

### **131.600 Definitions for KRS 131.600 to 131.630.**

As used in KRS 131.600 to 131.630:

- (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement;
- (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons;
- (3) "Allocable share" means allocable share as that term is defined in the master settlement agreement;
- (4) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to menthol, kings, and 100's, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;
- (5) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
  - (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
  - (b) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
  - (c) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

The term "cigarette" includes "roll-your-own", i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," nine-hundredths (0.09) ounces of "roll-your-own" tobacco shall constitute one (1) individual "cigarette";

- (6) "Commissioner" means the commissioner of the department;
- (7) "Department" means the Department of Revenue;
- (8) "Directory" means the directory as provided in KRS 131.610;
- (9) "Distributor" means a person, wherever residing or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes. This includes resident wholesalers, nonresident wholesalers, and unclassified acquirers

as defined in KRS 138.130;

- (10) "Financial instrument" has the same meaning as in KRS 138.210;
- (11) "Importer" has the same meaning as in KRS 248.750;
- (12) "Master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998, by Kentucky and leading United States tobacco product manufacturers;
- (13) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer;
- (14) "Participating manufacturer" has the meaning given the term in Section II(jj) of the master settlement agreement and all amendments thereto;
- (15) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with KRS 131.602(3);
- (16) "Released claims" means released claims as that term is defined in the master settlement agreement;
- (17) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement;
- (18) "Stamping agent" means a person, including a distributor, that is authorized to affix tax stamps to packages or other containers of cigarettes pursuant to KRS 138.146 or any person that is required to pay the excise tax imposed pursuant to KRS 138.155;
- (19) "Tobacco product manufacturer" means an entity that after June 30, 2000, directly and not exclusively through any affiliate:
  - (a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;
  - (b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
  - (c) Becomes a successor of an entity described in paragraph (a) or (b) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco

product manufacturer unless such affiliate itself falls within any of the definitions described in paragraph (a), (b), or (c) of this subsection; and

- (20) "Units sold" means the number of individual cigarettes sold in Kentucky by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by Kentucky on packs or "roll-your-own" tobacco. The department shall promulgate administrative regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

**Effective:** July 1, 2015

**History:** Amended 2015 Ky. Acts ch. 55, sec. 1, effective July 1, 2015. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXII, sec. 1, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, secs. 153 and 155, effective June 20, 2005. -- Created 2000 Ky. Acts ch. 342, sec. 1, effective June 30, 2000.