representative; and*
  - (b) *The representative shall proceed as provided in KRS 138.165(2). The commissioner shall cause the property to be sold after notice published pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as provided in KRS 138.165(2).*
- (7) *The owner or any person having an interest in the fixtures, materials, or personal property that has been seized as provided by subsection (6) of this section may apply to the commissioner for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the commissioner that the owner or person having an interest in the property was without fault, the department shall remit the forfeiture.*
- (8) *Any party aggrieved by an order entered under this section may appeal to the Kentucky Board of Tax Appeals in the manner provided by law.*

➔SECTION 6. A NEW SECTION OF KRS 138.130 TO 138.205 IS CREATED TO READ AS FOLLOWS:

*The department shall publish and maintain on its Web site an up-to-date list of tobacco products distributors licensed under subsection (7) of Section 3 of this Act.*

➔Section 7. Section 4 of this Act takes effect July 1, 2013.

➔Section 8. Sections 1 to 3 and Section 6 of this Act take effect August 1, 2013.

➔Section 9. Section 5 of this Act takes effect January 1, 2014.

**Signed by Governor March 22, 2013.**