

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 the  
11 tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or  
12 cover of which is made of paper or any other substance or material, except tobacco~~[-~~

13 ~~(b) "Cigarettes" does not include reference tobacco products or electronic~~  
14 ~~cigarettes];~~

15 (3) "Cigarette tax" means the group of taxes consisting of:

16 (a) The tax imposed by KRS 138.140(1)(a);

17 (b) The surtax imposed by KRS 138.140(1)(b); and

18 (c) The surtax imposed by KRS 138.140(1)(c);

19 (4) **(a) "Closed vapor cartridge" means a pre-filled disposable cartridge that:**

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

1                    2. Contains nicotine or non-nicotine substances or other material  
 2                    consumed during the process of vaporization or aerosolization.

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

6                    (5) "Department" means the Department of Revenue;

7                    (6)~~(5)~~ "Distributor" means any person within this state in possession of tobacco  
 8                    products or vapor products for resale within this state on which the tobacco  
 9                    products tax imposed under KRS 138.140(2) has not been paid;

10                  (7)~~(6)~~ "Half-pound unit" means a consumer-sized container, pouch, or package:

11                  (a) Containing at least four (4) ounces but not more than eight (8) ounces of  
 12                  chewing tobacco by net weight;

13                  (b) Produced by the manufacturer to be sold to consumers as a half-pound unit  
 14                  and not produced to be divided or sold separately; and

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

16                  (8)~~(7)~~ "Manufacturer" means any person who manufactures or produces cigarettes or  
 17                  tobacco products within or without this state;

18                  (9)~~(8)~~ "Nonresident wholesaler" means any person who purchases cigarettes directly  
 19                  from the manufacturer and maintains a permanent location outside this state where  
 20                  Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is  
 21                  reported and paid;

22                  (10)~~(9)~~ (a) "Open vaping system" means:

23                    1. Any noncombustible product that employs a heating element, battery,  
 24                    power source, electronic circuit, or other electronic, chemical, or  
 25                    mechanical means, regardless of shape or size and including the  
 26                    component parts and accessories thereto, that uses a refillable liquid  
 27                    solution to deliver vaporized or aerosolized nicotine, non-nicotine

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

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

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

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

14 (12)~~(10)~~ "Pound unit" means a consumer-sized container, pouch, or package:

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

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

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

20 (13)~~(11)~~ "Reference~~[-tobacco]~~ products" means tobacco products, vapor products, or  
 21 cigarettes made by a manufacturer specifically for an accredited state college or  
 22 university to be held by the college or university until sale or transfer to a  
 23 laboratory, hospital, medical center, institute, college or university, manufacturer, or  
 24 other institution;

25 (14)~~(12)~~ "Resident wholesaler" means any person who purchases at least seventy-five  
 26 percent (75%) of all cigarettes purchased by the wholesaler directly from the  
 27 manufacturer on which the cigarette tax is unpaid, and who maintains an established

1 place of business in this state where the wholesaler attaches cigarette tax evidence  
2 or receives untax-paid cigarettes;

3 ~~(15)~~~~(13)~~ "Retail distributor" means a retailer who has obtained a retail distributor's  
4 license under KRS 138.195;

5 ~~(16)~~~~(14)~~ "Retailer" means any person who sells to a consumer or to any person for any  
6 purpose other than resale;

7 ~~(17)~~~~(15)~~ "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,  
8 offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco  
9 products, and distribution in any manner or by any means whatsoever;

10 ~~(18)~~~~(16)~~ "Sale at retail" means a sale to any person for any other purpose other than  
11 resale;

12 ~~(19)~~~~(17)~~ "Single unit" means a consumer-sized container, pouch, or package:

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

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

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

17 ~~(20)~~~~(18)~~ (a) "Snuff" means tobacco that:

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

19 2. Is not for smoking.

20 (b) "Snuff" includes snus;

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

1 business;

2 ~~(22)~~~~(20)~~ "Tax evidence" means any stamps, metered impressions, or other indicia  
3 prescribed by the department by administrative regulation as a means of denoting  
4 the payment of cigarette taxes;

5 ~~(23)~~~~(24)~~ "Tobacco products" means any smokeless tobacco products, smoking tobacco,  
6 chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for  
7 chewing or smoking, or both, or any kind or form of tobacco that is suitable to be  
8 placed in an individual's oral cavity, except cigarettes;

9 ~~(24)~~~~(22)~~ "Tobacco products tax" means the tax imposed by KRS 138.140(2)~~(a)~~1. to 3.;

10 ~~(25)~~~~(23)~~ "Transporter" means any person transporting untax-paid cigarettes obtained  
11 from any source to any destination within this state, other than cigarettes transported  
12 by the manufacturer thereof;

13 ~~(26)~~~~(24)~~ "Unclassified acquirer" means any person in this state who acquires cigarettes  
14 from any source on which the cigarette tax has not been paid, and who is not a  
15 person otherwise required to be licensed under KRS 138.195;

16 ~~(27)~~~~(25)~~ "Untax-paid cigarettes" means any cigarettes on which the cigarette tax  
17 imposed by KRS 138.140 has not been paid;

18 ~~(28)~~~~(26)~~ "Untax-paid tobacco or vapor products" means any tobacco products or vapor  
19 products on which the ~~tobacco products~~ tax imposed by KRS 138.140~~(2)~~ has not  
20 been paid;~~and~~

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

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

24 ~~(31)~~~~(27)~~ "Vending machine operator" means any person who operates one (1) or more  
25 cigarette vending machines.

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

27 (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate

1 rate of three cents (\$0.03) on each twenty (20) cigarettes.

2 (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in  
3 paragraph (a) of this subsection at a proportionate rate of one dollar and six  
4 cents (\$1.06) on each twenty (20) cigarettes.

5 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this  
6 subsection and in addition to the surtax levied by paragraph (b) of this  
7 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)  
8 cigarettes. The revenues from this surtax shall be deposited in the cancer  
9 research institutions matching fund created in KRS 164.043.

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

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

15 1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-  
16 half (1-1/2) ounces or portion thereof by net weight sold;

17 2. Upon chewing tobacco at the rate of:

18 a. Nineteen cents (\$0.19) per each single unit sold;

19 b. Forty cents (\$0.40) per each half-pound unit sold; or

20 c. Sixty-five cents (\$0.65) per each pound unit sold.

21 If the container, pouch, or package on which the tax is levied contains  
22 more than sixteen (16) ounces by net weight, the rate that shall be  
23 applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus  
24 nineteen cents (\$0.19) for each increment of four (4) ounces or portion  
25 thereof exceeding sixteen (16) ounces sold;~~and~~

26 3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the  
27 actual price for which the distributor sells tobacco products, except snuff

1 and chewing tobacco, within the Commonwealth;

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

4 **5. Upon open vaping systems, fifteen percent (15%) of the actual price**  
 5 **for which the distributor sells:**

6 **a. The open vaping system when the actual price includes the items**  
 7 **described in both subsection (10)(a) 1. and 2. of Section 1 of this**  
 8 **Act; or**

9 **b. The liquid solution described in subsection (10)(a)2. of Section 1**  
 10 **of this Act when the solution is sold separately.**

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

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

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

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

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

26 c. On purchases of untax-paid tobacco products, except snuff and  
 27 chewing tobacco, fifteen percent (15%) of the total purchase price

1 as invoiced by the retail distributor's supplier;

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

4 *e. On purchases of untax-paid open vaping systems, fifteen percent*  
 5 *(15%) of the total purchase price as invoiced by the retail*  
 6 *distributor's supplier as described in paragraph (a)5. of this*  
 7 *subsection.*

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

13 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco  
 14 products *or vapor products* to another distributor licensed under KRS  
 15 138.195(7)(a) without payment of the excise tax. In such case, the  
 16 purchasing licensed distributor shall be the distributor liable for the tax.

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

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



- 1 (e) No tax shall be imposed on tobacco products or vapor products under this  
2 subsection that are not within the taxing power of this state under the  
3 Commerce Clause of the United States Constitution.
- 4 (3) (a) The taxes imposed by subsections (1) and (2) of this section:  
5 1. Shall not apply to reference~~[tobacco]~~ products; and  
6 2. Shall be paid only once, regardless of the number of times the cigarettes  
7 or tobacco products may be sold.
- 8 (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this  
9 section shall be reduced by:  
10 1. Fifty percent (50%) on any product as to which a modified risk tobacco  
11 product order is issued under 21 U.S.C. sec. 387k(g)(1); or  
12 2. Twenty-five percent (25%) for any product as to which a modified risk  
13 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- 14 (4) A reference~~[tobacco]~~ product shall carry a marking labeling the contents as a  
15 research cigarette, research vapor product, or a research tobacco product to be used  
16 only for tobacco-health research and experimental purposes and shall not be offered  
17 for sale, sold, or distributed to consumers.
- 18 (5) The department may prescribe forms and promulgate administrative regulations to  
19 execute and administer the provisions of this section.
- 20 (6) The General Assembly recognizes that increasing taxes on tobacco products should  
21 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The  
22 relative taxes on tobacco products proposed in this section reflect the growing data  
23 from scientific studies suggesting that although smokeless tobacco poses some  
24 risks, those health risks are significantly less than the risks posed by other forms of  
25 tobacco products. Moreover, the General Assembly acknowledges that some in the  
26 public health community recognize that tobacco harm reduction should be a  
27 complementary public health strategy regarding tobacco products. Taxing tobacco

1 products according to relative risk is a rational tax policy and may well serve the  
2 public health goal of reducing smoking-related mortality and morbidity and  
3 lowering health care costs associated with tobacco-related disease.

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

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

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

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

17 ➔Section 3. Sections 50 and 53, amending KRS 138.130 and 138.140, of House  
18 Bill 351/EN, as enacted at the 2020 Regular Session of the General Assembly, are hereby  
19 repealed in their entirety and shall have no effect on the laws of the Commonwealth of  
20 Kentucky.

21 ➔Section 4. Sections 1 and 2 of this Act take effect August 1, 2020.

22 ➔Section 5. (1) The Legislative Research Commission is hereby directed to  
23 create the Kentucky Small Business COVID-19 Task Force that shall:

24 (a) Review and recommend strategies for the reopening of businesses both during  
25 an emergency and after all emergency orders have expired;

26 (b) Evaluate forms of assistance for small businesses in the Commonwealth to  
27 assist those businesses during the coronavirus disease 2019 (COVID-19) pandemic or a

1 future similar economic crisis;

2 (c) Develop a list of recommendations for the General Assembly to consider  
3 related to that assistance; and

4 (d) Develop a funding methodology for the recommended assistance.

5 (2) The task force shall be composed of members appointed by the President of  
6 the Senate and Speaker of the House, with final membership of the task force being  
7 subject to the consideration and approval of the Legislative Research Commission.

8 (3) If the chairs of the Senate Standing Committee on Appropriations and  
9 Revenue and the House Standing Committee on Appropriations and Revenue are not  
10 appointed to the task force as provided by subsection (2) of this section, they may  
11 participate in the meetings of the task force as non-voting ex officio members.

12 (4) The President of the Senate and the Speaker of the House shall each appoint  
13 one co-chair of the task force from among the members appointed to the task force.

14 (5) The task force shall submit its findings, recommendations, and any proposed  
15 legislation to the Legislative Research Commission for referral to the appropriate  
16 committee or committees by December 14, 2020.

17 (6) Notwithstanding the provisions of this section, the Legislative Research  
18 Commission shall have the authority to alternatively assign the issues identified in this  
19 section to an interim joint committee or subcommittee thereof and to designate a study  
20 completion date.

21 ➔Section 6. **Conveyance of Property:** Notwithstanding KRS 45.777,  
22 164A.575(8), and any provision to the contrary contained in House Bill 352/EN, as  
23 enacted at the 2020 Regular Session of the General Assembly, Northern Kentucky  
24 University may dispose of real property and improvements located in Covington/Park  
25 Hills, Kentucky that will become surplus to its needs and retain the proceeds from any  
26 sale.

27 ➔Section 7. Section 6 of this Act applies to the fiscal year beginning July 1, 2020,

- 1 and ending June 30, 2021, and the fiscal year beginning July 1, 2021, and ending June 30,
- 2 2022, and shall expire at the end of June 30, 2022.