

1 AN ACT relating to taxation of tobacco and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) There is hereby established in the State Treasury the underfunded pension trust*
6 *fund.*

7 *(2) The fund shall consist of moneys received from the surtax imposed by subsection*
8 *(1)(d) of Section 2 of this Act, the surtax imposed by subsection (2)(b) of Section*
9 *2 of this Act, the surtax imposed by subsection (2)(d)3. of Section 2 of this Act,*
10 *state appropriations, gifts, grants, and federal funds.*

11 *(3) The fund shall be administered by the Finance and Administration Cabinet.*

12 *(4) Amounts deposited in the fund shall be transferred on the first day of each*
13 *calendar month to each public pension plan that is underfunded, in equal*
14 *proportion.*

15 *(5) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal*
16 *year shall not lapse but shall be carried forward into the next fiscal year.*

17 *(6) Any interest earnings of the fund shall become a part of the fund and shall not*
18 *lapse.*

19 *(7) Moneys deposited in the fund are hereby appropriated for the purposes set forth*
20 *in this section and shall not be appropriated or transferred by the General*
21 *Assembly for any other purposes.*

22 ➔Section 2. KRS 138.140 is amended to read as follows:

23 (1) *(a)* A tax shall be paid on the sale of cigarettes within the state at a proportionate
24 rate of three cents (\$0.03) on each twenty (20) cigarettes.

25 ~~*(b)(2)*~~ ~~[Effective April 1, 2009,]~~A surtax shall be paid in addition to the tax
26 levied in *paragraph (a) of this subsection*~~[subsection (1) of this section]~~ at a
27 proportionate rate of fifty-six cents (\$0.56) on each twenty (20) cigarettes.

1 This tax shall be paid only once, at the same time the tax imposed by
2 paragraph (a) of this subsection~~[subsection (1) of this section]~~ is paid.

3 ~~(c)[(3)]~~ ~~[Effective June 1, 2005,]~~A surtax shall be paid in addition to the tax
4 levied in paragraph (a) of this subsection~~[subsection (1) of this section]~~ and
5 in addition to the surtax levied by paragraph (b) of this subsection~~[subsection~~
6 ~~(2) of this section]~~, at a proportionate rate of one cent (\$0.01) on each twenty
7 (20) cigarettes. This tax shall be paid at the same time the tax imposed by
8 paragraph (a) of this subsection~~[subsection (1) of this section]~~ and the surtax
9 imposed by paragraph (b) of this subsection~~[subsection (2) of this section]~~
10 are paid. The revenues from this surtax shall be deposited in the cancer
11 research institutions matching fund created in KRS 164.043.

12 ~~(d)[(4)]~~ *Effective October 1, 2018, a surtax shall be paid in addition to the tax*
13 *levied in paragraph (a) of this subsection and in addition to the surtaxes*
14 *levied by paragraphs (b) and (c) of this subsection, at a proportionate rate of*
15 *one dollar (\$1) on each twenty (20) cigarettes. This tax shall be paid at the*
16 *same time the tax imposed by paragraph (a) of this subsection and the*
17 *surtaxes imposed by paragraphs (b) and (c) of this subsection are paid. The*
18 *revenues from this surtax shall be deposited in the underfunded pension*
19 *trust fund established in Section 1 of this Act.*

20 (2) (a) Effective August 1, 2013, an excise tax is hereby imposed upon every
21 distributor for the privilege of selling tobacco products in this state at the
22 following rates:

- 23 1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-
24 half (1-1/2) ounces or portion thereof by net weight sold;
- 25 2. Upon chewing tobacco at the rate of:
 - 26 a. Nineteen cents (\$0.19) per each single unit sold;
 - 27 b. Forty cents (\$0.40) per each half-pound unit sold; or

- 1 c. Sixty-five cents (\$0.65) per each pound unit sold.
- 2 If the container, pouch, or package on which the tax is levied contains
- 3 more than sixteen (16) ounces by net weight, the rate that shall be
- 4 applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus
- 5 nineteen cents (\$0.19) for each increment of four (4) ounces or portion
- 6 thereof exceeding sixteen (16) ounces sold; and
- 7 3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the
- 8 actual price for which the distributor sells tobacco products, except snuff
- 9 and chewing tobacco, within the Commonwealth.
- 10 (b) 1. Effective October 1, 2018, a surtax is hereby imposed upon every
- 11 distributor, in addition to the excise tax imposed by paragraph (a) of
- 12 this subsection, for the privilege of selling tobacco products in this
- 13 state at the following rates:
- 14 a. Upon snuff at the rate of fifty-one cents (\$0.51) per each one and
- 15 one-half (1-1/2) ounces or portion thereof by net weight sold;
- 16 b. Upon chewing tobacco at the rate of:
- 17 i. Fifty-one cents (\$0.51) per each single unit sold;
- 18 ii. One dollar and eight cents (\$1.08) per each half-pound
- 19 unit sold; or
- 20 iii. One dollar and seventy-five cents (\$1.75) per each pound
- 21 unit sold.
- 22 If the container, pouch, or package on which the tax is levied
- 23 contains more than sixteen (16) ounces by net weight, the rate
- 24 that shall be applied to the unit shall equal the sum of one dollar
- 25 and seventy-five cents (\$1.75) plus fifty-one cents (\$0.51) for
- 26 each increment of four (4) ounces or portion thereof exceeding
- 27 sixteen (16) ounces sold; and

1 *c. Upon tobacco products sold, at the rate of forty percent (40%) of*
 2 *the actual price for which the distributor sells tobacco products,*
 3 *except snuff and chewing tobacco, within the Commonwealth.*

4 *2. The revenues from this surtax shall be deposited in the underfunded*
 5 *pension trust fund established in Section 1 of this Act.*

6 (c) The net weight posted by the manufacturer on the container, pouch, or
 7 package or on the manufacturer's invoice shall be used to calculate the tax due
 8 on snuff or chewing tobacco.

9 (d)~~(e)~~ 1. A retailer located in this state shall not purchase tobacco products
 10 for resale to consumers from any person within or outside this state
 11 unless that person is a distributor licensed under KRS 138.195(7)(a) or
 12 the retailer applies for and is granted a retail distributor's license under
 13 KRS 138.195(7)(b) for the privilege of purchasing untaxed tobacco
 14 products and remitting the tax as provided in this paragraph.

15 2. A licensed retail distributor of tobacco products shall be subject to the
 16 excise tax as follows:

17 a. On purchases of untaxed snuff, at the same rate levied by
 18 paragraph (a)1. of this subsection;

19 b. On purchases of untaxed chewing tobacco, at the same rates levied
 20 by paragraph (a)2. of this subsection; and

21 c. On purchases of untaxed tobacco products, except snuff and
 22 chewing tobacco, fifteen percent (15%) of the total purchase price
 23 as invoiced by the retail distributor's supplier.

24 *3. Effective October 1, 2018, in addition to the excise tax imposed in*
 25 *subparagraph 2. of this paragraph, a licensed retail distributor of*
 26 *tobacco products shall be subject to a surtax as follows:*

27 *a. On purchases of untaxed snuff, at the same rate levied by*

- 1 paragraph (b)1.a. of this subsection;
 2 b. On purchases of untaxed chewing tobacco, at the same rates
 3 levied by paragraph (b)1.b. of this subsection; and
 4 c. On purchases of untaxed tobacco products, except snuff and
 5 chewing tobacco, at the same rate levied by paragraph (b)1.c. of
 6 this subsection.

- 7 ~~(e) [(d)]~~ 1. The licensed distributor that first possesses tobacco products for
 8 sale to a retailer in this state or for sale to a person who is not licensed
 9 under KRS 138.195(7) shall be the distributor liable for the tax and
 10 surtax imposed by this subsection except as provided in subparagraph 2.
 11 of this paragraph.
- 12 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
 13 products to another distributor licensed under KRS 138.195(7)(a)
 14 without payment of the excise tax or the surtax. In such case, the
 15 purchasing licensed distributor shall be the distributor liable for the tax
 16 and the surtax.
- 17 3. A licensed distributor or licensed retail distributor shall:
- 18 a. Identify and display the distributor's or retail distributor's license
 19 number on the invoice to the retailer; and
- 20 b. Identify and display the excise tax and the surtax separately on the
 21 invoice to the retailer. If the excise tax or the surtax is included as
 22 part of the product's sales price, the licensed distributor or licensed
 23 retail distributor shall list the total excise tax and surtax in
 24 summary form by tax type with invoice totals.
- 25 4. It shall be presumed that the excise tax and surtax have~~has~~ not been
 26 paid if the licensed distributor or licensed retail distributor does not
 27 comply with subparagraph 3. of this paragraph.

1 ~~(f)(e)~~ No tax shall be imposed on tobacco products under this subsection that
2 are not within the taxing power of this state under the Commerce Clause of
3 the United States Constitution.

4 ~~(3)(5)~~ The taxes imposed by subsections (1) to (2)~~and (4)~~ of this section shall not
5 apply to reference tobacco products.

6 ~~(4)(6)~~ The taxes imposed by subsections (1) to (2)~~(4)~~ of this section shall be paid
7 only once, regardless of the number of times the cigarettes~~[,]~~ or tobacco products
8 may be sold.

9 ~~(5)(7)~~ The department may prescribe forms and promulgate administrative
10 regulations to execute and administer the provisions of this section.

11 ~~(6)(8)~~ The General Assembly recognizes that increasing taxes on tobacco products
12 should reduce consumption, and therefore result in healthier lifestyles for
13 Kentuckians. The relative taxes on tobacco products proposed in this section reflect
14 the growing data from scientific studies suggesting that although smokeless tobacco
15 poses some risks, those health risks are significantly less than the risks posed by
16 other forms of tobacco products. Moreover, the General Assembly acknowledges
17 that some in the public health community recognize that tobacco harm reduction
18 should be a complementary public health strategy regarding tobacco products.
19 Taxing tobacco products according to relative risk is a rational tax policy and may
20 well serve the public health goal of reducing smoking-related mortality and
21 morbidity and lowering health care costs associated with tobacco-related disease.

22 ➔Section 3. KRS 138.143 is amended to read as follows:

23 (1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and
24 unclassified acquirer shall:

25 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
26 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
27 in their control at 11:59 p.m. on September 30, 2018~~March 31, 2009~~.

1 Inventory of cigarettes in vending machines may be accomplished by:

- 2 1. Taking an actual physical inventory;
- 3 2. Estimating the cigarettes in vending machines by reporting one-half
4 (1/2) of the normal fill capacity of the machines, as reflected in
5 individual inventory records maintained for vending machines; or
- 6 3. Using a combination of the methods prescribed in subparagraphs 1. and
7 2. of this paragraph;

8 (b) File a return with the department on or before **October 10, 2018**~~[April 10,~~
9 ~~2009]~~, showing the entire wholesale and retail inventories of cigarettes in
10 packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette
11 tax stamps possessed by them or in their control at 11:59 p.m. on **September**
12 **30, 2018**~~[March 31, 2009]~~; and

13 (c) Pay a floor stock tax at a proportionate rate equal to **one dollar (\$1)**~~[thirty~~
14 ~~cents (\$0.30)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky
15 tax stamp and unaffixed Kentucky tax stamps in their possession or control at
16 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~.

17 (2) Every retailer and sub-jobber shall:

- 18 (a) 1. Take a physical inventory of all units of snuff possessed by them or in
19 their control at 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~;
- 20 2. File a return with the department on or before **October 10, 2018**~~[April~~
21 ~~10, 2009]~~, showing the entire inventory of snuff possessed by them or in
22 their control at 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~; and
- 23 3. Pay a floor stock tax at a proportionate rate equal to **fifty-one cents**
24 **(\$0.51)**~~[nine and one-half cents (\$0.095)]~~ on each unit of snuff in their
25 possession or control at 11:59 p.m. on **September 30, 2018**~~[March 31,~~
26 ~~2009]~~~~;~~ ~~and]~~

27 (b) 1. ~~[a.]~~ Take a physical inventory of all ~~[other]~~ tobacco products, **except**

1 snuff and chewing tobacco, possessed by them or in their control at
2 11:59 p.m. on September 30, 2018~~[March 31, 2009]~~;

3 ~~2. [b.]~~ File a return with the department on or before October 10, 2018~~[April~~
4 ~~10, 2009]~~, showing the entire inventories of ~~[other]~~ tobacco products,
5 except snuff and chewing tobacco, possessed by them or in their control
6 at 11:59 p.m. on September 30, 2018~~[March 31, 2009]~~; and

7 ~~3. [e.]~~ Pay a floor stock tax at a proportionate rate equal to forty cents (\$0.40)
8 on each unit~~[seven and one-half percent (7.5%) on the purchase price]~~
9 of ~~[other]~~ tobacco products, except snuff and chewing tobacco, in their
10 possession or control at 11:59 p.m. on September 30, 2018~~[March 31,~~
11 ~~2009]~~.

12 As used in this paragraph, "unit" means the unit manufactured for
13 the intended sale at retail to an individual customer; and

14 (c) 1. Take a physical inventory of all units of chewing tobacco possessed by
15 them or in their control at 11:59 p.m. on September 30, 2018;

16 2. File a return with the department on or before October 10, 2018,
17 showing the entire inventory of chewing tobacco possessed by them or
18 in their control at 11:59 p.m. on September 30, 2018; and

19 3. Pay a floor stock tax on each unit of snuff in their possession or
20 control at 11:59 p.m. on September 30, 2018 at the following rates:

21 a. Fifty-one cents (\$0.51) per each single unit sold;

22 b. One dollar and eight cents (\$1.08) per each half-pound unit sold;

23 or

24 c. One dollar and seventy-five cents (\$1.75) per each pound unit
25 sold.

26 If the container, pouch, or package on which the tax is levied contains
27 more than sixteen (16) ounces by net weight, the rate that shall be

1 *applied to the unit shall equal the sum of one dollar and seventy-five*
 2 *cents (\$1.75) plus fifty-one cents (\$0.51) for each increment of four (4)*
 3 *ounces or portion thereof exceeding sixteen (16) ounces sold.*

4 ~~[2. a. As used in this paragraph, "purchase price" means the actual~~
 5 ~~amount paid for the other tobacco products subject to the tax~~
 6 ~~imposed by this paragraph.~~

7 ~~b. If the retailer or sub-jobber cannot determine the actual amount~~
 8 ~~paid for each item of other tobacco product, the retailer or sub-~~
 9 ~~jobber may use as the purchase price the amount per unit paid as~~
 10 ~~reflected on the most recent invoice received prior to April 1,~~
 11 ~~2009, for the same category of other tobacco product.~~

12 ~~c. To prevent double taxation, if the invoice used by the retailer or~~
 13 ~~sub-jobber to determine the purchase price of the other tobacco~~
 14 ~~product does not separately state the tax paid by the wholesaler,~~
 15 ~~the retailer or sub-jobber may reduce the amount paid per unit by~~
 16 ~~seven and one-half percent (7.5%).]~~

17 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
 18 first installment, in an amount equal to at least one-third (1/3) of the total
 19 amount due, shall be remitted with the return provided by the department on
 20 or before **October 10, 2018**~~[April 10, 2009]~~. The second installment, in an
 21 amount that brings the total amount paid to at least two-thirds (2/3) of the total
 22 amount due, shall be remitted on or before **November 10, 2018**~~[May 10,~~
 23 ~~2009]~~. The third installment, in an amount equal to the remaining balance,
 24 shall be remitted on or before **December 10, 2018**~~[June 10, 2009]~~.

25 (b) Interest shall not be imposed against any outstanding installment payment not
 26 yet due from any retailer, sub-jobber, resident wholesaler, nonresident
 27 wholesaler, or unclassified acquirer who files the return and makes payments

1 as required under this section.

2 (c) Any retailer, sub-jobber, resident wholesaler, nonresident wholesaler, or
3 unclassified acquirer who fails to file a return or make a payment on or before
4 the dates provided in this section shall, in addition to the tax, pay interest at
5 the tax interest rate as defined in KRS 131.010(6) from the date on which the
6 return was required to be filed.

7 ➔SECTION 4. KRS 138.130 IS REPEALED AND REENACTED TO READ AS
8 FOLLOWS:

9 (1) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked and
10 includes loose leaf chewing tobacco, plug chewing tobacco, and twist chewing
11 tobacco, but "chewing tobacco" does not include snuff;

12 (2) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or
13 any substitute for tobacco, irrespective of size or shape and whether or not the
14 tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper
15 or cover of which is made of paper or any other substance or material, excepting
16 tobacco. "Cigarettes" shall not mean reference tobacco products, electronic
17 cigarettes, or e-cigarettes;

18 (3) "Cigarette tax" or "cigarette taxes" means the group consisting of:

19 (a) The tax imposed by subsection (1)(a) of Section 2 of this Act;

20 (b) The surtax imposed by subsection (1)(b) of Section 2 of this Act;

21 (c) The surtax imposed by subsection (1)(c) of Section 2 of this Act; and

22 (d) The surtax imposed by subsection (1)(d) of Section 2 of this Act;

23 (4) "Department" means the Department of Revenue;

24 (5) "Distributor" means any person within this state in possession of tobacco
25 products for resale within this state on which the tax and surtax imposed under
26 subsection (2) of Section 2 of this Act has not been paid;

27 (6) "Electronic cigarette," "e-cigarette," or "electronic or e-cigarette" means:

- 1 (a) Any device, whether manufactured, distributed, marketed, or sold as an e-
2 cigarette, e-cigar, e-pipe, or similar product and every variation thereof,
3 regardless of shape or size, that contains a heating element, battery,
4 electronic circuit, power source, or other electronic, chemical, or
5 mechanical means that can be used to produce vapor from nicotine or any
6 other substance, the use of which simulates smoking;
- 7 (b) Any vapor cartridge or other container of a liquid solution or other material
8 that is intended to be used with or in the device; or
- 9 (c) Any component of the device or related product that may be sold with or
10 without the device.
- 11 (7) "Half-pound unit" means a consumer-sized container, pouch, or package:
- 12 (a) Containing at least four (4) ounces but not more than eight (8) ounces of
13 chewing tobacco by net weight;
- 14 (b) Produced by the manufacturer to be sold to consumers as a half-pound unit
15 and not produced to be divided or sold separately; and
- 16 (c) Containing one (1) individual container, pouch, or package;
- 17 (8) "Manufacturer" means any person who manufactures or produces cigarettes, or
18 tobacco products within or without this state;
- 19 (9) "Nonresident wholesaler" means any person who purchases cigarettes directly
20 from the manufacturer and maintains a permanent location or locations outside
21 this state where Kentucky cigarette tax evidence is attached or from where
22 Kentucky cigarette tax is reported and paid;
- 23 (10) "Person" means any individual, firm, copartnership, joint venture, association,
24 municipal or private corporation whether organized for profit or not, the
25 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust,
26 or any other group or combination acting as a unit, and the plural as well as the
27 singular;

- 1 (11) "Pound unit" means a consumer-sized container, pouch, or package:
2 (a) Containing more than eight (8) ounces but not more than sixteen (16)
3 ounces of chewing tobacco by net weight;
4 (b) Produced by the manufacturer to be sold to consumers as a pound unit and
5 not produced to be divided or sold separately;
6 (c) Containing one (1) individual container, pouch, or package;
- 7 (12) "Reference tobacco products" means tobacco products, including cigarettes,
8 made by a manufacturer specifically for an accredited state college or university
9 to be held by the college or university until sale or transfer to a laboratory,
10 hospital, medical center, institute, college or university, manufacturer, or other
11 institution. A reference tobacco product shall carry a marking labeling the
12 contents as a research cigarette or a research tobacco product to be used only for
13 tobacco-health research and experimental purposes, which shall not be offered
14 for sale, sold, or distributed to consumers;
- 15 (13) "Resident wholesaler" means any person who purchases at least seventy-five
16 percent (75%) of all cigarettes purchased by the wholesaler directly from the
17 manufacturer on which the cigarette taxes are unpaid, and who maintains an
18 established place of business in this state where the wholesaler attaches cigarette
19 tax evidence, or receives untaxed cigarettes;
- 20 (14) "Retail distributor" means a retailer who has obtained a retail distributor's
21 license under subsection (7)(b) of Section 11 of this Act;
- 22 (15) "Retailer" means any person who sells to a consumer or to any person for any
23 purpose other than resale;
- 24 (16) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,
25 offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco
26 products, and distribution in any manner or by any means whatsoever;
- 27 (17) "Sale at retail" means a sale to any person for any other purpose other than

1 resale;

2 (18) "Single unit" means a consumer-sized container, pouch, or package:

3 (a) Containing less than four (4) ounces of chewing tobacco by net weight;

4 (b) Produced by the manufacturer to be sold to consumers as a single unit and
5 not produced to be divided or sold separately; and

6 (c) Containing one (1) individual container, pouch, or package;

7 (19) (a) "Snuff" means tobacco that:

8 1. Is finely cut, ground, or powdered; and

9 2. Is not for smoking.

10 (b) "Snuff" includes snus;

11 (20) "Sub-jobber" means any person who purchases cigarettes from a resident
12 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under
13 Section 11 of this Act on which the cigarette taxes have been paid and makes
14 them available to retailers for resale. No person shall make cigarettes available to
15 retailers for resale unless the person certifies and establishes to the satisfaction of
16 the department that firm arrangements have been made to regularly supply at
17 least five (5) retail locations with Kentucky tax-paid cigarettes for resale in the
18 regular course of business;

19 (21) "Tax evidence" means any stamps, metered impressions, or other indicia
20 prescribed by the department by administrative regulation as a means of denoting
21 the payment of cigarette taxes;

22 (22) "Tobacco products" means:

23 (a) Electronic cigarettes and e-cigarettes; and

24 (b) Any smokeless tobacco products, smoking tobacco, chewing tobacco, and
25 any kind or form of tobacco prepared in a manner suitable for chewing or
26 smoking, or both, or any kind or form of tobacco that is suitable to be
27 placed in an individual's oral cavity, except cigarettes;

1 (23) "Transporter" means any person transporting untax-paid cigarettes obtained
 2 from any source to any destination within this state, other than cigarettes
 3 transported by the manufacturer thereof;

4 (24) "Unclassified acquirer" means any person in this state who acquires cigarettes
 5 from any source on which the cigarette taxes have not been paid, and who is not
 6 a person otherwise required to be licensed under Section 11 of this Act;

7 (25) "Untax-paid cigarettes" means any cigarettes on which the taxes and surtaxes
 8 imposed by Sections 2 to 11 of this Act have not been paid;

9 (26) "Untax-paid tobacco products" means any tobacco products on which the taxes
 10 and surtaxes imposed by Sections 2 to 11 of this Act have not been paid; and

11 (27) "Vending machine operator" means any person who operates one (1) or more
 12 cigarette vending machines.

13 ➔Section 5. KRS 138.132 is amended to read as follows:

14 (1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid
 15 tobacco products held, owned, possessed, or in control of any person other than as
 16 provided in KRS 138.130 to 138.205 are contraband and subject to seizure and
 17 forfeiture as set out in this section.

18 (2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco
 19 products from a licensed distributor and the purchase invoice does not contain
 20 the separate identification and display of the excise tax and surtax required by
 21 subsection (2) of Section 2 of this Act~~[KRS 138.140(4)(d)3-],~~ the retailer
 22 shall, within twenty-four (24) hours, notify the department in writing.

23 (b) The notification shall include the name and address of the person from whom
 24 the tobacco products were purchased and a copy of the purchase invoice.

25 (c) The tobacco products for which the required information was not included on
 26 the invoice shall be retained by the retailer, and not sold, for a period of fifteen
 27 (15) days after giving the proper notice as required by this subsection.

- 1 (d) After the fifteen (15) day period, the retailer may pay the tax and surtax due
2 on the tobacco products described in paragraph (c) of this subsection
3 according to administrative regulations promulgated by the department, and
4 after which may proceed to sell the tobacco products.
- 5 (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products for
6 resale from a person not licensed under KRS 138.195(7), which is prohibited by
7 subsection (2) of Section 2 of this Act~~[KRS 138.140(4)(c)]~~, the retailer may not sell
8 those tobacco products until the retailer applies for and is granted a retail
9 distributor's license under KRS 138.195(7)(b).
- 10 (4) If, upon examination, the department determines that the retailer has failed to
11 comply with the provisions of subsection (3) of this section, the retailer shall pay all
12 tax, surtax, and interest and applicable penalties due and the following shall apply:
- 13 (a) For the first offense, an additional penalty shall be assessed equal to ten
14 percent (10%) of the tax and surtax due;
- 15 (b) For a second offense within three (3) years or less of the first offense, an
16 additional penalty shall be assessed equal to twenty-five percent (25%) of the
17 tax and surtax due; and
- 18 (c) For a third offense or subsequent offense within three (3) years or less of the
19 first offense, the tobacco products shall be contraband and subject to seizure
20 and forfeiture as provided in subsection (5) of this section.
- 21 (5) (a) Whenever a representative of the department finds contraband tobacco
22 products within the borders of this state, the tobacco products shall be
23 immediately seized and stored in a depository to be determined by the
24 representative.
- 25 (b) At the time of seizure, the representative shall deliver to the person in whose
26 custody the tobacco products are found a receipt for the seized products. The
27 receipt shall state on its face that any inquiry concerning any tobacco products

1 seized shall be directed to the commissioner of the Department of Revenue,
2 Frankfort, Kentucky.

3 (c) Immediately upon seizure, the representative shall notify the commissioner of
4 the nature and quantity of the tobacco products seized. Any seized tobacco
5 products shall be held for a period of twenty (20) days, and if after that period
6 no person has claimed the tobacco products as his or her property, the
7 commissioner shall cause the tobacco products to be destroyed.

8 (6) All fixtures, equipment, materials, and personal property used in substantial
9 connection with the sale or possession of tobacco products involved in a knowing
10 and intentional violation of KRS 138.130 to 138.205 shall be contraband and
11 subject to seizure and forfeiture as follows:

12 (a) The department's representative shall seize the property and store the property
13 in a safe place selected by the representative; and

14 (b) The representative shall proceed as provided in KRS 138.165(2). The
15 commissioner shall cause the property to be sold after notice published
16 pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as
17 provided in KRS 138.165(2).

18 (7) The owner or any person having an interest in the fixtures, materials, or personal
19 property that has been seized as provided by subsection (6) of this section may
20 apply to the commissioner for remission of the forfeiture for good cause shown. If it
21 is shown to the satisfaction of the commissioner that the owner or person having an
22 interest in the property was without fault, the department shall remit the forfeiture.

23 (8) Any party aggrieved by an order entered under this section may appeal to the
24 Kentucky Claims Commission pursuant to KRS 49.220.

25 ➔Section 6. KRS 138.135 is amended to read as follows:

26 (1) (a) Every manufacturer, whether located in this state or outside this state, that
27 ships tobacco products to a distributor, retailer, retail distributor, or any other

1 person located in this state shall file a report with the department on or before
2 the twentieth day of each month identifying all such shipments made by the
3 manufacturer during the preceding month. The department, within its
4 discretion, may allow a manufacturer to file the report for periods other than
5 monthly.

6 (b) The reports shall identify:

- 7 1. The names and addresses of the persons in this state to whom the
8 shipments were made;
- 9 2. The quantities of tobacco products shipped, by type of product and
10 brand; and
- 11 3. Any other information the department may require.

12 (2) Each licensed distributor and each licensed retail distributor shall keep in each
13 licensed place of business complete and accurate records for that place of business,
14 including:

15 (a) Itemized invoices of:

- 16 1. Tobacco products purchased, manufactured, imported, or caused to be
17 imported into this state from outside this state, or shipped or transported
18 to other distributors or retailers in this state or outside this state,
19 including type of product and brand;
- 20 2. All sales of tobacco products, including sales of tobacco products
21 manufactured or produced in this state, including type of product and
22 brand; and
- 23 3. All tobacco products transferred to retail outlets owned or controlled by
24 the licensed distributor, including type of product and brand; and

25 (b) Any other records required by the department.

26 (3) Each retailer of tobacco products shall keep complete and accurate records of all
27 purchases of tobacco products, including invoices that identify:

- 1 (a) The distributor's name and address;
- 2 (b) The name, quantity, and purchase price of the product purchased;
- 3 (c) The license number of the distributor licensed under KRS 138.195(7); and
- 4 (d) The excise tax and surtax as required by subsection (2) of Section 2 of this
5 Act~~[KRS 138.140(4)(d)3]~~.

6 (4) All books, records, invoices, and documents required by this section shall be
7 preserved, in a form prescribed by the department, for not less than four (4) years
8 from the making of the records unless the department authorizes, in writing, the
9 destruction of the records.

10 ➔Section 7. KRS 138.146 is amended to read as follows:

11 (1) The tax imposed by KRS 138.130 to 138.205 shall be due when any licensed
12 wholesaler or unclassified acquirer takes possession within this state of untax-paid
13 cigarettes.

14 (2) The cigarette tax shall be paid by the purchase of stamps by a resident wholesaler
15 within forty-eight (48) hours after the wholesaler receives the cigarettes. A stamp
16 shall be affixed to each package of an aggregate denomination not less than the
17 amount of the cigarette tax on the package. The affixed stamp shall be prima facie
18 evidence of payment of the cigarette tax. Unless stamps have been previously
19 affixed, they shall be affixed by each resident wholesaler prior to the delivery of any
20 cigarettes to a retail location or any person in this state. The evidence of cigarette
21 tax payment shall be affixed to each individual package of cigarettes by a
22 nonresident wholesaler prior to the introduction or importation of the cigarettes into
23 the territorial limits of this state. The evidence of cigarette tax payment shall be
24 affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes
25 are received by the unclassified acquirer.

26 (3) The department shall by regulation prescribe the form of cigarette tax evidence, the
27 method and manner of the sale and distribution of cigarette tax evidence, and the

1 method and manner that tax evidence shall be affixed to the cigarettes. All cigarette
2 tax evidence prescribed by the department shall be designed and furnished in a
3 fashion to permit identification of the person that affixed the cigarette tax evidence
4 to the particular package of cigarettes, by means of numerical rolls or other mark on
5 the cigarette tax evidence. The department shall maintain for at least three (3) years
6 information identifying the person that affixed the cigarette tax evidence to each
7 package of cigarettes. This information shall not be kept confidential or exempt
8 from disclosure to the public through open records.

9 (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the
10 department shall allow as compensation to any licensed wholesaler an amount
11 of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
12 (\$3) of tax evidence purchased at face value and attributable to the tax
13 assessed in subsection (1)(a) of Section 2 of this Act~~[KRS 138.140(1)]~~. No
14 compensation shall be allowed for tax evidence purchased at face value
15 attributable to the surtaxes~~[tax]~~ assessed in subsections (1)(b), (1)(c), or
16 (1)(d) of Section 2 of this Act~~[KRS 138.140(2) or (3)]~~.

17 (b) ~~[1. Notwithstanding the provisions of paragraph (a) of this subsection, for~~
18 ~~purposes of offsetting the costs associated with paying the tax imposed~~
19 ~~under KRS 138.140(2), the department shall allow a limited amount of~~
20 ~~compensation in addition to the compensation provided in paragraph (a)~~
21 ~~of this subsection for a restricted time to any licensed wholesaler. The~~
22 ~~additional compensation shall be an amount of tax evidence, attributable~~
23 ~~to the tax assessed in KRS 138.140(1), equal to twelve cents (\$0.12)~~
24 ~~face value for each three dollars (\$3) of tax evidence purchased at face~~
25 ~~value on or after June 1, 2005, and before December 1, 2005. The~~
26 ~~additional compensation provided shall sunset 12 midnight November~~
27 ~~30, 2005.~~

1 2. ~~During the six (6) month period beginning on June 1, 2005, and ending~~
2 ~~before December 1, 2005, no licensed wholesaler or stamping agent~~
3 ~~shall receive the additional compensation provided under subparagraph~~
4 ~~1. of this subsection on the purchase of an amount of stamps over one~~
5 ~~hundred fifty percent (150%) of the total number of stamps purchased by~~
6 ~~the same licensed wholesaler or stamping agent for the period beginning~~
7 ~~on December 1, 2004, and ending before May 31, 2005.~~

8 (e) ~~—~~ The department shall have the power to withhold compensation as provided
9 in paragraph ~~[paragraphs]~~ (a) ~~[and (b)]~~ of this subsection from any licensed
10 wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205
11 or any regulations promulgated thereunder. Any refund or credit for unused
12 cigarette tax evidence shall be reduced by the amount allowed as
13 compensation at the time of purchase.

14 (5) No tax evidence may be affixed, or used in any way, by any person other than the
15 person purchasing the evidence from the department. Tax evidence may not be
16 transferred or negotiated, and may not, by any scheme or device, be given, bartered,
17 sold, traded, or loaned to any other person. Unaffixed tax evidence may be returned
18 to the department ~~[—]~~ for credit or refund for any reason satisfactory to the
19 department.

20 (6) In the event any retailer shall receive into his possession cigarettes to which
21 evidence of Kentucky tax payment is not properly affixed, he shall within twenty-
22 four (24) hours notify the department ~~[—]~~ of such fact. Such notice shall be in writing,
23 and shall give the name of the person from whom such cigarettes were received, and
24 the quantity of such cigarettes, and such written notice may be given to any field
25 agent of the department. The written notice may also be directed to the
26 commissioner of the Department of Revenue, Frankfort, Kentucky. If such notice is
27 given by means of the United States mail, it shall be sent by certified mail. Any

1 such cigarettes shall be retained by such retailer, and not sold, for a period of fifteen
2 (15) days after giving the notice provided in this subsection. The retailer may, at his
3 option, pay the tax due on any such cigarettes according to rules and regulations to
4 be prescribed by the department, and proceed to sell the same after such payment.

5 (7) Cigarettes stamped with the cigarette tax evidence of another state shall at no time
6 be commingled with cigarettes on which the Kentucky cigarette tax evidence has
7 been affixed, but any licensed wholesaler, licensed sub-jobber, or licensed vending
8 machine operator may hold cigarettes stamped with the tax evidence of another
9 state for any period of time, subsection (2) of this section notwithstanding.

10 ➔Section 8. KRS 138.155 is amended to read as follows:

11 In lieu of the affixing of cigarette tax evidence to individual packages of cigarettes as the
12 means of denoting payment of the cigarette tax or surtaxes imposed by KRS 138.130 to
13 138.205, the department may prescribe, by rules and regulations sufficient to protect the
14 revenue of this state, a method of reporting, payment and collection of such tax, without
15 the affixing of tax evidence to individual packages of cigarettes. In the event such a
16 system is adopted no compensation for reporting for the purpose of such tax in excess of
17 two percent (2%) of the tax due shall be allowed to any person.

18 ➔Section 9. KRS 138.165 is amended to read as follows:

19 (1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-
20 paid cigarettes held, owned, possessed, or in control of any person other than as
21 provided in KRS 138.130 to 138.205 are contraband and subject to seizure and
22 forfeiture as set out in this section.

23 (2) Whenever any peace officer of this state, or any representative of the department,
24 finds any untax-paid cigarettes within the borders of this state in the possession of
25 any person other than a licensee authorized to possess untax-paid cigarettes by the
26 provisions of KRS 138.130 to 138.205, such cigarettes shall be immediately seized
27 and stored in a depository to be selected by the officer or agent. At the time of

1 seizure, the officer or agent shall deliver to the person in whose custody the
2 cigarettes are found a receipt for the cigarettes. The receipt shall state on its face
3 that any inquiry concerning any goods seized shall be directed to the commissioner
4 of the department~~[of Revenue]~~, Frankfort, Kentucky. Immediately upon seizure, the
5 officer or agent shall notify the commissioner of the department~~[of Revenue]~~ of the
6 nature and quantity of the goods seized. Any seized goods shall be held for a period
7 of twenty (20) days and if after such period no person has claimed the cigarettes as
8 his property, the commissioner shall cause the same to be exposed to public sale to
9 any person authorized to purchase untax-paid cigarettes. The sale shall be on notice
10 published pursuant to KRS Chapter 424. All proceeds, less the cost of sale, from the
11 sale shall be paid into the Kentucky State Treasury for general fund purposes.

12 (3) It is declared to be the legislative intent that any vending machine used for
13 dispensing cigarettes on which Kentucky cigarette tax has not been paid is
14 contraband and subject to seizure and forfeiture. In the event any peace officer or
15 agent of the department finds any vending machine within the borders of this state
16 dispensing untax-paid cigarettes, he shall immediately seize the vending machine
17 and store the same in a safe place selected by him. He shall thereafter proceed as
18 provided in subsection (2) of this section and the commissioner of the department~~[~~
19 ~~of Revenue]~~ shall cause the vending machine to be sold, and the proceeds applied,
20 as set out in subsection (2) of this section.

21 (4) No cigarettes, on which the tax or surtaxes imposed by KRS 138.130 to 138.205
22 have ~~[has]~~ not been paid, shall be transported within this state by any person other
23 than a manufacturer or a person licensed under the provisions of KRS 138.195. It is
24 declared to be the legislative intent that any motor vehicle used to transport any
25 such cigarettes by other persons is contraband and subject to seizure and forfeiture.
26 If any peace officer or agent of the department finds any such motor vehicle, the
27 vehicle shall be seized immediately and stored in a safe place. The peace officer or

1 agent of the department shall thereafter proceed as provided in subsection (2) of this
2 section and the commissioner of the department~~[of Revenue]~~ shall cause the motor
3 vehicle to be sold, and the proceeds applied, as set out in subsection (2) of this
4 section.

5 (5) The owner or any person having an interest in any goods, machines or vehicles
6 seized as provided under subsections (1) to (4) of this section may apply to the
7 commissioner of the department~~[of Revenue]~~ for remission of the forfeiture for
8 good cause shown. If it is shown to the satisfaction of the department~~[of Revenue]~~
9 that the owner was without fault in the possession, dispensing, or transportation of
10 the untax-paid cigarettes, the department~~[of Revenue]~~ shall remit the forfeiture. If
11 the department~~[of Revenue]~~ determines that the possession, dispensing, or
12 transportation of untax-paid cigarettes was willful or intentional, the department~~[of~~
13 ~~Revenue]~~ may nevertheless remit the forfeiture on condition that the owner pay a
14 penalty to be prescribed by the department~~[of Revenue]~~ of not more than fifty
15 percent (50%) of the value of the property forfeited. All taxes due on untax-paid
16 cigarettes shall be paid in addition to the penalty, if any.

17 (6) Any party aggrieved by an order entered hereunder may appeal to the Kentucky
18 Claims Commission pursuant to KRS 49.220.

19 ➔Section 10. KRS 138.183 is amended to read as follows:

20 (1) Notwithstanding any other provision of this chapter to the contrary, the president,
21 vice president, secretary, treasurer, or any other person holding any equivalent
22 corporate office of any corporation subject to the provisions of KRS 138.130 to
23 138.205 shall be personally and individually liable, both jointly and severally, for
24 the taxes and surtaxes imposed under KRS 138.130 to 138.205.

25 (2) Corporate dissolution, withdrawal of the corporation from the state, or the cessation
26 of holding any corporate office shall not discharge the liability of any person. The
27 personal and individual liability shall apply to every person holding a corporate

1 office at the time the tax becomes or became due.

2 (3) Notwithstanding any other provision of this chapter, KRS 275.150, 362.1-306(3) or
3 predecessor law, or KRS 362.2-404(3) to the contrary, the managers of a limited
4 liability company, the partners of a limited liability partnership, and the general
5 partners of a limited liability limited partnership or any other person holding any
6 equivalent office of a limited liability company, limited liability partnership or
7 limited liability limited partnership subject to the provisions of KRS 138.130 to
8 138.205 shall be personally and individually liable, both jointly and severally, for
9 the tax imposed under KRS 138.130 to 138.205.

10 (4) Dissolution, withdrawal of the limited liability company, limited liability
11 partnership, or limited liability limited partnership from the state, or the cessation of
12 holding any office shall not discharge the liability of any person. The personal and
13 individual liability shall apply to every manager of a limited liability company,
14 partner of a limited liability partnership or general partner of a limited liability
15 limited partnership at the time the tax becomes or became due.

16 (5) No person shall be personally and individually liable under this section who had no
17 authority to collect, truthfully account for, or pay over any tax or surtax imposed by
18 KRS 138.130 to 138.205 at the time the tax or surtax imposed becomes or became
19 due.

20 (6) "Taxes" as used in this section include interest accrued at the rate provided by KRS
21 131.183, all applicable penalties imposed under the provisions of this chapter, and
22 all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to
23 131.445, and 131.990.

24 ➔Section 11. KRS 138.195 is amended to read as follows:

25 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on
26 which the Kentucky cigarette tax has not been paid, nor act as a resident
27 wholesaler, nonresident wholesaler, vending machine operator, sub-jobber,

1 transporter or unclassified acquirer of such cigarettes without first obtaining a
2 license from the department as set out in this section.

3 (b) No person shall act as a distributor of tobacco products without first obtaining
4 a license from the department as set out in this section.

5 (c) For licenses effective for periods beginning on or after July 1, 2015, no
6 individual, entity, or any other group or combination acting as a unit may be
7 eligible to obtain a license under this section if the individual, or any partner,
8 director, principal officer, or manager of the entity or any other group or
9 combination acting as a unit has been convicted of or entered a plea of guilty
10 or nolo contendere to:

11 1. A crime relating to the reporting, distribution, sale, or taxation of
12 cigarettes or tobacco products; or

13 2. A crime involving fraud, falsification of records, improper business
14 transactions or reporting;

15 for ten (10) years from the expiration of probation or final discharge from
16 parole or maximum expiration of sentence.

17 (2) Each resident wholesaler shall secure a separate license for each place of business at
18 which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky
19 cigarette tax has not been paid are received. Each nonresident wholesaler shall
20 secure a separate license for each place of business at which evidence of Kentucky
21 cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.
22 Such a license or licenses shall be secured on or before July 1 of each year, and each
23 licensee shall pay the sum of five hundred dollars (\$500) for each such year or
24 portion thereof for which such license is secured.

25 (3) Each sub-jobber shall secure a separate license for each place of business from
26 which Kentucky ~~tax paid~~ cigarettes **on which the tax and surtaxes have been**
27 **paid** are made available to retailers, whether such place of business is located within

1 or without this state. Such license or licenses shall be secured on or before July 1 of
2 each year, and each licensee shall pay the sum of five hundred dollars (\$500) for
3 each such year or portion thereof for which such license is secured.

4 (4) Each vending machine operator shall secure a license for the privilege of dispensing
5 Kentucky ~~tax paid~~ cigarettes on which the tax and surtaxes have been paid by
6 vending machines. Such license shall be secured on or before July 1 of each year,
7 and each licensee shall pay the sum of twenty-five dollars (\$25) for each year or
8 portion thereof for which such license is secured. No vending machine shall be
9 operated within this Commonwealth without having prominently affixed thereto the
10 name of its operator, together with the license number assigned to such operator by
11 the department. The department shall prescribe by administrative regulation the
12 manner in which the information shall be affixed to the vending machine.

13 (5) Each transporter shall secure a license for the privilege of transporting cigarettes
14 within this state. Such license shall be secured on or before July 1 of each year, and
15 each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion
16 thereof for which such license is secured. No transporter shall transport any
17 cigarettes without having in actual possession an invoice or bill of lading therefor,
18 showing the name and address of the consignor and consignee, the date acquired by
19 the transporter, the name and address of the transporter, the quantity of cigarettes
20 being transported, together with the license number assigned to such transporter by
21 the department.

22 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
23 cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall
24 be secured on or before July 1 of each year, and each licensee shall pay the sum of
25 fifty dollars (\$50) for each such year or portion thereof for which such license is
26 secured.

27 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco

- 1 products in this state. Each license shall be secured on or before July 1
2 of each year, and each licensee shall pay the sum of five hundred dollars
3 (\$500) for each year or portion thereof for which the license is secured.
- 4 2. a. A resident wholesaler, nonresident wholesaler, or subjobber
5 licensed under this section may also obtain and maintain a
6 distributor's license at each place of business at no additional cost
7 each year.
- 8 b. An unclassified acquirer licensed under this section may also
9 obtain and maintain a distributor's license for the privilege of
10 selling tobacco products in this state. The license shall be secured
11 on or before July 1 of each year, and each licensee shall pay the
12 sum of four hundred fifty dollars (\$450) for each year or portion
13 thereof for which the license is secured.
- 14 3. The department may, upon application, grant a distributor's license to a
15 person other than a retailer and who is not otherwise required to hold a
16 distributor's license under this paragraph. If the department grants the
17 license, the licensee shall pay the sum of five hundred dollars (\$500) for
18 each year or portion thereof for which the license is secured, and the
19 licensee shall be subject to the excise tax ***and surtax*** in the same manner
20 and subject to the same requirements as a distributor required to be
21 licensed under this paragraph.
- 22 (b) The department may, upon application, grant a retail distributor's license to a
23 retailer for the privilege of purchasing tobacco products from a distributor not
24 licensed by the department. If the department grants the license, the licensee
25 shall pay the sum of one hundred dollars (\$100) for each year or portion
26 thereof for which the license is secured.
- 27 (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department

1 from requiring a person to purchase more than one (1) license if the nature of such
2 person's business is so diversified as to justify such requirement.

3 (9) (a) The department may by administrative regulation require any person
4 requesting a license or holding a license under this section to supply such
5 information concerning his business, sales or any privilege exercised, as is
6 deemed reasonably necessary for the regulation of such licensees, and to
7 protect the revenues of the state.

8 (b) Failure on the part of the applicant or licensee to comply with KRS 131.600 to
9 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative
10 regulations promulgated thereunder, or to permit an inspection of premises,
11 machines, or vehicles by an authorized agent of the department at any
12 reasonable time shall be grounds for the denial or revocation of any license
13 issued by the department, after due notice and a hearing by the department.

14 (c) The commissioner may assign a time and place for the hearing and may
15 appoint a conferee who shall conduct a hearing, receive evidence, and hear
16 arguments.

17 (d) The conferee shall thereupon file a report with the commissioner together with
18 a recommendation as to the denial or revocation of the license.

19 (e) From any denial or revocation made by the commissioner on the report, the
20 licensee may prosecute an appeal to the Kentucky Claims Commission
21 pursuant to KRS 49.220.

22 (f) Any person whose license has been revoked for the willful violation of any
23 provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
24 248.754 or any administrative regulations promulgated thereunder shall not be
25 entitled to any license provided for in this section, or have any interest in any
26 license, either disclosed or undisclosed, either as an individual, partnership,
27 corporation or otherwise, for a period of two (2) years after the revocation.

- 1 (10) No license issued pursuant to this section shall be transferable or negotiable except
2 that a license may be transferred between an individual and a corporation, if that
3 individual is the exclusive owner of that corporation, or between a subsidiary
4 corporation and its parent corporation.
- 5 (11) Every manufacturer located or doing business in this state and the first person to
6 import cigarettes into this state shall keep written records of all shipments of
7 cigarettes to persons within this state, and shall submit to the department monthly
8 reports of such shipments. All books, records, invoices, and documents required by
9 this section shall be preserved in a form prescribed by the department for not less
10 than four (4) years from the making of the records unless the department authorizes,
11 in writing, the destruction of the records.
- 12 (12) No person licensed under this section except nonresident wholesalers shall either
13 sell to or purchase from any other such licensee untax-paid cigarettes.
- 14 (13) (a) Licensed distributors of tobacco products shall pay and report the tax **and**
15 **surtaxes** levied by **subsection (2) of Section 2 of this Act**~~[KRS 138.140(4)(a)]~~
16 on or before the twentieth day of the calendar month following the month in
17 which the possession or title of the tobacco products are transferred from the
18 licensed distributor to retailers or consumers in this state, as the case may be.
- 19 (b) Retailers who have applied for and been granted a retail distributor's license
20 for the privilege of purchasing tobacco products from a person who is not a
21 distributor licensed under KRS 138.195(7)(a) shall report and pay the tax **and**
22 **surtaxes** levied by **subsection (2) of Section 2 of this Act**~~[KRS~~
23 ~~138.140(4)(e)2.]~~ on or before the twentieth day of the calendar month
24 following the month in which the products are acquired by the licensed retail
25 distributors.
- 26 (c) If the distributor or retail distributor timely reports and pays the tax due, the
27 distributor or retail distributor may deduct an amount equal to one percent

1 (1%) of the tax due.

2 (d) The department shall promulgate administrative regulations setting forth the
3 details of the reporting requirements.

4 (14) A tax return shall be filed for each reporting period whether or not tax is due.

5 (15) Any license issued by the department under this section shall not be construed to
6 waive or condone any violation that occurred or may have occurred prior to the
7 issuance of the license and shall not prevent subsequent proceedings against the
8 licensee.

9 (16) (a) The department may deny the issuance of a license under this section if:

10 1. The applicant has made any material false statement on the application
11 for the license; or

12 2. The applicant has violated any provision of KRS 131.600 to 131.630,
13 138.130 to 138.205, 248.754, or 248.756 or any administrative
14 regulations promulgated thereunder.

15 (b) If the department denies the applicant a license under this section, the
16 department shall notify the applicant of the grounds for the denial, and the
17 applicant may request a hearing and appeal the denial as provided in
18 subsection (9) of this section.

19 ➔Section 12. KRS 365.270 is amended to read as follows:

20 As used in KRS 365.260 to 365.380, unless the context otherwise requires:

21 (1) "Person" means and includes any individual, firm, association, company,
22 partnership, corporation, joint stock company, club, agency, syndicate, the
23 Commonwealth of Kentucky and any municipal corporation or other political
24 subdivision of this state, trust, receiver, trustee, fiduciary, or conservator.

25 (2) "Commissioner" means the commissioner of the Department of Revenue of the
26 Commonwealth of Kentucky.

27 (3) "Department" means the Department of Revenue.

- 1 (4) "Cigarettes" means and includes any roll for smoking made wholly or in part of
2 tobacco, irrespective of size or shape and whether or not the tobacco is flavored,
3 adulterated, or mixed with any other ingredient, the wrapper or cover of which is
4 made of paper or any other substance or material, excepting tobacco.
- 5 (5) "Wholesaler" means any person who sells cigarettes at wholesale or distributes
6 cigarettes to be sold at retail, and includes any manufacturer, distributor, jobber,
7 subjobber as defined in KRS 138.130(20)~~[(12)]~~, broker, agent, or other person,
8 whether or not enumerated in this subsection, who sells or distributes cigarettes.
- 9 (6) "Retailer" means and includes any person who sells cigarettes in this state to a
10 consumer or to any person for any purpose other than resale.
- 11 (7) "Sale" or "sell" means any transfer for consideration or gift.
- 12 (8) "Sell at wholesale," "sale at wholesale," and "wholesale sales" means and includes
13 any sale made in the ordinary course of trade or usual conduct of the wholesaler's
14 business to a retailer for the purpose of resale.
- 15 (9) "Sell at retail," "sale at retail," or "retail sales" means and includes any sale for
16 consumption or use made in the ordinary course of trade or usual conduct of the
17 seller's business.
- 18 (10) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler or
19 retailer, as the case may be, less all trade discounts, except customary cash
20 discounts, plus the full face value of any stamps or any tax which may be required
21 by any cigarette tax act of this state or political subdivision thereof, now in effect or
22 hereafter enacted, if not already included in the invoice cost of the cigarettes to the
23 wholesaler or retailer, as the case may be.
- 24 (11) (a) "Cost to wholesaler" means the basic cost of the cigarettes involved to the
25 wholesaler plus the cost of doing cigarette business by the wholesaler. In
26 determining the cost of doing cigarette business by the wholesaler, the cost of
27 doing business by the wholesaler shall first be determined by applying the

1 standards and methods of accounting regularly employed by him, and includes
2 labor costs, including salaries of executives and officers, rent, depreciation,
3 selling costs, maintenance of equipment, delivery costs, all types of licenses,
4 taxes, insurance, and advertising. The cost of doing business by the wholesaler
5 shall then be multiplied by the fraction obtained through dividing the
6 wholesaler's cigarette sales for the preceding six (6) months by the
7 wholesaler's total sales for the same period and the product thereof shall be the
8 cost of doing cigarette business.

9 (b) In the absence of proof of a lesser or higher cost of doing cigarette business by
10 the wholesaler making the sale, the cost of doing cigarette business by the
11 wholesaler shall be presumed to be two percent (2%) of the basic cost of the
12 cigarettes to the wholesale dealer, plus cartage to the retail outlet, if performed
13 or paid for by the wholesale dealer. Cartage cost, in the absence of proof of a
14 lesser or higher cost, shall be presumed to be three-fourths of one percent
15 (0.75%) of the basic cost of the cigarettes to the wholesaler.

16 (12) (a) "Cost to the retailer" means the basic cost of cigarettes involved to the retailer
17 plus the cost of doing cigarette business by the retailer. In determining the cost
18 of doing cigarette business by the retailer, the cost of doing business by the
19 retailer shall first be determined by applying the standards and methods of
20 accounting regularly employed by him and includes labor, including salaries
21 of executives and officers, rent, depreciation, selling costs, maintenance of
22 equipment, delivery costs, all types of licenses, taxes, insurance, and
23 advertising. The cost of doing business by the retailer shall then be multiplied
24 by the fraction obtained through dividing the retailer's cigarette sales for the
25 preceding six (6) months by the retailer's total sales for the same period and
26 the product thereof shall be the cost of doing cigarette business.

27 (b) In the absence of proof of a lesser or higher cost of doing cigarette business by

1 the retailer making the sale, the cost of doing cigarette business by the retailer
2 shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the
3 retailer.

4 ➔Section 13. KRS 164.043 is amended to read as follows:

5 (1) There is hereby created in the State Treasury a cancer research matching fund
6 designated as the "cancer research institutions matching fund." The fund shall be
7 administered by the Council for Postsecondary Education. For tax periods
8 beginning on or after June 1, 2005, the one-cent (\$0.01) surtax collected under
9 subsection (1)(c) of Section 2 of this Act~~[KRS 138.140(2)]~~ shall be deposited in the
10 fund and shall be made available for matching purposes to the following
11 universities for cancer research:

12 (a) One-half (1/2) of the moneys deposited in the fund shall be made available to
13 the University of Kentucky; and

14 (b) One-half (1/2) of the moneys deposited in the fund shall be made available to
15 the University of Louisville.

16 (2) All interest earned on moneys in the fund shall be credited to the fund.

17 (3) Any moneys remaining in the fund at the end of the fiscal year shall lapse to the
18 general fund.

19 (4) To receive the funds, the universities shall provide dollar-for-dollar matching funds.
20 The matching funds shall come from external sources to be eligible for the state
21 match. External source contributions are those that originate outside the university
22 and its affiliated corporations. The matching funds shall be newly generated to be
23 eligible for state match. Newly generated contributions are those received by the
24 university after April 1, 2005.

25 (5) Moneys transferred to the fund pursuant to subsection (1) of this section are hereby
26 appropriated for purposes set forth in this section.

27 (6) The following funds are not eligible for state match:

- 1 (a) Funds received from federal, state, and local government sources; and
- 2 (b) General fund and student-derived revenues.