

AN ACT relating to the taxation of electronic cigarettes.

***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 cigarettes ***or electronic 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 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:

**(a) Electronic cigarettes; and**

**(b)** 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:

~~1.(a)~~ Cigarettes; and

~~2.(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; **and**
- (24) (a) "Electronic cigarette" means any device, regardless of shape or size, that:**
- 1. Contains a heating element, battery, electronic circuit, power source, or other electronic, chemical, or mechanical means; and**
  - 2. Can be used to deliver a vapor of nicotine or any other substance; the use of which simulates smoking.**
- (b) "Electronic cigarette" includes but is not limited to:**
- 1. The device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or similar product and every variation thereof;**
  - 2. Any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in the device; and**
  - 3. Any component of the device or related product, that may be sold with**

*or without the device.*

→ Section 2. This Act takes effect August 1, 2016.