

**138.140 Taxation of cigarettes, tobacco products, and vapor products -- Taxes not applicable to reference tobacco products -- Rates -- Liability for and remittance of tax -- Administrative regulations -- General Assembly's recognition of effect of increased tobacco taxes on public health -- Potential reduction of tax on modified risk tobacco product. (Effective July 1, 2021)**

- (1) (a) 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.
  - (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection at a proportionate rate of one dollar and six cents (\$1.06) on each twenty (20) cigarettes.
  - (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection and in addition to the surtax levied by paragraph (b) of this subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.
  - (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be paid at the time that the tax imposed by paragraph (a) of this subsection is paid.
- (2) (a) 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;
  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;
  4. Upon closed vapor cartridges, one dollar and fifty cents (\$1.50) per cartridge; and
  5. Upon open vaping systems, fifteen percent (15%) of the actual price for which the distributor sells:
    - a. The open vaping system when the actual price includes the items described in both KRS 138.130(10)(a)1. and 2.; or
    - b. The liquid solution described in KRS 138.130(10)(a)2. when the solution is sold separately.
- (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 untax-paid 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 untax-paid snuff, at the same rate levied by paragraph (a)1. of this subsection;
    - b. On purchases of untax-paid chewing tobacco, at the same rates levied by paragraph (a)2. of this subsection;
    - c. On purchases of untax-paid tobacco products, except snuff and chewing tobacco, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier;
    - d. On purchases of untax-paid closed vapor cartridges, at the same rate levied by paragraph (a)4. of this subsection; and
    - e. On purchases of untax-paid open vaping systems, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier as described in paragraph (a)5. of this subsection.
- (d)
  - 1. The licensed distributor that first possesses tobacco products or vapor 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 or vapor 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 or vapor products under this subsection that are not within the taxing power of this state under the Commerce Clause of the United States Constitution.
- (3) (a) The taxes imposed by subsections (1) and (2) of this section:
  - 1. Shall not apply to reference products; and
  - 2. Shall be paid only once, regardless of the number of times the cigarettes or tobacco products may be sold.
- (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this section shall be reduced by:
  - 1. Fifty percent (50%) on any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(1); or
  - 2. Twenty-five percent (25%) for any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- (4) A reference product shall carry a marking labeling the contents as a research cigarette, research vapor product, or a research tobacco product to be used only for tobacco-health research and experimental purposes and shall not be offered for sale, sold, or distributed to consumers.
- (5) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.
- (6) 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.
- (7) Any person subject to the taxes imposed under subsections (1) and (2) of this section that:
  - (a) Files an application related to a modified risk tobacco product shall report to the department that an application has been filed within thirty (30) days of that filing; and
  - (b) Receives an order authorizing the marketing of a modified risk tobacco product shall report to the department that an authorizing order has been received.
- (8) Upon receipt of the information required by subsection (7)(b) of this section, the department shall reduce the tax imposed on the modified risk tobacco product as required by subsection (3)(b) of this section on the first day of the calendar month following the expiration of forty-five (45) days following receipt of the information required by subsection (7)(b) of this section.

**History:** Amended 2021 Ky. Acts ch. 156, sec. 3, effective July 1, 2021. -- Amended 2020 Ky. Acts ch. 91, sec. 53, effective August 1, 2020. -- Amended 2018 Ky. Acts ch. 171, sec. 27, effective April 14, 2018; and ch. 207, sec. 27, effective April 27, 2018. -- Amended 2016 Ky. Acts ch. 14, sec. 2, effective August 1, 2016. -- Amended 2013 Ky. Acts ch. 97, sec. 2, effective August 1, 2013. -- Amended 2009 Ky. Acts ch. 2, sec. 1, effective February 13, 2009. -- Amended 2006 Ky. Acts ch. 251, secs. 49, 50, and 51, effective April 25, 2006; ch. 252, Pt. XXXII, sec. 2, effective April 25, 2006; and ch. 252, Pt. XXXIII, sec. 2, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 168, sec. 81, effective June 1, 2005; and ch. 173, Pt. XXV, sec. 1, effective March 20, 2005. -- Amended 1976 Ky. Acts ch. 155, sec. 2. -- Amended 1970 Ky. Acts ch. 255, sec. 4. -- Amended 1962 Ky. Acts ch. 92, sec. 2. -- Amended 1960 Ky. Acts ch. 5, Art. IV, sec. 5. -- Amended 1954 Ky. Acts ch. 77, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4281e-2, 4281e-3, 4281e-4, 4281e-10, 4281e-11.

**Legislative Research Commission Note** (4/27/2018). Pursuant to 2018 Ky. Acts ch. 207, sec. 150, the amendments made to this statute in that Act apply to the sale of cigarettes on or after July 1, 2018.

**Legislative Research Commission Note** (4/25/2006). This section was amended by 2006 Ky. Acts ch. 252, Pt. XXXII, sec. 2, and Pt. XXXIII, sec. 2; and ch. 251, secs. 49, 50, and 51, which specifically amend this statute as it appears in Section 2 of Part XXXIII of 2006 Regular Session HB 380/EN.