

## CHAPTER 14

## ( HB 83 )

AN ACT relating to 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, or 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 *tobacco products*~~[cigarettes]~~;
- (6) ***"Reference tobacco products" means tobacco products, including 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. 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, which shall not be offered for sale, sold, or distributed to consumers***~~["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 tobacco products, 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 purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.140(1), (2), and (3) is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes;
- (11) "Nonresident wholesaler" means any person who purchases cigarettes 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 from a resident wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS 138.195 on which the tax imposed by KRS 138.140(1), (2), and (3) 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;

- (13) "Vending machine operator" means any person who operates one (1) or more cigarette vending machines;
- (14) "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;
- (15) "Unclassified acquirer" means any person in this state who acquires cigarettes from any source on which the tax imposed by KRS 138.140(1), (2), and (3) 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;~~
- (17) "Distributor" means any person within this state in possession of tobacco products for resale within this state on which the tax imposed under KRS 138.140(4) has not been paid;
- (18) "Retail distributor" means a retailer who has obtained a retail distributor's license under KRS 138.195(7)(b);
- (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.

➔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 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 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 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.
- (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.
- (5) ***The taxes imposed by subsections (1) and (4) of this section shall not apply to reference tobacco products.***

- (6) The taxes imposed by subsections (1) to (4) of this section shall be paid only once, regardless of the number of times the cigarettes, or tobacco products may be sold.
- (7)~~(6)~~ The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.
- (8)~~(7)~~ 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. This Act takes effect August 1, 2016.

**Signed by Governor April 1, 2016.**