

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 138.140 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;
- 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 for which the distributor sells:
- 10 a. The open vaping system when the actual price includes the items
 11 described in both subsection (10)(a)1. and 2. of KRS 138.130; or
 12 b. The liquid solution described in subsection (10)(a)2. of KRS
 13 138.130 when the solution is sold separately~~Upon open vaping~~
 14 ~~systems, fifteen percent (15%) of the actual price for which the~~
 15 ~~distributor sells the open vaping system].~~
- 16 (b) The net weight posted by the manufacturer on the container, pouch, or
 17 package or on the manufacturer's invoice shall be used to calculate the tax due
 18 on snuff or chewing tobacco.
- 19 (c) 1. A retailer located in this state shall not purchase tobacco products for
 20 resale to consumers from any person within or outside this state unless
 21 that person is a distributor licensed under KRS 138.195(7)(a) or the
 22 retailer applies for and is granted a retail distributor's license under KRS
 23 138.195(7)(b) for the privilege of purchasing untax-paid tobacco
 24 products and remitting the tax as provided in this paragraph.
- 25 2. A licensed retail distributor of tobacco products shall be subject to the
 26 excise tax as follows:
- 27 a. On purchases of untax-paid snuff, at the same rate levied by

- 1 paragraph (a)1. of this subsection;
- 2 b. On purchases of untax-paid chewing tobacco, at the same rates
- 3 levied by paragraph (a)2. of this subsection;
- 4 c. On purchases of untax-paid tobacco products, except snuff and
- 5 chewing tobacco, fifteen percent (15%) of the total purchase price
- 6 as invoiced by the retail distributor's supplier;
- 7 d. On purchases of untax-paid closed vapor cartridges, at the same
- 8 rate levied by paragraph (a)4. of this subsection; and
- 9 e. On purchases of untax-paid open vaping systems, fifteen percent
- 10 (15%) of the total purchase price as invoiced by the retail
- 11 distributor's supplier as described in paragraph (a)5. of this
- 12 subsection.
- 13 (d) 1. The licensed distributor that first possesses tobacco products or vapor
- 14 products for sale to a retailer in this state or for sale to a person who is
- 15 not licensed under KRS 138.195(7) shall be the distributor liable for the
- 16 tax imposed by this subsection except as provided in subparagraph 2. of
- 17 this paragraph.
- 18 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
- 19 products or vapor products to another distributor licensed under KRS
- 20 138.195(7)(a) without payment of the excise tax. In such case, the
- 21 purchasing licensed distributor shall be the distributor liable for the tax.
- 22 3. A licensed distributor or licensed retail distributor shall:
- 23 a. Identify and display the distributor's or retail distributor's license
- 24 number on the invoice to the retailer; and
- 25 b. Identify and display the excise tax separately on the invoice to the
- 26 retailer. If the excise tax is included as part of the product's sales
- 27 price, the licensed distributor or licensed retail distributor shall list

1 the total excise tax in summary form by tax type with invoice
2 totals.

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

6 (e) No tax shall be imposed on tobacco products or vapor products under this
7 subsection that are not within the taxing power of this state under the
8 Commerce Clause of the United States Constitution.

9 (3) (a) The taxes imposed by subsections (1) and (2) of this section:

10 1. Shall not apply to reference products; and

11 2. Shall be paid only once, regardless of the number of times the cigarettes
12 or tobacco products may be sold.

13 (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
14 section shall be reduced by:

15 1. Fifty percent (50%) on any product as to which a modified risk tobacco
16 product order is issued under 21 U.S.C. sec. 387k(g)(1); or

17 2. Twenty-five percent (25%) for any product as to which a modified risk
18 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).

19 (4) A reference product shall carry a marking labeling the contents as a research
20 cigarette, research vapor product, or a research tobacco product to be used only for
21 tobacco-health research and experimental purposes and shall not be offered for sale,
22 sold, or distributed to consumers.

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

25 (6) The General Assembly recognizes that increasing taxes on tobacco products should
26 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The
27 relative taxes on tobacco products proposed in this section reflect the growing data

1 from scientific studies suggesting that although smokeless tobacco poses some
2 risks, those health risks are significantly less than the risks posed by other forms of
3 tobacco products. Moreover, the General Assembly acknowledges that some in the
4 public health community recognize that tobacco harm reduction should be a
5 complementary public health strategy regarding tobacco products. Taxing tobacco
6 products according to relative risk is a rational tax policy and may well serve the
7 public health goal of reducing smoking-related mortality and morbidity and
8 lowering health care costs associated with tobacco-related disease.

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

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

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

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

22 ➔Section 2. This Act shall take effect July 1, 2021.