

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,  
10 or any substitute for tobacco, irrespective of size or shape and whether or not  
11 the 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 electronic~~  
15 ~~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) **(a) "Closed vapor cartridge" means a pre-filled disposable cartridge that:**

21 **1. Is intended to be used with or in a noncombustible product that**  
22 **employs a heating element, battery, power source, electronic circuit, or**  
23 **other electronic, chemical, or mechanical means, regardless of shape**  
24 **or size, to deliver vaporized or aerosolized nicotine, non-nicotine**  
25 **substances, or other materials to users that may be inhaling from the**  
26 **product such as any electronic cigarette, electronic cigar, electronic**  
27 **cigarillo, electronic pipe, or other similar product or device and every**

1                    *variation thereof, regardless of whether marketed as such; and*  
 2                    *2. Contains nicotine or non-nicotine substances or other material*  
 3                    *consumed during the process of vaporization or aerosolization.*

4                    *(b) "Closed vapor cartridge" does not include any product regulated as a drug*  
 5                    *or device by the United States Food and Drug Administration under*  
 6                    *Chapter V of the Food, Drug, and Cosmetic Act;*

7                    *(5)* "Department" means the Department of Revenue;

8                    *(6)*~~*(5)*~~ "Distributor" means any person within this state in possession of tobacco  
 9                    products *or vapor products* for resale within this state on which the tobacco  
 10                    products tax imposed under KRS 138.140(2) has not been paid;

11                    *(7)*~~*(6)*~~ "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)*~~*(7)*~~ "Manufacturer" means any person who manufactures or produces cigarettes or  
 18                    tobacco products within or without this state;

19                    *(9)*~~*(8)*~~ "Nonresident wholesaler" means any person who purchases cigarettes directly  
 20                    from the manufacturer and maintains a permanent location outside this state where  
 21                    Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is  
 22                    reported and paid;

23                    *(10)*~~*(9)*~~ *(a) "Open vaping system" means:*

24                    *1. Any noncombustible product that employs a heating element, battery,*  
 25                    *power source, electronic circuit, or other electronic, chemical, or*  
 26                    *mechanical means, regardless of shape or size and including the*  
 27                    *component parts and accessories thereto, that uses a refillable liquid*

1 solution to deliver vaporized or aerosolized nicotine, non-nicotine  
 2 substances, or other materials to users that may be inhaling from the  
 3 product such as any electronic cigarette, electronic cigar, electronic  
 4 cigarillo, electronic pipe, or similar product or device and every  
 5 variation thereof, regardless of whether marketed as such; and

6 2. Any liquid solution that is intended to be used with the product  
 7 described in subparagraph 1. of this paragraph.

8 (b) "Open vaping system" does not include any product regulated as a drug or  
 9 device by the United States Food and Drug Administration under Chapter V  
 10 of the Food, Drug, and Cosmetic Act;

11 (11) "Person" means any individual, firm, copartnership, joint venture, association,  
 12 municipal or private corporation whether organized for profit or not, the  
 13 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or  
 14 any other group or combination acting as a unit;

15 (12)~~[(10)]~~ "Pound unit" means a consumer-sized container, pouch, or package:

16 (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces  
 17 of chewing tobacco by net weight;

18 (b) Produced by the manufacturer to be sold to consumers as a pound unit and not  
 19 produced to be divided or sold separately; and

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

21 (13)~~[(11)]~~ "Reference~~[-tobacco]~~ products" means tobacco products, vapor products, or  
 22 cigarettes made by a manufacturer specifically for an accredited state college or  
 23 university to be held by the college or university until sale or transfer to a  
 24 laboratory, hospital, medical center, institute, college or university, manufacturer, or  
 25 other institution;

26 (14)~~[(12)]~~ "Resident wholesaler" means any person who purchases at least seventy-five  
 27 percent (75%) of all cigarettes purchased by the wholesaler directly from the

1 manufacturer on which the cigarette tax is unpaid, and who maintains an established  
2 place of business in this state where the wholesaler attaches cigarette tax evidence  
3 or receives untax-paid cigarettes;

4 ~~(15)~~~~(13)~~ "Retail distributor" means a retailer who has obtained a retail distributor's  
5 license under KRS 138.195;

6 ~~(16)~~~~(14)~~ "Retailer" means any person who sells to a consumer or to any person for any  
7 purpose other than resale;

8 ~~(17)~~~~(15)~~ "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,  
9 offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco  
10 products, and distribution in any manner or by any means whatsoever;

11 ~~(18)~~~~(16)~~ "Sale at retail" means a sale to any person for any other purpose other than  
12 resale;

13 ~~(19)~~~~(17)~~ "Single unit" means a consumer-sized container, pouch, or package:

- 14 (a) Containing less than four (4) ounces of chewing tobacco by net weight;  
15 (b) Produced by the manufacturer to be sold to consumers as a single unit and not  
16 produced to be divided or sold separately; and  
17 (c) Containing one (1) individual container, pouch, or package;

18 ~~(20)~~~~(18)~~ (a) "Snuff" means tobacco that:

- 19 1. Is finely cut, ground, or powdered; and  
20 2. Is not for smoking.

21 (b) "Snuff" includes snus;

22 ~~(21)~~~~(19)~~ "Sub-jobber" means any person who purchases cigarettes from a resident  
23 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS  
24 138.195 on which the cigarette tax has been paid and makes them available to  
25 retailers for resale. No person shall make cigarettes available to retailers for resale  
26 unless the person certifies and establishes to the satisfaction of the department that  
27 firm arrangements have been made to regularly supply at least five (5) retail

1 locations with Kentucky tax-paid cigarettes for resale in the regular course of  
2 business;

3 ~~(22)~~~~(20)~~ "Tax evidence" means any stamps, metered impressions, or other indicia  
4 prescribed by the department by administrative regulation as a means of denoting  
5 the payment of cigarette taxes;

6 ~~(23)~~~~(21)~~ "Tobacco products" means any smokeless tobacco products, smoking tobacco,  
7 chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for  
8 chewing or smoking, or both, or any kind or form of tobacco that is suitable to be  
9 placed in an individual's oral cavity, except cigarettes;

10 ~~(24)~~~~(22)~~ "Tobacco products tax" means the tax imposed by KRS 138.140(2)~~(a)~~1. to 3.;

11 ~~(25)~~~~(23)~~ "Transporter" means any person transporting untax-paid cigarettes obtained  
12 from any source to any destination within this state, other than cigarettes transported  
13 by the manufacturer thereof;

14 ~~(26)~~~~(24)~~ "Unclassified acquirer" means any person in this state who acquires cigarettes  
15 from any source on which the cigarette tax has not been paid, and who is not a  
16 person otherwise required to be licensed under KRS 138.195;

17 ~~(27)~~~~(25)~~ "Untax-paid cigarettes" means any cigarettes on which the cigarette tax  
18 imposed by KRS 138.140 has not been paid;

19 ~~(28)~~~~(26)~~ "Untax-paid tobacco or vapor products" means any tobacco products or vapor  
20 products on which the ~~tobacco products~~ tax imposed by KRS 138.140~~(2)~~ has not  
21 been paid;~~and~~

22 ~~(29)~~ **"Vapor products" means a closed vapor cartridge or an open vaping system;**

23 ~~(30)~~ **"Vapor products tax" means tax imposed under subsection (2)(a)4. and 5. of**  
24 **Section 4 of this Act; and**

25 ~~(31)~~~~(27)~~ "Vending machine operator" means any person who operates one (1) or more  
26 cigarette vending machines.

27 ➔Section 2. KRS 138.132 is amended to read as follows:

- 1 (1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid  
2 tobacco products or vapor products held, owned, possessed, or in control of any  
3 person other than as provided in KRS 138.130 to 138.205 are contraband and  
4 subject to seizure and forfeiture as set out in this section.
- 5 (2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco  
6 products or vapor products from a licensed distributor and the purchase  
7 invoice does not contain the separate identification and display of the tobacco  
8 products tax or vapor products tax, the retailer shall, within twenty-four (24)  
9 hours, notify the department in writing.
- 10 (b) The notification shall include the name and address of the person from whom  
11 the tobacco products or vapor products were purchased and a copy of the  
12 purchase invoice.
- 13 (c) The tobacco products or vapor products for which the required information  
14 was not included on the invoice shall be retained by the retailer, and not sold,  
15 for a period of fifteen (15) days after giving the proper notice as required by  
16 this subsection.
- 17 (d) After the fifteen (15) day period, the retailer may pay the tax due on the  
18 tobacco products or vapor products described in paragraph (c) of this  
19 subsection according to administrative regulations promulgated by the  
20 department, and after which may proceed to sell the tobacco products or vapor  
21 products.
- 22 (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products or  
23 vapor products for resale from a person not licensed under KRS 138.195(7), which  
24 is prohibited by KRS 138.140(2), the retailer may not sell those tobacco products or  
25 vapor products until the retailer applies for and is granted a retail distributor's  
26 license under KRS 138.195(7)(b).
- 27 (4) If, upon examination, the department determines that the retailer has failed to

1 comply with the provisions of subsection (3) of this section, the retailer shall pay all  
2 tax and interest and applicable penalties due and the following shall apply:

3 (a) For the first offense, an additional penalty shall be assessed equal to ten  
4 percent (10%) of the tax due;

5 (b) For a second offense within three (3) years or less of the first offense, an  
6 additional penalty shall be assessed equal to twenty-five percent (25%) of the  
7 tax due; and

8 (c) For a third offense or subsequent offense within three (3) years or less of the  
9 first offense, the tobacco products or vapor products shall be contraband and  
10 subject to seizure and forfeiture as provided in subsection (5) of this section.

11 (5) (a) Whenever a representative of the department finds contraband tobacco  
12 products or contraband vapor products within the borders of this state, the  
13 tobacco products or vapor products shall be immediately seized and stored in  
14 a depository to be determined by the representative.

15 (b) At the time of seizure, the representative shall deliver to the person in whose  
16 custody the tobacco products or vapor products are found a receipt for the  
17 seized products. The receipt shall state on its face that any inquiry concerning  
18 any tobacco products or vapor products seized shall be directed to the  
19 commissioner of the Department of Revenue, Frankfort, Kentucky.

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

26 (6) All fixtures, equipment, materials, and personal property used in substantial  
27 connection with the sale or possession of tobacco products or vapor products

1 involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be  
2 contraband and subject to seizure and forfeiture as follows:

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

5 (b) The representative shall proceed as provided in KRS 138.165(2). The  
6 commissioner shall cause the property to be sold after notice published  
7 pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as  
8 provided in KRS 138.165(2).

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

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

16 ➔Section 3. KRS 138.135 is amended to read as follows:

17 (1) (a) Every manufacturer, whether located in this state or outside this state, that  
18 ships tobacco products or vapor products to a distributor, retailer, retail  
19 distributor, or any other person located in this state shall file a report with the  
20 department on or before the twentieth day of each month identifying all such  
21 shipments made by the manufacturer during the preceding month. The  
22 department, within its discretion, may allow a manufacturer to file the report  
23 for periods other than monthly.

24 (b) The reports shall identify:

25 1. The names and addresses of the persons in this state to whom the  
26 shipments were made;

27 2. The quantities of tobacco products and vapor products shipped, by type



- 1 of product and brand; and
- 2 3. Any other information the department may require.
- 3 (2) Each licensed distributor and each licensed retail distributor shall keep in each
- 4 licensed place of business complete and accurate records for that place of business,
- 5 including:
- 6 (a) Itemized invoices of:
- 7 1. Tobacco products and vapor products purchased, manufactured,
- 8 imported, or caused to be imported into this state from outside this state,
- 9 or shipped or transported to other distributors or retailers in this state or
- 10 outside this state, including type of product and brand;
- 11 2. All sales of tobacco products and vapor products, including sales of
- 12 tobacco products and vapor products manufactured or produced in this
- 13 state, including type of product and brand; and
- 14 3. All tobacco products and vapor products transferred to retail outlets
- 15 owned or controlled by the licensed distributor, including type of
- 16 product and brand; and
- 17 (b) Any other records required by the department.
- 18 (3) Each retailer of tobacco products or vapor products shall keep complete and
- 19 accurate records of all purchases of tobacco products or vapor products, including
- 20 invoices that identify:
- 21 (a) The distributor's name and address;
- 22 (b) The name, quantity, and purchase price of the product purchased;
- 23 (c) The license number of the distributor licensed under KRS 138.195(7); and
- 24 (d) The tobacco products tax or the vapor products tax imposed by Section 4 of
- 25 this Act~~[KRS 138.140]~~.
- 26 (4) All books, records, invoices, and documents required by this section shall be
- 27 preserved, in a form prescribed by the department, for not less than four (4) years

1 from the making of the records unless the department authorizes, in writing, the  
2 destruction of the records.

3 ➔Section 4. KRS 138.140 is amended to read as follows:

- 4 (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate  
5 rate of three cents (\$0.03) on each twenty (20) cigarettes.
- 6 (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in  
7 paragraph (a) of this subsection at a proportionate rate of one dollar and six  
8 cents (\$1.06) on each twenty (20) cigarettes.
- 9 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this  
10 subsection and in addition to the surtax levied by paragraph (b) of this  
11 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)  
12 cigarettes. The revenues from this surtax shall be deposited in the cancer  
13 research institutions matching fund created in KRS 164.043.
- 14 (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be  
15 paid at the time that the tax imposed by paragraph (a) of this subsection is  
16 paid.
- 17 (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of  
18 selling tobacco products in this state at the following rates:
- 19 1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-  
20 half (1-1/2) ounces or portion thereof by net weight sold;
- 21 2. Upon chewing tobacco at the rate of:
- 22 a. Nineteen cents (\$0.19) per each single unit sold;
- 23 b. Forty cents (\$0.40) per each half-pound unit sold; or
- 24 c. Sixty-five cents (\$0.65) per each pound unit sold.
- 25 If the container, pouch, or package on which the tax is levied contains  
26 more than sixteen (16) ounces by net weight, the rate that shall be  
27 applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus

1                   nineteen cents (\$0.19) for each increment of four (4) ounces or portion  
2                   thereof exceeding sixteen (16) ounces sold;~~and~~

3                   3.   Upon tobacco products sold, at the rate of fifteen percent (15%) of the  
4                   actual price for which the distributor sells tobacco products, except snuff  
5                   and chewing tobacco, within the Commonwealth;

6                   4.   Upon closed vapor cartridges, one dollar and fifty cents (\$1.50) per  
7                   cartridge; and

8                   5.   Upon open vaping systems, fifteen percent (15%) of the actual price  
9                   the distributor sells open vaping systems.

10                  (b)   The net weight posted by the manufacturer on the container, pouch, or  
11                  package or on the manufacturer's invoice shall be used to calculate the tax due  
12                  on snuff or chewing tobacco.

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

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

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

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

25                   c.   On purchases of untax-paid tobacco products, except snuff and  
26                   chewing tobacco, fifteen percent (15%) of the total purchase price  
27                   as invoiced by the retail distributor's supplier;

1 *d. On purchases of untax-paid closed vapor cartridges, at the same*  
 2 *rate levied by paragraph (a)4. of this subsection; and*

3 *e. On purchases of untax-paid open vaping systems, fifteen percent*  
 4 *(15%) of the total purchase price as invoiced by the retail*  
 5 *distributor's supplier.*

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

11 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco  
 12 products *or vapor products* to another distributor licensed under KRS  
 13 138.195(7)(a) without payment of the excise tax. In such case, the  
 14 purchasing licensed distributor shall be the distributor liable for the tax.

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

16 a. Identify and display the distributor's or retail distributor's license  
 17 number on the invoice to the retailer; and

18 b. Identify and display the excise tax separately on the invoice to the  
 19 retailer. If the excise tax is included as part of the product's sales  
 20 price, the licensed distributor or licensed retail distributor shall list  
 21 the total excise tax in summary form by tax type with invoice  
 22 totals.

23 4. It shall be presumed that the excise tax has not been paid if the licensed  
 24 distributor or licensed retail distributor does not comply with  
 25 subparagraph 3. of this paragraph.

26 (e) No tax shall be imposed on tobacco products *or vapor products* under this  
 27 subsection that are not within the taxing power of this state under the

- 1 Commerce Clause of the United States Constitution.
- 2 (3) (a) The taxes imposed by subsections (1) and (2) of this section:
- 3 1. Shall not apply to reference~~[tobacco]~~ products; and
- 4 2. Shall be paid only once, regardless of the number of times the cigarettes
- 5 or tobacco products may be sold.
- 6 (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
- 7 section shall be reduced by:
- 8 1. Fifty percent (50%) on any product as to which a modified risk tobacco
- 9 product order is issued under 21 U.S.C. sec. 387k(g)(1); or
- 10 2. Twenty-five percent (25%) for any product as to which a modified risk
- 11 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- 12 (4) A reference~~[tobacco]~~ product shall carry a marking labeling the contents as a
- 13 research cigarette, **research vapor product**, or a research tobacco product to be used
- 14 only for tobacco-health research and experimental purposes and shall not be offered
- 15 for sale, sold, or distributed to consumers.
- 16 (5) The department may prescribe forms and promulgate administrative regulations to
- 17 execute and administer the provisions of this section.
- 18 (6) The General Assembly recognizes that increasing taxes on tobacco products should
- 19 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The
- 20 relative taxes on tobacco products proposed in this section reflect the growing data
- 21 from scientific studies suggesting that although smokeless tobacco poses some
- 22 risks, those health risks are significantly less than the risks posed by other forms of
- 23 tobacco products. Moreover, the General Assembly acknowledges that some in the
- 24 public health community recognize that tobacco harm reduction should be a
- 25 complementary public health strategy regarding tobacco products. Taxing tobacco
- 26 products according to relative risk is a rational tax policy and may well serve the
- 27 public health goal of reducing smoking-related mortality and morbidity and

1 lowering health care costs associated with tobacco-related disease.

2 (7) Any person subject to the taxes imposed under subsections (1) and (2) of this  
3 section that:

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

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

10 (8) Upon receipt of the information required by subsection (7)(b) of this section, the  
11 department shall reduce the tax imposed on the modified risk tobacco product as  
12 required by subsection (3)(b) of this section on the first day of the calendar month  
13 following the expiration of forty-five (45) days following receipt of the information  
14 required by subsection (7)(b) of this section.

15 ➔Section 5. KRS 138.143 is amended to read as follows:

16 (1) (a) ~~Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and~~  
17 ~~unclassified acquirer shall:~~

18 ~~(a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax~~  
19 ~~stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or~~  
20 ~~in their control at 11:59 p.m. on June 30, 2018. Inventory of cigarettes in~~  
21 ~~vending machines may be accomplished by:~~

22 1. ~~Taking an actual physical inventory;~~

23 2. ~~Estimating the cigarettes in vending machines by reporting one-half~~  
24 ~~(1/2) of the normal fill capacity of the machines, as reflected in~~  
25 ~~individual inventory records maintained for vending machines; or~~

26 3. ~~Using a combination of the methods prescribed in subparagraphs 1. and~~  
27 ~~2. of this paragraph;~~

- 1       ~~(b) File a return with the department on or before July 10, 2018, showing the~~  
 2       ~~entire wholesale and retail inventories of cigarettes in packages bearing~~  
 3       ~~Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps~~  
 4       ~~possessed by them or in their control at 11:59 p.m. on June 30, 2018; and~~
- 5       ~~(c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) on each~~  
 6       ~~twenty (20) cigarettes in packages bearing a Kentucky tax stamp and~~  
 7       ~~unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on~~  
 8       ~~June 30, 2018.~~

9       ~~(2)~~ Every retailer, **retail distributor**, and sub-jobber shall:

- 10       ~~{(a)}~~ 1. Take a physical inventory of all units of **closed vapor cartridges and**  
 11       ~~{(a)}~~ **open vaping systems**~~{snuff}~~ possessed by them or in their control at  
 12       ~~{(a)}~~ 11:59 p.m. on **July 31, 2020**~~{March 31, 2009}~~;
- 13       2. File a return with the department on or before **August 10, 2020**~~{April 10,~~  
 14       ~~{(a)}~~ ~~2009}~~, showing the entire inventory of snuff possessed by them or in  
 15       ~~{(a)}~~ their control at 11:59 p.m. on **July 31, 2020**~~{March 31, 2009}~~; and
- 16       3. Pay a floor stock tax at a proportionate rate equal to:
- 17       ~~{(a)}~~ **a. One dollar and fifty cents (\$1.50) on each closed vapor cartridge**~~{~~  
 18       ~~{(a)}~~ ~~nine and one half cents (\$0.095) on each unit of snuff}~~ in their  
 19       ~~{(a)}~~ possession or control at 11:59 p.m. on **July 31, 2020**~~{March 31,~~  
 20       ~~{(a)}~~ ~~2009}~~; and
- 21       ~~{(a)}~~ **b. Fifteen percent (15%) on the purchase price of open vaping**  
 22       ~~{(a)}~~ **systems in their possession or control at 11:59 pm. on July 31,**  
 23       ~~{(a)}~~ **2020.**
- 24       ~~(b)~~ 1. ~~{a. Take a physical inventory of all other tobacco products possessed~~  
 25       ~~(b)~~ ~~by them or in their control at 11:59 p.m. on March 31, 2009;~~
- 26       ~~(b)~~ 2. ~~b. File a return with the department on or before April 10, 2009, showing~~  
 27       ~~(b)~~ ~~the entire inventories of other tobacco products possessed by them~~

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

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

8           2. ~~b.]~~ If the retailer, retail distributor, or sub-jobber cannot determine the  
 9                                   actual amount paid for each open vaping system~~[item of other tobacco~~  
 10                                  ~~product]~~, the retailer, retail distributor, or sub-jobber may use as the  
 11                                  purchase price the amount per unit paid as reflected on the most recent  
 12                                  invoice received prior to August 1, 2020~~[April 1, 2009,~~  
 13                                  ~~— for the same category of other tobacco product.~~

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

19    ~~(2)~~~~(3)~~ (a) The taxes imposed by this section may be paid in three (3) installments.  
 20                                  The first installment, in an amount equal to at least one-third (1/3) of the total  
 21                                  amount due, shall be remitted with the return provided by the department on  
 22                                  or before August 10, 2020~~[July 10, 2018]~~. The second installment, in an  
 23                                  amount that brings the total amount paid to at least two-thirds (2/3) of the total  
 24                                  amount due, shall be remitted on or before September 10, 2020~~[August 10,~~  
 25                                  ~~2018]~~. The third installment, in an amount equal to the remaining balance,  
 26                                  shall be remitted on or before October 10, 2020~~[September 10, 2018]~~.

27           (b) Interest shall not be imposed against any outstanding installment payment not



1 yet due from any retailer, **retail distributor, or** sub-jobber~~[, resident~~  
 2 ~~wholesaler, nonresident wholesaler, or unclassified acquirer]~~ who files the  
 3 return and makes payments as required under this section.

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

9 ➔Section 6. KRS 138.183 is amended to read as follows:

10 (1) Notwithstanding any other provision of this chapter to the contrary, the president,  
 11 vice president, secretary, treasurer, or any other person holding any equivalent  
 12 corporate office of any corporation subject to the provisions of KRS 138.130 to  
 13 138.205 shall be personally and individually liable, both jointly and severally, for  
 14 the **taxes imposed by Section 4 of this Act**~~[cigarette tax and the tobacco products~~  
 15 ~~tax]~~.

16 (2) Corporate dissolution, withdrawal of the corporation from the state, or the cessation  
 17 of holding any corporate office shall not discharge the liability of any person. The  
 18 personal and individual liability shall apply to every person holding a corporate  
 19 office at the time the tax becomes or became due.

20 (3) Notwithstanding any other provision of this chapter, KRS 275.150, 362.1-306(3) or  
 21 predecessor law, or KRS 362.2-404(3) to the contrary, the managers of a limited  
 22 liability company, the partners of a limited liability partnership, and the general  
 23 partners of a limited liability limited partnership or any other person holding any  
 24 equivalent office of a limited liability company, limited liability partnership or  
 25 limited liability limited partnership subject to the provisions of KRS 138.130 to  
 26 138.205 shall be personally and individually liable, both jointly and severally, for  
 27 the **taxes imposed by Section 4 of this Act**~~[cigarette tax and the tobacco products~~

1 ~~tax~~].

2 (4) Dissolution, withdrawal of the limited liability company, limited liability  
3 partnership, or limited liability limited partnership from the state, or the cessation of  
4 holding any office shall not discharge the liability of any person. The personal and  
5 individual liability shall apply to every manager of a limited liability company,  
6 partner of a limited liability partnership or general partner of a limited liability  
7 limited partnership at the time the tax becomes or became due.

8 (5) No person shall be personally and individually liable under this section who had no  
9 authority to collect, truthfully account for, or pay over any **tax imposed by Section 4**  
10 **of this Act**~~[cigarette tax or tobacco products tax]~~ at the time the taxes imposed  
11 become or became due.

12 (6) "Taxes" as used in this section include interest accrued at the rate provided by KRS  
13 131.183, all applicable penalties imposed under the provisions of this chapter, and  
14 all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to  
15 131.445, and 131.990.

16 ➔Section 7. KRS 138.195 is amended to read as follows:

17 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on  
18 which the Kentucky cigarette tax has not been paid, nor act as a resident  
19 wholesaler, nonresident wholesaler, vending machine operator, sub-jobber,  
20 transporter or unclassified acquirer of such cigarettes without first obtaining a  
21 license from the department as set out in this section.

22 (b) No person shall act as a distributor of tobacco products **or vapor products**  
23 without first obtaining a license from the department as set out in this section.

24 (c) For licenses effective for periods beginning on or after July 1, 2015, no  
25 individual, entity, or any other group or combination acting as a unit may be  
26 eligible to obtain a license under this section if the individual, or any partner,  
27 director, principal officer, or manager of the entity or any other group or

1 combination acting as a unit has been convicted of or entered a plea of guilty  
2 or nolo contendere to:

- 3 1. A crime relating to the reporting, distribution, sale, or taxation of  
4 cigarettes, ~~or~~ tobacco products, or vapor products; or
- 5 2. A crime involving fraud, falsification of records, improper business  
6 transactions or reporting;

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

9 (2) (a) Each resident wholesaler shall secure a separate license for each place of  
10 business at which cigarette tax evidence is affixed or at which cigarettes on  
11 which the Kentucky cigarette tax has not been paid are received.

12 (b) Each nonresident wholesaler shall secure a separate license for each place of  
13 business at which evidence of Kentucky cigarette tax is affixed or from where  
14 Kentucky cigarette tax is reported and paid.

15 (c) Each license shall be secured on or before July 1 of each year.

16 (d) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,  
17 or portion thereof, for which each license is secured.

18 (3) (a) Each sub-jobber shall secure a separate license for each place of business from  
19 which cigarettes, upon which the cigarette tax has been paid, are made  
20 available to retailers, whether the place of business is located within or  
21 without this state.

22 (b) Each license shall be secured on or before July 1 of each year.

23 (c) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,  
24 or portion thereof, for which each license is secured.

25 (4) (a) Each vending machine operator shall secure a license for the privilege of  
26 dispensing cigarettes, on which the cigarette tax has been paid, by vending  
27 machines.

- 1 (b) Each license shall be secured on or before July 1 of each year.
- 2 (c) Each licensee shall pay the sum of twenty-five dollars (\$25) for each year, or  
3 portion thereof, for which each license is secured.
- 4 (d) No vending machine shall be operated within this Commonwealth without  
5 having prominently affixed thereto the name of its operator and the license  
6 number assigned to that operator by the department.
- 7 (e) The department shall prescribe by administrative regulation the manner in  
8 which the information shall be affixed to the vending machine.
- 9 (5) (a) Each transporter shall secure a license for the privilege of transporting  
10 cigarettes within this state.
- 11 (b) Each license shall be secured on or before July 1 of each year.
- 12 (c) Each licensee shall pay the sum of fifty dollars (\$50) for each year, or portion  
13 thereof, for which each license is secured.
- 14 (d) No transporter shall transport any cigarettes without having in actual  
15 possession an invoice or bill of lading therefor, showing:
- 16 1. The name and address of the consignor and consignee;
- 17 2. The date acquired by the transporter;
- 18 3. The name and address of the transporter;
- 19 4. The quantity of cigarettes being transported; and
- 20 5. The license number assigned to the transporter by the department.
- 21 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring  
22 cigarettes on which the cigarette tax has not been paid. The license shall be secured  
23 on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars  
24 (\$50) for each year, or portion thereof, for which the license is secured.
- 25 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco  
26 products or vapor products in this state. Each license shall be secured on  
27 or before July 1 of each year, and each licensee shall pay the sum of five

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

1 person's business is so diversified as to justify the requirement.

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

7 (b) Failure on the part of the applicant or licensee to:

- 8 1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or  
9 248.754 or any administrative regulations promulgated thereunder; or
- 10 2. Permit an inspection of premises, machines, or vehicles by an authorized  
11 agent of the department at any reasonable time;

12 shall be grounds for the denial or revocation of any license issued by the  
13 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 or vapor products shall pay and  
15 report the tobacco products tax or vapor products tax on or before the  
16 twentieth day of the calendar month following the month in which the  
17 possession or title of the tobacco products or vapor products are transferred  
18 from the licensed distributor to retailers or consumers in this state, as the case  
19 may be.
- 20 (b) Retailers who have applied for and been granted a retail distributor's license  
21 for the privilege of purchasing tobacco products or vapor products from a  
22 person who is not a distributor licensed under KRS 138.195(7)(a) shall report  
23 and pay the tobacco products tax or vapor products tax on or before the  
24 twentieth day of the calendar month following the month in which the  
25 products are acquired by the licensed retail 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 8. KRS 138.197 is amended to read as follows:

20 The department shall publish and maintain on its Web site an up-to-date list of tobacco  
21 products and vapor products distributors licensed under KRS 138.195(7).

22 ➔Section 9. This Act takes effect at 11:59 p.m. on July 31, 2020.