

1 AN ACT relating to the taxation of tobacco products.

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

3 ➔Section 1. KRS 138.130 is amended to read as follows:

4 As used in KRS 138.130 to 138.205:

- 5 (1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked  
6 and includes loose leaf chewing tobacco, plug chewing tobacco, and twist  
7 chewing tobacco.
- 8 (b) "Chewing tobacco" does not include snuff;
- 9 (2) (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or  
10 any substitute for tobacco, irrespective of size or shape and whether or not the  
11 tobacco is flavored, adulterated, or mixed with any other ingredient, the  
12 wrapper or cover of which is made of paper or any other substance or  
13 material, except tobacco.
- 14 (b) "Cigarettes" does not include reference tobacco products or tobacco  
15 products~~[electronic cigarettes]~~;
- 16 (3) "Cigarette tax" means the group of taxes consisting of:
- 17 (a) The tax imposed by KRS 138.140(1)(a);
- 18 (b) The surtax imposed by KRS 138.140(1)(b); and
- 19 (c) The surtax imposed by KRS 138.140(1)(c);
- 20 (4) "Department" means the Department of Revenue;
- 21 (5) "Distributor" means any person within this state in possession of tobacco products  
22 for resale within this state on which the tobacco products tax imposed under KRS  
23 138.140(2) has not been paid;
- 24 (6) "Half-pound unit" means a consumer-sized container, pouch, or package:
- 25 (a) Containing at least four (4) ounces but not more than eight (8) ounces of  
26 chewing tobacco by net weight;
- 27 (b) Produced by the manufacturer to be sold to consumers as a half-pound unit

- 1           and not produced to be divided or sold separately; and
- 2           (c)   Containing one (1) individual container, pouch, or package;
- 3   (7)   "Manufacturer" means any person who manufactures or produces cigarettes or  
4       tobacco products within or without this state;
- 5   (8)   "Nonresident wholesaler" means any person who purchases cigarettes directly from  
6       the manufacturer and maintains a permanent location outside this state where  
7       Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is  
8       reported and paid;
- 9   (9)   "Person" means any individual, firm, copartnership, joint venture, association,  
10       municipal or private corporation whether organized for profit or not, the  
11       Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or  
12       any other group or combination acting as a unit;
- 13   (10) "Pound unit" means a consumer-sized container, pouch, or package:
- 14       (a)   Containing more than eight (8) ounces but not more than sixteen (16) ounces  
15       of chewing tobacco by net weight;
- 16       (b)   Produced by the manufacturer to be sold to consumers as a pound unit and not  
17       produced to be divided or sold separately; and
- 18       (c)   Containing one (1) individual container, pouch, or package;
- 19   (11) "Reference tobacco products" means tobacco products or cigarettes made by a  
20       manufacturer specifically for an accredited state college or university to be held by  
21       the college or university until sale or transfer to a laboratory, hospital, medical  
22       center, institute, college or university, manufacturer, or other institution;
- 23   (12) "Resident wholesaler" means any person who purchases at least seventy-five  
24       percent (75%) of all cigarettes purchased by the wholesaler directly from the  
25       manufacturer on which the cigarette tax is unpaid, and who maintains an established  
26       place of business in this state where the wholesaler attaches cigarette tax evidence  
27       or receives untax-paid cigarettes;

- 1 (13) "Retail distributor" means a retailer who has obtained a retail distributor's license  
2 under KRS 138.195;
- 3 (14) "Retailer" means any person who sells to a consumer or to any person for any  
4 purpose other than resale;
- 5 (15) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer  
6 for sale, advertising for sale, soliciting an order for cigarettes or tobacco products,  
7 and distribution in any manner or by any means whatsoever;
- 8 (16) "Sale at retail" means a sale to any person for any other purpose other than resale;
- 9 (17) "Single unit" means a consumer-sized container, pouch, or package:
- 10 (a) Containing less than four (4) ounces of chewing tobacco by net weight;
- 11 (b) Produced by the manufacturer to be sold to consumers as a single unit and not  
12 produced to be divided or sold separately; and
- 13 (c) Containing one (1) individual container, pouch, or package;
- 14 (18) (a) "Snuff" means tobacco that:
- 15 1. Is finely cut, ground, or powdered; and
- 16 2. Is not for smoking.
- 17 (b) "Snuff" includes snus;
- 18 (19) "Sub-jobber" means any person who purchases cigarettes from a resident  
19 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS  
20 138.195 on which the cigarette tax has been paid and makes them available to  
21 retailers for resale. No person shall make cigarettes available to retailers for resale  
22 unless the person certifies and establishes to the satisfaction of the department that  
23 firm arrangements have been made to regularly supply at least five (5) retail  
24 locations with Kentucky tax-paid cigarettes for resale in the regular course of  
25 business;
- 26 (20) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed  
27 by the department by administrative regulation as a means of denoting the payment

1 of cigarette taxes;

2 (21) "Tobacco products" means:

3 **(a)** Any smokeless tobacco products, smoking tobacco, chewing tobacco, and any  
 4 kind or form of tobacco prepared in a manner suitable for chewing, **snorting,**  
 5 or smoking, or **any combination thereof;**~~[both,]~~ or

6 **(b) Any product that:**

7 **1. Has not been approved by the United States Food and Drug**  
 8 **Administration as an over-the-counter nicotine replacement therapy;**

9 **2. Is suitable to be placed in an individual's oral cavity; and**

10 **3. Contains:**

11 **a.** Any kind or form of tobacco; **or**

12 **b.** **Any kind or form of a product containing nicotine which may or**  
 13 **may not contain tobacco**~~[that is suitable to be placed in an~~  
 14 ~~individual's oral cavity, except cigarettes]; **or**~~

15 **(c) Vapor products;**

16 (22) "Tobacco products tax" means the tax imposed by KRS 138.140(2);

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

20 (24) "Unclassified acquirer" means any person in this state who acquires cigarettes from  
 21 any source on which the cigarette tax has not been paid, and who is not a person  
 22 otherwise required to be licensed under KRS 138.195;

23 (25) "Untax-paid cigarettes" means any cigarettes on which the cigarette tax imposed by  
 24 KRS 138.140 has not been paid;

25 (26) "Untax-paid tobacco products" means any tobacco products on which the tobacco  
 26 products tax imposed by KRS 138.140 has not been paid; ~~[and]~~

27 **(27) (a) "Vapor product" means any noncombustible product that employs a**

1 heating element, battery, power source, electronic circuit, or other  
 2 electronic, chemical, or mechanical means, regardless of shape or size and  
 3 including the component parts and accessories thereto, that can be used to  
 4 deliver vaporized or aerosolized nicotine or other non-nicotine substances to  
 5 users inhaling from the device.

6 (b) "Vapor product" includes but is not limited to any electronic cigarette,  
 7 electronic cigar, electronic cigarillo, electronic pipe, or similar product or  
 8 device and every variation thereof, regardless of whether marketed as such,  
 9 and any vapor cartridge or other container of a liquid solution or other  
 10 material that is intended to be used with or in an electronic cigarette,  
 11 electronic cigar, electronic cigarillo, electronic pipe, or other similar  
 12 product or device.

13 (c) "Vapor product" does not include any product regulated as a drug or device  
 14 by the United States Food and Drug Administration under Chapter V of the  
 15 Food, Drug, and Cosmetic Act; and

16 ~~(28)~~~~(27)~~ "Vending machine operator" means any person who operates one (1) or more  
 17 cigarette vending machines.

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

- 19 (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate  
 20 rate of three cents (\$0.03) on each twenty (20) cigarettes.
- 21 (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in  
 22 paragraph (a) of this subsection at a proportionate rate of one dollar and six  
 23 cents (\$1.06) on each twenty (20) cigarettes.
- 24 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this  
 25 subsection and in addition to the surtax levied by paragraph (b) of this  
 26 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)  
 27 cigarettes. The revenues from this surtax shall be deposited in the cancer

1 research institutions matching fund created in KRS 164.043.

2 (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be  
3 paid at the time that the tax imposed by paragraph (a) of this subsection is  
4 paid.

5 (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of  
6 selling tobacco products in this state at the following rates:

7 1. Upon snuff at the rate of **thirty-eight cents (\$0.38)**~~[nineteen cents~~  
8 ~~(\$0.19)]~~ per each one and one-half (1-1/2) ounces or portion thereof by  
9 net weight sold;

10 2. Upon chewing tobacco at the rate of:

11 a. **Thirty-eight cents (\$0.38)**~~[Nineteen cents (\$0.19)]~~ per each single  
12 unit sold;

13 b. **Eighty cents (\$0.80)**~~[Forty cents (\$0.40)]~~ per each half-pound unit  
14 sold; or

15 c. **One dollar and thirty cents (\$1.30)**~~[Sixty five cents (\$0.65)]~~ per  
16 each pound unit sold.

17 If the container, pouch, or package on which the tax is levied contains  
18 more than sixteen (16) ounces by net weight, the rate that shall be  
19 applied to the unit shall equal the sum of **one dollar and thirty cents**  
20 **(\$1.30)**~~[sixty five cents (\$0.65)]~~ plus **thirty-eight cents (\$0.38)**~~[nineteen~~  
21 ~~cents (\$0.19)]~~ for each increment of four (4) ounces or portion thereof  
22 exceeding sixteen (16) ounces sold; and

23 3. Upon tobacco products sold, at the rate of **twenty-five percent**  
24 **(25%)**~~[fifteen percent (15%)]~~ of the actual price for which the distributor  
25 sells tobacco products, except snuff and chewing tobacco, within the  
26 Commonwealth.

27 (b) The net weight posted by the manufacturer on the container, pouch, or

1 package or on the manufacturer's invoice shall be used to calculate the tax due  
2 on snuff or chewing tobacco.

3 (c) 1. A retailer located in this state shall not purchase tobacco products for  
4 resale to consumers from any person within or outside this state unless  
5 that person is a distributor licensed under KRS 138.195(7)(a) or the  
6 retailer applies for and is granted a retail distributor's license under KRS  
7 138.195(7)(b) for the privilege of purchasing untax-paid tobacco  
8 products and remitting the tax as provided in this paragraph.

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

11 a. On purchases of untax-paid snuff, at the same rate levied by  
12 paragraph (a)1. of this subsection;

13 b. On purchases of untax-paid chewing tobacco, at the same rates  
14 levied by paragraph (a)2. of this subsection; and

15 c. On purchases of untax-paid tobacco products, except snuff and  
16 chewing tobacco, twenty-five percent (25%)~~fifteen percent~~  
17 ~~(15%)~~ of the total purchase price as invoiced by the retail  
18 distributor's supplier.

19 (d) 1. The licensed distributor that first possesses tobacco products for sale to a  
20 retailer in this state or for sale to a person who is not licensed under  
21 KRS 138.195(7) shall be the distributor liable for the tax imposed by  
22 this subsection except as provided in subparagraph 2. of this paragraph.

23 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco  
24 products to another distributor licensed under KRS 138.195(7)(a)  
25 without payment of the excise tax. In such case, the purchasing licensed  
26 distributor shall be the distributor liable for the tax.

27 3. A licensed distributor or licensed retail distributor shall:

- 1           a. Identify and display the distributor's or retail distributor's license  
2           number on the invoice to the retailer; and
- 3           b. Identify and display the excise tax separately on the invoice to the  
4           retailer. If the excise tax is included as part of the product's sales  
5           price, the licensed distributor or licensed retail distributor shall list  
6           the total excise tax in summary form by tax type with invoice  
7           totals.
- 8           4. It shall be presumed that the excise tax has not been paid if the licensed  
9           distributor or licensed retail distributor does not comply with  
10          subparagraph 3. of this paragraph.
- 11          (e) No tax shall be imposed on tobacco products under this subsection that are not  
12          within the taxing power of this state under the Commerce Clause of the  
13          United States Constitution.
- 14          (3) (a) The taxes imposed by subsections (1) and (2) of this section:
- 15                1. Shall not apply to reference tobacco products; and
- 16                2. Shall be paid only once, regardless of the number of times the cigarettes  
17                or tobacco products may be sold.
- 18          (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this  
19          section shall be reduced by:
- 20                1. Fifty percent (50%) on any product as to which a modified risk tobacco  
21                product order is issued under 21 U.S.C. sec. 387k(g)(1); or
- 22                2. Twenty-five percent (25%) for any product as to which a modified risk  
23                tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- 24          (4) A reference tobacco product shall carry a marking labeling the contents as a  
25          research cigarette or a research tobacco product to be used only for tobacco-health  
26          research and experimental purposes and shall not be offered for sale, sold, or  
27          distributed to consumers.

1 (5) The department may prescribe forms and promulgate administrative regulations to  
2 execute and administer the provisions of this section.

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

14 ~~(6)~~<sup>(7)</sup> Any person subject to the taxes imposed under subsections (1) and (2) of this  
15 section that:

16 (a) Files an application related to a modified risk tobacco product shall report to  
17 the department that an application has been filed within thirty (30) days of that  
18 filing; and

19 (b) Receives an order authorizing the marketing of a modified risk tobacco  
20 product shall report to the department that an authorizing order has been  
21 received.

22 ~~(7)~~<sup>(8)</sup> Upon receipt of the information required by subsection ~~(6)~~<sup>(7)</sup>(b) of this  
23 section, the department shall reduce the tax imposed on the modified risk tobacco  
24 product as required by subsection (3)(b) of this section on the first day of the  
25 calendar month following the expiration of forty-five (45) days following receipt of  
26 the information required by subsection ~~(6)~~<sup>(7)</sup>(b) of this section.

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

- 1    ~~(1) [Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and~~  
2       ~~unclassified acquirer shall:~~
- 3       ~~(a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps,~~  
4       ~~and all unaffixed Kentucky cigarette tax stamps possessed by them or in their~~  
5       ~~control at 11:59 p.m. on June 30, 2018. Inventory of cigarettes in vending machines~~  
6       ~~may be accomplished by:~~
- 7       ~~1. Taking an actual physical inventory;~~
- 8       ~~2. Estimating the cigarettes in vending machines by reporting one-half (1/2) of the~~  
9       ~~normal fill capacity of the machines, as reflected in individual inventory records~~  
10      ~~maintained for vending machines; or~~
- 11      ~~3. Using a combination of the methods prescribed in subparagraphs 1. and 2. of this~~  
12      ~~paragraph;~~
- 13      ~~(b) File a return with the department on or before July 10, 2018, showing the entire~~  
14      ~~wholesale and retail inventories of cigarettes in packages bearing Kentucky tax~~  
15      ~~stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in~~  
16      ~~their control at 11:59 p.m. on June 30, 2018; and~~
- 17      ~~(c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) on each~~  
18      ~~twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed~~  
19      ~~Kentucky tax stamps in their possession or control at 11:59 p.m. on June 30, 2018.~~
- 20    ~~(2) Every retailer and sub-jobber shall:~~
- 21      ~~(a) [1. Take a physical inventory of all units of snuff possessed by them or in~~  
22      ~~their control at 11:59 p.m. on March 31, 2009;~~
- 23      ~~2. File a return with the department on or before April 10, 2009, showing the~~  
24      ~~entire inventory of snuff possessed by them or in their control at 11:59 p.m. on~~  
25      ~~March 31, 2009; and~~
- 26      ~~3. Pay a floor stock tax at a proportionate rate equal to nine and one-half cents~~  
27      ~~(\$0.095) on each unit of snuff in their possession or control at 11:59 p.m. on~~

1           ~~March 31, 2009; and~~

2           ~~(b) 1. a. Take a physical inventory of all other tobacco products possessed~~  
 3           ~~by them or in their control at 11:59 p.m. on March 31, 2009;~~

4           ~~b. File a return with the department on or before April 10, 2009, showing the~~  
 5           ~~entire inventories of other tobacco products possessed by them or in their~~  
 6           ~~control at 11:59 p.m. on March 31, 2009; and~~

7           ~~c. Pay a floor stock tax at a proportionate rate equal to seven and one half~~  
 8           ~~percent (7.5%) on the purchase price of other tobacco products in their~~  
 9           ~~possession or control at 11:59 p.m. on March 31, 2009.~~

10          ~~2. a. As used in this paragraph, "purchase price" means the actual amount~~  
 11          ~~paid for the other tobacco products subject to the tax imposed by this~~  
 12          ~~paragraph.~~

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

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

22          ~~**Take a physical inventory of all tobacco products possessed by them or in**~~  
 23          ~~**their control at 11:59 p.m. on July 31, 2020;**~~

24          ~~**(b) File a return with the department on or before August 10, 2020, showing**~~  
 25          ~~**the entire inventory, by category, of tobacco products possessed by them or**~~  
 26          ~~**in their control at 11:59 p.m. on July 31, 2020; and**~~

27          ~~**(c) For each of the following categories of tobacco products in their possession**~~

1 or control at 11:59 p.m. on July 31, 2020, pay a floor stock tax at a  
 2 proportionate rate equal to:

3 1. Nineteen cents (\$0.19) on each unit of snuff;

4 2. a. Nineteen cents (\$0.19) on each single unit of chewing tobacco;

5 b. Forty cents (\$0.40) on each half-pound unit of chewing tobacco;

6 c. Sixty-five cents (\$0.65) on each pound unit of chewing tobacco.

7 If the container, pouch, or package on which the tax is levied

8 contains more than sixteen (16) ounces by net weight, the rate

9 that shall be applied to the unit shall equal the sum of sixty-five

10 cents (\$0.65) plus nineteen cents (\$0.19) for each increment of

11 four (4) ounces, or portion thereof, exceeding sixteen (16)

12 ounces;

13 3. Ten percent (10%) of the actual amount paid for each category of

14 tobacco products upon which tax has been paid under Section 2 of this

15 Act, except snuff and chewing tobacco. If the retailer or sub-jobber

16 cannot determine the actual amount paid, the retailer or sub-jobber

17 may use the actual amount paid per unit as reflected on the most

18 recent invoice received prior to August 1, 2020, for the same category

19 of tobacco products; and

20 4. Twenty-five percent (25%) of the actual amount paid for each category

21 of tobacco products, including vapor products, for which no tax had

22 been assessed or paid prior to August 1, 2020.

23 ~~(2)~~~~(3)}~~ (a) The taxes imposed by this section may be paid in three (3) installments.

24 The first installment, in an amount equal to at least one-third (1/3) of the total

25 amount due, shall be remitted with the return provided by the department on

26 or before August 10, 2020~~July 10, 2018~~. The second installment, in an

27 amount that brings the total amount paid to at least two-thirds (2/3) of the total

1 amount due, shall be remitted on or before September 10, 2020~~[August 10,~~  
2 ~~2018]~~. The third installment, in an amount equal to the remaining balance,  
3 shall be remitted on or before October 10, 2020~~[September 10, 2018]~~.

4 (b) Interest shall not be imposed against any outstanding installment payment not  
5 yet due from any retailer, sub-jobber, resident wholesaler, nonresident  
6 wholesaler, or unclassified acquirer who files the return and makes payments  
7 as required under this section.

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

13 ➔Section 4. This Act takes effect at 11:59 p.m. on July 31, 2020.