

138.130 Definitions for KRS 138.130 to 138.205.

As used in KRS 138.130 to 138.205:

- (1) (a) "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.
 - (b) "Chewing tobacco" does not include snuff;
- (2) "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, except tobacco;
- (3) "Cigarette tax" means the group of taxes consisting of:
 - (a) The tax imposed by KRS 138.140(1)(a);
 - (b) The surtax imposed by KRS 138.140(1)(b); and
 - (c) The surtax imposed by KRS 138.140(1)(c);
- (4) (a) "Closed vapor cartridge" means a pre-filled disposable cartridge that:
 1. Is intended to be used with or in a noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users that may be inhaling from the product such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device and every variation thereof, regardless of whether marketed as such; and
 2. Contains nicotine or non-nicotine substances or other material consumed during the process of vaporization or aerosolization.
- (b) "Closed vapor cartridge" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;
- (5) "Department" means the Department of Revenue;
- (6) "Distributor" means any person within this state in possession of tobacco products or vapor products for resale within this state on which the tobacco products tax imposed under KRS 138.140(2) has not been paid;
- (7) "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;
- (8) "Manufacturer" means any person who manufactures or produces cigarettes or tobacco products within or without this state;
- (9) "Nonresident wholesaler" means any person who purchases cigarettes directly from

the manufacturer and maintains a permanent location outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid;

- (10) (a) "Open vaping system" means:
1. Any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that uses a refillable liquid solution to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users that may be inhaling from the product such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such; and
 2. Any liquid solution that is intended to be used with the product described in subparagraph 1. of this paragraph.
- (b) "Open vaping system" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;
- (11) "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;
- (12) "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;
- (13) "Reference products" means tobacco products, vapor products, or 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;
- (14) "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 cigarette tax is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence or receives untax-paid cigarettes;
- (15) "Retail distributor" means a retailer who has obtained a retail distributor's license under KRS 138.195;
- (16) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;
- (17) "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;

- (18) "Sale at retail" means a sale to any person for any other purpose other than resale;
- (19) "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;
- (20) (a) "Snuff" means tobacco that:
 - 1. Is finely cut, ground, or powdered; and
 - 2. Is not for smoking.(b) "Snuff" includes snus;
- (21) "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 cigarette tax 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;
- (22) "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 cigarette taxes;
- (23) "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 cigarettes;
- (24) "Tobacco products tax" means the tax imposed by KRS 138.140(2)(a)1. to 3.;
- (25) "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;
- (26) "Unclassified acquirer" means any person in this state who acquires cigarettes from any source on which the cigarette tax has not been paid, and who is not a person otherwise required to be licensed under KRS 138.195;
- (27) "Untax-paid cigarettes" means any cigarettes on which the cigarette tax imposed by KRS 138.140 has not been paid;
- (28) "Untax-paid tobacco or vapor products" means any tobacco products or vapor products on which the tax imposed by KRS 138.140(2) has not been paid;
- (29) "Vapor products" means a closed vapor cartridge or an open vaping system;
- (30) "Vapor products tax" means tax imposed under KRS 138.140(2)(a)4. and 5.; and
- (31) "Vending machine operator" means any person who operates one (1) or more

cigarette vending machines.

Effective: August 1, 2020

History: Amended 2020 Ky. Acts ch. 91, sec. 50, effective August 1, 2020. -- Repealed and reenacted 2018 Ky. Acts ch. 171, sec. 24, effective April 14, 2018; and ch. 207, sec. 24, effective April 27, 2018. -- Amended 2016 Ky. Acts ch. 14, sec. 1, effective August 1, 2016. -- Amended 2013 Ky. Acts ch. 97, sec. 1, effective August 1, 2013. -- Amended 2007 Ky. Acts ch. 84, sec. 1, effective July 1, 2007. -- Amended 2006 Ky. Acts ch. 6, sec. 7, effective June 1, 2006; ch. 251, sec. 48, effective April 25, 2006; and ch. 252, Pt. XXXIII, sec. 1, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 346, effective June 20, 2005; and ch. 168, sec. 80, effective June 1, 2005. -- Amended 1982 Ky. Acts ch. 386, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 233, sec. 19, effective June 17, 1978. -- Amended 1962 Ky. Acts ch. 92, sec. 1. -- Amended 1950 Ky. Acts ch. 215, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4281e-1.

Legislative Research Commission Note (6/1/2006). This section was amended by 2006 Ky. Acts chs. 6, sec. 7; 252, Pt. XXXIII, sec. 1, and 251, sec. 48, which specifically amends this statute as it appears in Section 1 of Part XXXIII of 2006 Regular Session HB 380/EN. These do not appear to be in conflict and have been codified together.