

1 AN ACT relating to tobacco-related illnesses and making an appropriation therefor.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 205.510 TO 205.560 IS CREATED
4 TO READ AS FOLLOWS:

5 *(1) There is hereby established in the State Treasury the Medicaid tobacco-related*
6 *illness reimbursement fund. The fund shall consist of moneys received from the*
7 *healthcare reimbursement assessments imposed by Section 4 of this Act, state*
8 *appropriations, gifts, grants, and federal funds.*

9 *(2) The fund shall be administered by the cabinet.*

10 *(3) (a) Amounts deposited in the fund shall be used only for the purpose of*
11 *reimbursing the cabinet for costs associated with treatment of tobacco-*
12 *related illnesses.*

13 *(b) Amounts deposited in the fund shall not be used for expansion of the*
14 *Medicaid program.*

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

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

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

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 212 IS CREATED TO
23 READ AS FOLLOWS:

24 *(1) There is hereby established in the State Treasury the county tobacco cessation*
25 *fund. The fund shall consist of moneys received from the healthcare*
26 *reimbursement assessments imposed by Section 4 of this Act, state*
27 *appropriations, gifts, grants, and federal funds.*

1 (2) The fund shall be administered by the Cabinet for Health and Family Services.

2 (3) Amounts deposited in the fund shall be used only for the purpose of providing
3 grants to qualifying county health departments, as described in Section 3 of this
4 Act, for the creation and administration of tobacco cessation programs.

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

7 (5) Any interest earnings of the fund shall become a part of the fund and shall not
8 lapse.

9 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
10 in this section and shall not be appropriated or transferred by the General
11 Assembly for any other purposes.

12 (7) (a) On the first day of January, April, July, and October of each year, the
13 Cabinet for Health and Family Services shall distribute all the money in the
14 fund to qualifying county health departments.

15 (b) The money shall be distributed to each qualifying county health department
16 in direct proportion to the population of the county, as determined by the
17 most recent annual population estimate published by the United States
18 Census Bureau.

19 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 212 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) Each county health department located in a county that has a current ordinance,
22 or located in a county that enacts an ordinance on or after the effective date of
23 this Act, prohibiting the smoking of tobacco or the use of e-cigarettes:

24 (a) In all workplaces;

25 (b) In all buildings open to the public; and

26 (c) Within fifteen (15) feet of entrances to all workplaces and buildings open to
27 the public;

1 shall receive funds from the county tobacco cessation fund established in Section
2 2 of this Act.

3 (2) The county health departments shall use those funds for the sole purpose of
4 creating and administering tobacco cessation programs.

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

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

8 (2) Effective April 1, 2009, a surtax shall be paid in addition to the tax levied in
9 subsection (1) of this section at a proportionate rate of fifty-six cents (\$0.56) on
10 each twenty (20) cigarettes. This tax shall be paid only once, at the same time the
11 tax imposed by subsection (1) of this section is paid.

12 (3) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in
13 subsection (1) of this section and in addition to the surtax levied by subsection (2)
14 of this section, at a proportionate rate of one cent (\$0.01) on each twenty (20)
15 cigarettes. This tax shall be paid at the same time the tax imposed by subsection (1)
16 of this section and the surtax imposed by subsection (2) of this section are paid. The
17 revenues from this surtax shall be deposited in the cancer research institutions
18 matching fund created in KRS 164.043.

19 (4) (a) Effective October 1, 2018, a healthcare reimbursement assessment shall be
20 paid in addition to the tax levied in subsection (1) of this section and in
21 addition to the surtaxes levied by subsections (2) and (3) of this section, at a
22 proportionate rate of one dollar (\$1) on each twenty (20) cigarettes. This
23 assessment shall be paid at the same time the tax imposed by subsection (1)
24 of this section and the surtaxes imposed by subsections (2) and (3) of this
25 section are paid.

26 (b) The revenues from this assessment shall be distributed in the following
27 manner:

- 1 1. Ninety percent (90%) shall be deposited in the Medicaid tobacco-
 2 related illness reimbursement fund established in Section 1 of this
 3 Act; and
 4 2. Ten percent (10%) shall be deposited in the county tobacco cessation
 5 fund established in Section 2 of this Act.

6 (5) (a) Effective August 1, 2013, an excise tax is hereby imposed upon every
 7 distributor for the privilege of selling tobacco products in this state at the
 8 following rates:

- 9 1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-
 10 half (1-1/2) ounces or portion thereof by net weight sold;
 11 2. Upon chewing tobacco at the rate of:
 12 a. Nineteen cents (\$0.19) per each single unit sold;
 13 b. Forty cents (\$0.40) per each half-pound unit sold; or
 14 c. Sixty-five cents (\$0.65) per each pound unit sold.

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

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

23 (b) 1. Effective October 1, 2018, a healthcare reimbursement assessment is
 24 hereby imposed upon every distributor, in addition to the excise tax
 25 imposed by paragraph (a) of this subsection, for the privilege of selling
 26 tobacco products in this state at the following rates:

- 27 a. Upon snuff at the rate of one dollar (\$1) per each one and one-

1 half (1-1/2) ounces or portion thereof by net weight sold;

2 b. Upon chewing tobacco at the rate of:

3 i. One dollar (\$1) per each single unit sold;

4 ii. One dollar (\$1) per each half-pound unit sold; or

5 iii. One dollar (\$1) per each pound unit sold.

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

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

8 that shall be applied to the unit shall equal the sum of one dollar

9 (\$1) plus one dollar (\$1) for each increment of sixteen (16)

10 ounces or portion thereof exceeding sixteen (16) ounces sold;

11 and

12 c. Upon tobacco products at the rate of one dollar (\$1) per unit of

13 tobacco products, except snuff and chewing tobacco, sold.

14 2. The revenues from this assessment shall be distributed in the

15 following manner:

16 a. Ninety percent (90%) shall be deposited in the Medicaid tobacco-

17 related illness reimbursement fund established in Section 1 of

18 this Act; and

19 b. Ten percent (10%) shall be deposited in the county tobacco

20 cessation fund established in Section 2 of this Act.

21 (c) The net weight posted by the manufacturer on the container, pouch, or

22 package or on the manufacturer's invoice shall be used to calculate the tax due

23 on snuff or chewing tobacco.

24 (d){(e)} 1. A retailer located in this state shall not purchase tobacco products

25 for resale to consumers from any person within or outside this state

26 unless that person is a distributor licensed under KRS 138.195(7)(a) or

27 the retailer applies for and is granted a retail distributor's license under

1 KRS 138.195(7)(b) for the privilege of purchasing untaxed tobacco
2 products and remitting the tax as provided in this paragraph.

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

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

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

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

12 3. Effective October 1, 2018, in addition to the excise tax imposed in
13 subparagraph 2. of this paragraph, a licensed retail distributor of
14 tobacco products shall be subject to the healthcare reimbursement
15 assessment as follows:

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

18 b. On purchases of untaxed chewing tobacco, at the same rates
19 levied by paragraph (b)1.b. of this subsection; and

20 c. On purchases of untaxed tobacco products, except snuff and
21 chewing tobacco, at the same rate levied by paragraph (b)1.c. of
22 this subsection.

23 ~~(e)~~ 1. The licensed distributor that first possesses tobacco products for
24 sale to a retailer in this state or for sale to a person who is not licensed
25 under KRS 138.195(7) shall be the distributor liable for the tax imposed
26 by paragraph (a) of this subsection and the healthcare reimbursement
27 assessment imposed by paragraph (b) of this subsection except as

1 provided in subparagraph 2. of this paragraph.

2 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
 3 products to another distributor licensed under KRS 138.195(7)(a)
 4 without payment of the excise tax or the healthcare reimbursement
 5 assessment. In such case, the purchasing licensed distributor shall be the
 6 distributor liable for the tax and the healthcare reimbursement
 7 assessment.

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

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

11 b. Identify and display the excise tax and the healthcare
 12 reimbursement assessment separately on the invoice to the
 13 retailer. If the excise tax or the healthcare reimbursement
 14 assessment is included as part of the product's sales price, the
 15 licensed distributor or licensed retail distributor shall list the total
 16 excise tax and healthcare reimbursement assessment in summary
 17 form by tax or assessment type with invoice totals.

18 4. It shall be presumed that the excise tax and healthcare reimbursement
 19 assessment have~~has~~ not been paid if the licensed distributor or
 20 licensed retail distributor does not comply with subparagraph 3. of this
 21 paragraph.

22 ~~(f)(e)~~ No tax or assessment shall be imposed on tobacco products under this
 23 subsection that are not within the taxing power of this state under the
 24 Commerce Clause of the United States Constitution.

25 ~~(6)(5)~~ The taxes imposed by subsection~~subsections~~ (1) to subsection~~and~~ (4)(a)
 26 of this section shall not apply to reference tobacco products.

27 ~~(7)(6)~~ The taxes and assessment imposed by subsections (1) to ~~(5)(4)~~ of this

1 section shall be paid only once, regardless of the number of times the cigarettes~~[,]~~ or
2 tobacco products may be sold.

3 ~~(8)~~~~(7)~~ The department may prescribe forms and promulgate administrative
4 regulations to execute and administer the provisions of this section.

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

16 ➔Section 5. KRS 138.130 is amended to read as follows:

17 As used in KRS 138.130 to 138.205, unless the context requires otherwise:

- 18 (1) "Department" means the Department of Revenue;
- 19 (2) "Manufacturer" means any person who manufactures or produces cigarettes, or
20 tobacco products within or without this state;
- 21 (3) "Retailer" means any person who sells to a consumer or to any person for any
22 purpose other than resale;
- 23 (4) "Sale at retail" means a sale to any person for any other purpose other than resale;
- 24 (5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any
25 substitute for tobacco, irrespective of size or shape and whether or not the tobacco
26 is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of
27 which is made of paper or any other substance or material, excepting tobacco.

1 "Cigarettes" shall not mean reference tobacco products, electronic cigarettes, or e-
2 cigarettes;

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

4 (a) The tax imposed by subsection (1) of Section 4 of this Act;

5 (b) The surtax imposed by subsection (2) of Section 4 of this Act;

6 (c) The surtax imposed by subsection (3) of Section 4 of this Act; and

7 (d) The healthcare reimbursement assessment imposed by subsection (4) of
8 Section 4 of this Act;

9 ~~(7)~~ "Reference tobacco products" means tobacco products, including cigarettes,
10 made by a manufacturer specifically for an accredited state college or university to
11 be held by the college or university until sale or transfer to a laboratory, hospital,
12 medical center, institute, college or university, manufacturer, or other institution. A
13 reference tobacco product shall carry a marking labeling the contents as a research
14 cigarette or a research tobacco product to be used only for tobacco-health research
15 and experimental purposes, which shall not be offered for sale, sold, or distributed
16 to consumers;

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

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

23 ~~(10)~~ "Person" means any individual, firm, copartnership, joint venture, association,
24 municipal or private corporation whether organized for profit or not, the
25 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or
26 any other group or combination acting as a unit, and the plural as well as the
27 singular;

1 ~~(11)~~~~(10)~~ "Resident wholesaler" means any person who purchases at least seventy-five
2 percent (75%) of all cigarettes purchased by the wholesaler directly from the
3 manufacturer on which the cigarette taxes are~~tax provided for in KRS 138.140(1),~~
4 ~~(2), and (3) is~~ unpaid, and who maintains an established place of business in this
5 state where the wholesaler attaches cigarette tax evidence, or receives untaxed
6 cigarettes;

7 ~~(12)~~~~(11)~~ "Nonresident wholesaler" means any person who purchases cigarettes directly
8 from the manufacturer and maintains a permanent location or locations outside this
9 state where Kentucky cigarette tax evidence is attached or from where Kentucky
10 cigarette tax is reported and paid;

11 ~~(13)~~~~(12)~~ "Sub-jobber" means any person who purchases cigarettes from a resident
12 wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS
13 138.195 on which the cigarette taxes have~~tax imposed by KRS 138.140(1), (2),~~
14 ~~and (3) has~~ been paid and makes them available to retailers for resale. No person
15 shall make cigarettes available to retailers for resale unless the person certifies and
16 establishes to the satisfaction of the department that firm arrangements have been
17 made to regularly supply at least five (5) retail locations with Kentucky tax-paid
18 cigarettes for resale in the regular course of business;

19 ~~(14)~~~~(13)~~ "Vending machine operator" means any person who operates one (1) or more
20 cigarette vending machines;

21 ~~(15)~~~~(14)~~ "Transporter" means any person transporting untax-paid cigarettes obtained
22 from any source to any destination within this state, other than cigarettes transported
23 by the manufacturer thereof;

24 ~~(16)~~~~(15)~~ "Unclassified acquirer" means any person in this state who acquires cigarettes
25 from any source on which the cigarette taxes have~~tax imposed by KRS~~
26 ~~138.140(1), (2), and (3) has~~ not been paid, and who is not a person otherwise
27 required to be licensed under the provisions of KRS 138.195;

1 ~~(17)~~~~(16)~~ "Tobacco products" means:

2 (a) *Electronic cigarettes and e-cigarettes; and*

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

7 ~~(18)~~~~(17)~~ "Distributor" means any person within this state in possession of tobacco
8 products for resale within this state on which the tax *and healthcare*
9 *reimbursement assessment* imposed under KRS 138.140~~(5)~~~~(4)~~ has not been paid;

10 ~~(19)~~~~(18)~~ "Retail distributor" means a retailer who has obtained a retail distributor's
11 license under KRS 138.195(7)(b);

12 ~~(20)~~~~(19)~~ "Chewing tobacco" means any leaf tobacco that is not intended to be smoked
13 and includes loose leaf chewing tobacco, plug chewing tobacco, and twist chewing
14 tobacco, but "chewing tobacco" does not include snuff;

15 ~~(21)~~~~(20)~~ "Single unit" means a consumer-sized container, pouch, or package:

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

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

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

20 ~~(22)~~~~(21)~~ "Half-pound unit" means a consumer-sized container, pouch, or package:

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

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

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

26 ~~(23)~~~~(22)~~ "Pound unit" means a consumer-sized container, pouch, or package:

27 (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces

- 1 of chewing tobacco by net weight;
- 2 (b) Produced by the manufacturer to be sold to consumers as a pound unit and not
- 3 produced to be divided or sold separately;~~[and]~~
- 4 (c) Containing one (1) individual container, pouch, or package; and
- 5 ~~(24)~~~~(23)~~ (a) "Snuff" means tobacco that:
- 6 1. Is finely cut, ground, or powdered; and
- 7 2. Is not for smoking.
- 8 (b) "Snuff" includes snus; **and**

9 **(25) "Electronic cigarette," "e-cigarette," or "electronic or e-cigarette" means:**

- 10 **(a) Any device, whether manufactured, distributed, marketed, or sold as an e-**
- 11 **cigarette, e-cigar, e-pipe, or similar product and every variation thereof,**
- 12 **regardless of shape or size, that contains a heating element, battery,**
- 13 **electronic circuit, power source, or other electronic, chemical, or**
- 14 **mechanical means that can be used to produce vapor from nicotine or any**
- 15 **other substance, the use of which simulates smoking;**
- 16 **(b) Any vapor cartridge or other container of a liquid solution or other material**
- 17 **that is intended to be used with or in the device; or**
- 18 **(c) Any component of the device or related product that may be sold with or**
- 19 **without the device.**

20 ➔Section 6. KRS 138.132 is amended to read as follows:

- 21 (1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid
- 22 tobacco products held, owned, possessed, or in control of any person other than as
- 23 provided in KRS 138.130 to 138.205 are contraband and subject to seizure and
- 24 forfeiture as set out in this section.
- 25 (2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco
- 26 products from a licensed distributor and the purchase invoice does not contain
- 27 the separate identification and display of the excise tax **and healthcare**

- 1 **reimbursement assessment** required by **subsection (5)(e)3. of Section 4 of**
2 **this Act**~~[KRS 138.140(4)(d)3.]~~, the retailer shall, within twenty-four (24)
3 hours, notify the department in writing.
- 4 (b) The notification shall include the name and address of the person from whom
5 the tobacco products were purchased and a copy of the purchase invoice.
- 6 (c) The tobacco products for which the required information was not included on
7 the invoice shall be retained by the retailer, and not sold, for a period of fifteen
8 (15) days after giving the proper notice as required by this subsection.
- 9 (d) After the fifteen (15) day period, the retailer may pay the tax **and healthcare**
10 **reimbursement assessment** due on the tobacco products described in
11 paragraph (c) of this subsection according to administrative regulations
12 promulgated by the department, and after which may proceed to sell the
13 tobacco products.
- 14 (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products for
15 resale from a person not licensed under KRS 138.195(7), which is prohibited by
16 **paragraph (5)(d) of Section 4 of this Act**~~[KRS 138.140(4)(e)]~~, the retailer may not
17 sell those tobacco products until the retailer applies for and is granted a retail
18 distributor's license under KRS 138.195(7)(b).
- 19 (4) If, upon examination, the department determines that the retailer has failed to
20 comply with the provisions of subsection (3) of this section, the retailer shall pay all
21 tax, **healthcare reimbursement assessment**, and interest and applicable penalties
22 due and the following shall apply:
- 23 (a) For the first offense, an additional penalty shall be assessed equal to ten
24 percent (10%) of the tax **and healthcare reimbursement assessment** due;
- 25 (b) For a second offense within three (3) years or less of the first offense, an
26 additional penalty shall be assessed equal to twenty-five percent (25%) of the
27 tax **and healthcare reimbursement assessment** due; and

- 1 (c) For a third offense or subsequent offense within three (3) years or less of the
2 first offense, the tobacco products shall be contraband and subject to seizure
3 and forfeiture as provided in subsection (5) of this section.
- 4 (5) (a) Whenever a representative of the department finds contraband tobacco
5 products within the borders of this state, the tobacco products shall be
6 immediately seized and stored in a depository to be determined by the
7 representative.
- 8 (b) At the time of seizure, the representative shall deliver to the person in whose
9 custody the tobacco products are found a receipt for the seized products. The
10 receipt shall state on its face that any inquiry concerning any tobacco products
11 seized shall be directed to the commissioner of the Department of Revenue,
12 Frankfort, Kentucky.
- 13 (c) Immediately upon seizure, the representative shall notify the commissioner of
14 the nature and quantity of the tobacco products seized. Any seized tobacco
15 products shall be held for a period of twenty (20) days, and if after that period
16 no person has claimed the tobacco products as his or her property, the
17 commissioner shall cause the tobacco products to be destroyed.
- 18 (6) All fixtures, equipment, materials, and personal property used in substantial
19 connection with the sale or possession of tobacco products involved in a knowing
20 and intentional violation of KRS 138.130 to 138.205 shall be contraband and
21 subject to seizure and forfeiture as follows:
- 22 (a) The department's representative shall seize the property and store the property
23 in a safe place selected by the representative; and
- 24 (b) The representative shall proceed as provided in KRS 138.165(2). The
25 commissioner shall cause the property to be sold after notice published
26 pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as
27 provided in KRS 138.165(2).

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

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

8 ➔Section 7. KRS 138.135 is amended to read as follows:

9 (1) (a) Every manufacturer, whether located in this state or outside this state, that
10 ships tobacco products to a distributor, retailer, retail distributor, or any other
11 person located in this state shall file a report with the department on or before
12 the twentieth day of each month identifying all such shipments made by the
13 manufacturer during the preceding month. The department, within its
14 discretion, may allow a manufacturer to file the report for periods other than
15 monthly.

16 (b) The reports shall identify:

- 17 1. The names and addresses of the persons in this state to whom the
18 shipments were made;
- 19 2. The quantities of tobacco products shipped, by type of product and
20 brand; and
- 21 3. Any other information the department may require.

22 (2) Each licensed distributor and each licensed retail distributor shall keep in each
23 licensed place of business complete and accurate records for that place of business,
24 including:

25 (a) Itemized invoices of:

- 26 1. Tobacco products purchased, manufactured, imported, or caused to be
27 imported into this state from outside this state, or shipped or transported

- 1 to other distributors or retailers in this state or outside this state,
 2 including type of product and brand;
- 3 2. All sales of tobacco products, including sales of tobacco products
 4 manufactured or produced in this state, including type of product and
 5 brand; and
- 6 3. All tobacco products transferred to retail outlets owned or controlled by
 7 the licensed distributor, including type of product and brand; and
- 8 (b) Any other records required by the department.
- 9 (3) Each retailer of tobacco products shall keep complete and accurate records of all
 10 purchases of tobacco products, including invoices that identify:
- 11 (a) The distributor's name and address;
- 12 (b) The name, quantity, and purchase price of the product purchased;
- 13 (c) The license number of the distributor licensed under KRS 138.195(7); and
- 14 (d) The excise tax ***and healthcare reimbursement assessment*** as required by
 15 ***subsection (5)(e)3. of Section 4 of this Act***~~[KRS 138.140(4)(d)3].~~
- 16 (4) All books, records, invoices, and documents required by this section shall be
 17 preserved, in a form prescribed by the department, for not less than four (4) years
 18 from the making of the records unless the department authorizes, in writing, the
 19 destruction of the records.
- 20 ➔Section 8. KRS 138.143 is amended to read as follows:
- 21 (1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and
 22 unclassified acquirer shall:
- 23 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
 24 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
 25 in their control at 11:59 p.m. on ***September 30, 2018***~~[March 31, 2009].~~
 26 Inventory of cigarettes in vending machines may be accomplished by:
- 27 1. Taking an actual physical inventory;

- 1 2. Estimating the cigarettes in vending machines by reporting one-half
2 (1/2) of the normal fill capacity of the machines, as reflected in
3 individual inventory records maintained for vending machines; or
4 3. Using a combination of the methods prescribed in subparagraphs 1. and
5 2. of this paragraph;
- 6 (b) File a return with the department on or before **October 10, 2018**~~[April 10,~~
7 ~~2009]~~, showing the entire wholesale and retail inventories of cigarettes in
8 packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette
9 tax stamps possessed by them or in their control at 11:59 p.m. on **September**
10 **30, 2018**~~[March 31, 2009]~~; and
- 11 (c) Pay a floor stock tax at a proportionate rate equal to **one dollar (\$1)**~~[thirty~~
12 ~~cents (\$0.30)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky
13 tax stamp and unaffixed Kentucky tax stamps in their possession or control at
14 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~.
- 15 (2) Every retailer and sub-jobber shall:
- 16 (a) 1. Take a physical inventory of all units of snuff possessed by them or in
17 their control at 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~;
- 18 2. File a return with the department on or before **October 10, 2018**~~[April~~
19 ~~10, 2009]~~, showing the entire inventory of snuff possessed by them or in
20 their control at 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~; and
- 21 3. Pay a floor stock tax at a proportionate rate equal to **one dollar (\$1)**~~[nine~~
22 ~~and one-half cents (\$0.095)]~~ on each unit of snuff in their possession or
23 control at 11:59 p.m. on **September 30, 2018**~~[March 31, 2009]~~; and
- 24 (b) 1. ~~[a.—]~~Take a physical inventory of all other tobacco products possessed
25 by them or in their control at 11:59 p.m. on **September 30, 2018**~~[March~~
26 ~~31, 2009]~~;
- 27 2. ~~[b.—]~~File a return with the department on or before **October 10, 2018**~~[April~~

1 ~~10, 2009~~], showing the entire inventories of other tobacco products
 2 possessed by them or in their control at 11:59 p.m. on **September 30,**
 3 **2018**~~[March 31, 2009]~~; and

4 ~~3. [e.]~~ Pay a floor stock tax at a proportionate rate equal to **one dollar (\$1) on**
 5 **each unit**~~[seven and one half percent (7.5%) on the purchase price]~~ of
 6 other tobacco products in their possession or control at 11:59 p.m. on
 7 **September 30, 2017**~~[March 31, 2009]~~.

8 **4. As used in this paragraph, "unit" means the unit manufactured for**
 9 **the intended sale at retail to an individual customer.**

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

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

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

23 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
 24 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 **October 10, 2018**~~[April 10, 2009]~~. 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 November 10, 2018~~[May 10,~~
 2 ~~2009]~~. The third installment, in an amount equal to the remaining balance,
 3 shall be remitted on or before December 10, 2018~~[June 10, 2009]~~.

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 9. KRS 138.146 is amended to read as follows:

14 (1) The tax and healthcare reimbursement assessment imposed by KRS 138.130 to
 15 138.205 shall be due when any licensed wholesaler or unclassified acquirer takes
 16 possession within this state of cigarettes upon which either the tax or healthcare
 17 reimbursement assessment has not been paid~~[untax-paid-cigarettes]~~.

18 (2) The tax and healthcare reimbursement assessment shall be paid by the purchase of
 19 stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler
 20 receives the cigarettes. A stamp shall be affixed to each package of an aggregate
 21 denomination not less than the amount of the tax and healthcare reimbursement
 22 assessment on the package. The affixed stamp shall be prima facie evidence of
 23 payment of tax and healthcare reimbursement assessment. Unless stamps have
 24 been previously affixed, they shall be affixed by each resident wholesaler prior to
 25 the delivery of any cigarettes to a retail location or any person in this state. The
 26 evidence of tax and healthcare reimbursement assessment payment shall be
 27 affixed to each individual package of cigarettes by a nonresident wholesaler prior to

1 the introduction or importation of the cigarettes into the territorial limits of this
2 state. The evidence of tax and healthcare reimbursement assessment payment
3 shall be affixed by an unclassified acquirer within twenty-four (24) hours after the
4 cigarettes are received by the unclassified acquirer.

5 (3) The department shall by regulation prescribe the form of cigarette tax and
6 healthcare reimbursement assessment evidence, the method and manner of the
7 sale and distribution of cigarette tax and healthcare reimbursement assessment
8 evidence, and the method and manner that tax and healthcare reimbursement
9 assessment evidence shall be affixed to the cigarettes. All cigarette tax and
10 healthcare reimbursement assessment evidence prescribed by the department shall
11 be designed and furnished in a fashion to permit identification of the person that
12 affixed the cigarette tax and healthcare reimbursement assessment evidence to the
13 particular package of cigarettes, by means of numerical rolls or other mark on the
14 cigarette tax and healthcare reimbursement assessment evidence. The department
15 shall maintain for at least three (3) years information identifying the person that
16 affixed the cigarette tax and healthcare reimbursement assessment evidence to
17 each package of cigarettes. This information shall not be kept confidential or
18 exempt from disclosure to the public through open records.

19 (4) (a) Units of cigarette tax and healthcare reimbursement assessment evidence
20 shall be sold at their face value, but the department shall allow as
21 compensation to any licensed wholesaler an amount of tax evidence equal to
22 thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence
23 purchased at face value and attributable to the tax assessed in KRS
24 138.140(1). No compensation shall be allowed for tax evidence purchased at
25 face value attributable to the tax assessed in KRS 138.140(2) or (3) or the
26 healthcare reimbursement assessment assessed in subsection (4) of Section
27 4 of this Act.

1 (b) ~~1.— Notwithstanding the provisions of paragraph (a) of this subsection, for~~
2 ~~purposes of offsetting the costs associated with paying the tax imposed~~
3 ~~under KRS 138.140(2), the department shall allow a limited amount of~~
4 ~~compensation in addition to the compensation provided in paragraph (a)~~
5 ~~of this subsection for a restricted time to any licensed wholesaler. The~~
6 ~~additional compensation shall be an amount of tax evidence, attributable~~
7 ~~to the tax assessed in KRS 138.140(1), equal to twelve cents (\$0.12)~~
8 ~~face value for each three dollars (\$3) of tax evidence purchased at face~~
9 ~~value on or after June 1, 2005, and before December 1, 2005. The~~
10 ~~additional compensation provided shall sunset 12 midnight November~~
11 ~~30, 2005.~~

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

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

25 (5) No tax evidence may be affixed, or used in any way, by any person other than the
26 person purchasing the evidence from the department. Tax evidence may not be
27 transferred or negotiated, and may not, by any scheme or device, be given, bartered,

1 sold, traded, or loaned to any other person. Unaffixed tax evidence may be returned
2 to the department~~[]~~ for credit or refund for any reason satisfactory to the
3 department.

4 (6) In the event any retailer shall receive into his possession cigarettes to which
5 evidence of Kentucky tax payment is not properly affixed, he shall within twenty-
6 four (24) hours notify the department~~[]~~ of such fact. Such notice shall be in writing,
7 and shall give the name of the person from whom such cigarettes were received, and
8 the quantity of such cigarettes, and such written notice may be given to any field
9 agent of the department. The written notice may also be directed to the
10 commissioner of the Department of Revenue, Frankfort, Kentucky. If such notice is
11 given by means of the United States mail, it shall be sent by certified mail. Any
12 such cigarettes shall be retained by such retailer, and not sold, for a period of fifteen
13 (15) days after giving the notice provided in this subsection. The retailer may, at his
14 option, pay the tax due on any such cigarettes according to rules and regulations to
15 be prescribed by the department, and proceed to sell the same after such payment.

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

21 ➔Section 10. KRS 138.165 is amended to read as follows:

22 (1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any ~~untax-~~
23 ~~paid~~ cigarettes **on which tax or the healthcare reimbursement assessment has not**
24 **been paid that are** held, owned, possessed, or in control of any person other than as
25 provided in KRS 138.130 to 138.205 are contraband and subject to seizure and
26 forfeiture as set out in this section.

27 (2) Whenever any peace officer of this state, or any representative of the department,

1 finds any ~~untax-paid~~ cigarettes **on which tax or the healthcare reimbursement**
2 **assessment has not been paid** within the borders of this state in the possession of
3 any person other than a licensee authorized to possess ~~untax-paid~~ cigarettes, **on**
4 **which tax or the healthcare reimbursement assessment has not been paid,** by the
5 provisions of KRS 138.130 to 138.205, such cigarettes shall be immediately seized
6 and stored in a depository to be selected by the officer or agent. At the time of
7 seizure, the officer or agent shall deliver to the person in whose custody the
8 cigarettes are found a receipt for the cigarettes. The receipt shall state on its face
9 that any inquiry concerning any goods seized shall be directed to the commissioner
10 of the Department of Revenue, Frankfort, Kentucky. Immediately upon seizure, the
11 officer or agent shall notify the commissioner of the Department of Revenue of the
12 nature and quantity of the goods seized. Any seized goods shall be held for a period
13 of twenty (20) days and if after such period no person has claimed the cigarettes as
14 his property, the commissioner shall cause the same to be exposed to public sale to
15 any person authorized to purchase ~~untax-paid~~ cigarettes **on which tax or the**
16 **healthcare reimbursement assessment has not been paid.** The sale shall be on
17 notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale,
18 from the sale shall be paid into the Kentucky State Treasury for general fund
19 purposes.

20 (3) It is declared to be the legislative intent that any vending machine used for
21 dispensing cigarettes on which Kentucky cigarette tax **or healthcare**
22 **reimbursement assessment** has not been paid is contraband and subject to seizure
23 and forfeiture. In the event any peace officer or agent of the department finds any
24 vending machine within the borders of this state dispensing ~~untax-paid~~ cigarettes
25 **on which tax or the healthcare reimbursement assessment has not been paid,** he
26 shall immediately seize the vending machine and store the same in a safe place
27 selected by him. He shall thereafter proceed as provided in subsection (2) of this

1 section and the commissioner of the Department of Revenue shall cause the vending
2 machine to be sold, and the proceeds applied, as set out in subsection (2) of this
3 section.

4 (4) No cigarettes, on which the tax *or healthcare reimbursement assessment* imposed
5 by KRS 138.130 to 138.205 has not been paid, shall be transported within this state
6 by any person other than a manufacturer or a person licensed under the provisions
7 of KRS 138.195. It is declared to be the legislative intent that any motor vehicle
8 used to transport any such cigarettes by other persons is contraband and subject to
9 seizure and forfeiture. If any peace officer or agent of the department finds any such
10 motor vehicle, the vehicle shall be seized immediately and stored in a safe place.
11 The peace officer or agent of the department shall thereafter proceed as provided in
12 subsection (2) of this section and the commissioner of the Department of Revenue
13 shall cause the motor vehicle to be sold, and the proceeds applied, as set out in
14 subsection (2) of this section.

15 (5) The owner or any person having an interest in any goods, machines or vehicles
16 seized as provided under subsections (1) to (4) of this section may apply to the
17 commissioner of the Department of Revenue for remission of the forfeiture for good
18 cause shown. If it is shown to the satisfaction of the Department of Revenue that the
19 owner was without fault in the possession, dispensing, or transportation of the
20 ~~untax-paid~~ cigarettes *on which tax or the healthcare reimbursement assessment*
21 *has not been paid*, the Department of Revenue shall remit the forfeiture. If the
22 Department of Revenue determines that the possession, dispensing, or
23 transportation of ~~untax-paid~~ cigarettes *on which tax or the healthcare*
24 *reimbursement assessment has not been paid* was willful or intentional, the
25 Department of Revenue may nevertheless remit the forfeiture on condition that the
26 owner pay a penalty to be prescribed by the Department of Revenue of not more
27 than fifty percent (50%) of the value of the property forfeited. All taxes due on

1 ~~untax paid~~ cigarettes on which tax or the healthcare reimbursement assessment
2 has not been paid shall be paid in addition to the penalty, if any.

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

5 ➔Section 11. KRS 138.183 is amended to read as follows:

6 (1) Notwithstanding any other provision of this chapter to the contrary, the president,
7 vice president, secretary, treasurer, or any other person holding any equivalent
8 corporate office of any corporation subject to the provisions of KRS 138.130 to
9 138.205 shall be personally and individually liable, both jointly and severally, for
10 the taxes and healthcare reimbursement assessment imposed under KRS 138.130
11 to 138.205.

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

16 (3) Notwithstanding any other provision of this chapter, KRS 275.150, 362.1-306(3) or
17 predecessor law, or KRS 362.2-404(3) to the contrary, the managers of a limited
18 liability company, the partners of a limited liability partnership, and the general
19 partners of a limited liability limited partnership or any other person holding any
20 equivalent office of a limited liability company, limited liability partnership or
21 limited liability limited partnership subject to the provisions of KRS 138.130 to
22 138.205 shall be personally and individually liable, both jointly and severally, for
23 the tax imposed under KRS 138.130 to 138.205.

24 (4) Dissolution, withdrawal of the limited liability company, limited liability
25 partnership, or limited liability limited partnership from the state, or the cessation of
26 holding any office shall not discharge the liability of any person. The personal and
27 individual liability shall apply to every manager of a limited liability company,

1 partner of a limited liability partnership or general partner of a limited liability
2 limited partnership at the time the tax becomes or became due.

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

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

11 ➔Section 12. KRS 138.195 is amended to read as follows:

12 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on
13 which the Kentucky cigarette tax and healthcare reimbursement assessment
14 have~~has~~ not been paid, nor act as a resident wholesaler, nonresident
15 wholesaler, vending machine operator, sub-jobber, transporter or unclassified
16 acquirer of such cigarettes without first obtaining a license from the
17 department as set out in this section.

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

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

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

- 1 2. A crime involving fraud, falsification of records, improper business
2 transactions or reporting;
3 for ten (10) years from the expiration of probation or final discharge from
4 parole or maximum expiration of sentence.
- 5 (2) Each resident wholesaler shall secure a separate license for each place of business at
6 which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky
7 cigarette tax has not been paid are received. Each nonresident wholesaler shall
8 secure a separate license for each place of business at which evidence of Kentucky
9 cigarette tax **or healthcare reimbursement assessment** is affixed or from where
10 Kentucky cigarette tax **or healthcare reimbursement assessment** is reported and
11 paid. Such a license or licenses shall be secured on or before July 1 of each year,
12 and each licensee shall pay the sum of five hundred dollars (\$500) for each such
13 year or portion thereof for which such license is secured.
- 14 (3) Each sub-jobber shall secure a separate license for each place of business from
15 which Kentucky ~~tax paid~~ cigarettes **on which the tax and healthcare**
16 **reimbursement assessment have been paid** are made available to retailers, whether
17 such place of business is located within or without this state. Such license or
18 licenses shall be secured on or before July 1 of each year, and each licensee shall
19 pay the sum of five hundred dollars (\$500) for each such year or portion thereof for
20 which such license is secured.
- 21 (4) Each vending machine operator shall secure a license for the privilege of dispensing
22 Kentucky ~~tax paid~~ cigarettes **on which the tax and healthcare reimbursement**
23 **assessment have been paid** by vending machines. Such license shall be secured on
24 or before July 1 of each year, and each licensee shall pay the sum of twenty-five
25 dollars (\$25) for each year or portion thereof for which such license is secured. No
26 vending machine shall be operated within this Commonwealth without having
27 prominently affixed thereto the name of its operator, together with the license

1 number assigned to such operator by the department. The department shall prescribe
2 by administrative regulation the manner in which the information shall be affixed to
3 the vending machine.

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

13 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
14 cigarettes on which the Kentucky cigarette tax or healthcare reimbursement
15 assessment has not been paid. Such license shall be secured on or before July 1 of
16 each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such
17 year or portion thereof for which such license is secured.

18 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco
19 products in this state. Each license shall be secured on or before July 1
20 of each year, and each licensee shall pay the sum of five hundred dollars
21 (\$500) for each year or portion thereof for which the license is secured.

22 2. a. A resident wholesaler, nonresident wholesaler, or subjobber
23 licensed under this section may also obtain and maintain a
24 distributor's license at each place of business at no additional cost
25 each year.

26 b. An unclassified acquirer licensed under this section may also
27 obtain and maintain a distributor's license for the privilege of

1 selling tobacco products in this state. The license shall be secured
2 on or before July 1 of each year, and each licensee shall pay the
3 sum of four hundred fifty dollars (\$450) for each year or portion
4 thereof for which the license is secured.

5 3. The department may, upon application, grant a distributor's license to a
6 person other than a retailer and who is not otherwise required to hold a
7 distributor's license under this paragraph. If the department grants the
8 license, the licensee shall pay the sum of five hundred dollars (\$500) for
9 each year or portion thereof for which the license is secured, and the
10 licensee shall be subject to the excise tax and healthcare
11 reimbursement assessment in the same manner and subject to the same
12 requirements as a distributor required to be licensed under this
13 paragraph.

14 (b) The department may, upon application, grant a retail distributor's license to a
15 retailer for the privilege of purchasing tobacco products from a distributor not
16 licensed by the department. If the department grants the license, the licensee
17 shall pay the sum of one hundred dollars (\$100) for each year or portion
18 thereof for which the license is secured.

19 (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department
20 from requiring a person to purchase more than one (1) license if the nature of such
21 person's business is so diversified as to justify such requirement.

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

27 (b) Failure on the part of the applicant or licensee to comply with KRS 131.600 to

- 1 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative
2 regulations promulgated thereunder, or to permit an inspection of premises,
3 machines, or vehicles by an authorized agent of the department at any
4 reasonable time shall be grounds for the denial or revocation of any license
5 issued by the department, after due notice and a hearing by the department.
- 6 (c) The commissioner may assign a time and place for the hearing and may
7 appoint a conferee who shall conduct a hearing, receive evidence, and hear
8 arguments.
- 9 (d) The conferee shall thereupon file a report with the commissioner together with
10 a recommendation as to the denial or revocation of the license.
- 11 (e) From any denial or revocation made by the commissioner on the report, the
12 licensee may prosecute an appeal to the Kentucky Claims Commission
13 pursuant to KRS 49.220.
- 14 (f) Any person whose license has been revoked for the willful violation of any
15 provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
16 248.754 or any administrative regulations promulgated thereunder shall not be
17 entitled to any license provided for in this section, or have any interest in any
18 license, either disclosed or undisclosed, either as an individual, partnership,
19 corporation or otherwise, for a period of two (2) years after the revocation.
- 20 (10) No license issued pursuant to this section shall be transferable or negotiable except
21 that a license may be transferred between an individual and a corporation, if that
22 individual is the exclusive owner of that corporation, or between a subsidiary
23 corporation and its parent corporation.
- 24 (11) Every manufacturer located or doing business in this state and the first person to
25 import cigarettes into this state shall keep written records of all shipments of
26 cigarettes to persons within this state, and shall submit to the department monthly
27 reports of such shipments. All books, records, invoices, and documents required by

1 this section shall be preserved in a form prescribed by the department for not less
2 than four (4) years from the making of the records unless the department authorizes,
3 in writing, the destruction of the records.

4 (12) No person licensed under this section except nonresident wholesalers shall either
5 sell to or purchase from any other such licensee ~~untaxed~~ cigarettes **on which**
6 **the tax and healthcare reimbursement assessment have not been paid.**

7 (13) (a) Licensed distributors of tobacco products shall pay and report the tax **and**
8 **healthcare reimbursement assessment** levied by **subsection (5) of Section 4**
9 **of this Act** ~~[KRS 138.140(4)(a)]~~ on or before the twentieth day of the calendar
10 month following the month in which the possession or title of the tobacco
11 products are transferred from the licensed distributor to retailers or consumers
12 in this state, as the case may be.

13 (b) Retailers who have applied for and been granted a retail distributor's license
14 for the privilege of purchasing tobacco products from a person who is not a
15 distributor licensed under KRS 138.195(7)(a) shall report and pay the tax **and**
16 **healthcare reimbursement assessment** levied by **subsection (5)(d) of Section**
17 **4 of this Act** ~~[KRS 138.140(4)(e)2.]~~ on or before the twentieth day of the
18 calendar month following the month in which the products are acquired by the
19 licensed retail distributors.

20 (c) If the distributor or retail distributor timely reports and pays the tax **and**
21 **healthcare reimbursement assessment** due, the distributor or retail distributor
22 may deduct an amount equal to one percent (1%) of the tax **and healthcare**
23 **reimbursement assessment** due.

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

26 (14) A tax return shall be filed for each reporting period whether or not tax **or**
27 **healthcare reimbursement assessment** is due.

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

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

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

8 2. The applicant has violated any provision of KRS 131.600 to 131.630,
9 138.130 to 138.205, 248.754, or 248.756 or any administrative
10 regulations promulgated thereunder.

11 (b) If the department denies the applicant a license under this section, the
12 department shall notify the applicant of the grounds for the denial, and the
13 applicant may request a hearing and appeal the denial as provided in
14 subsection (9) of this section.

15 ➔Section 13. KRS 365.270 is amended to read as follows:

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

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

21 (2) "Commissioner" means the commissioner of the Department of Revenue of the
22 Commonwealth of Kentucky.

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

24 (4) "Cigarettes" means and includes any roll for smoking made wholly or in part of
25 tobacco, irrespective of size or shape and whether or not the tobacco is flavored,
26 adulterated, or mixed with any other ingredient, the wrapper or cover of which is
27 made of paper or any other substance or material, excepting tobacco.

- 1 (5) "Wholesaler" means any person who sells cigarettes at wholesale or distributes
2 cigarettes to be sold at retail, and includes any manufacturer, distributor, jobber,
3 subjobber as defined in KRS 138.130(13)[~~(12)~~], broker, agent, or other person,
4 whether or not enumerated in this subsection, who sells or distributes cigarettes.
- 5 (6) "Retailer" means and includes any person who sells cigarettes in this state to a
6 consumer or to any person for any purpose other than resale.
- 7 (7) "Sale" or "sell" means any transfer for consideration or gift.
- 8 (8) "Sell at wholesale," "sale at wholesale," and "wholesale sales" means and includes
9 any sale made in the ordinary course of trade or usual conduct of the wholesaler's
10 business to a retailer for the purpose of resale.
- 11 (9) "Sell at retail," "sale at retail," or "retail sales" means and includes any sale for
12 consumption or use made in the ordinary course of trade or usual conduct of the
13 seller's business.
- 14 (10) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler or
15 retailer, as the case may be, less all trade discounts, except customary cash
16 discounts, plus the full face value of any stamps or any tax which may be required
17 by any cigarette tax act of this state or political subdivision thereof, now in effect or
18 hereafter enacted, if not already included in the invoice cost of the cigarettes to the
19 wholesaler or retailer, as the case may be.
- 20 (11) (a) "Cost to wholesaler" means the basic cost of the cigarettes involved to the
21 wholesaler plus the cost of doing cigarette business by the wholesaler. In
22 determining the cost of doing cigarette business by the wholesaler, the cost of
23 doing business by the wholesaler shall first be determined by applying the
24 standards and methods of accounting regularly employed by him, and includes
25 labor costs, including salaries of executives and officers, rent, depreciation,
26 selling costs, maintenance of equipment, delivery costs, all types of licenses,
27 taxes, insurance, and advertising. The cost of doing business by the wholesaler

1 shall then be multiplied by the fraction obtained through dividing the
2 wholesaler's cigarette sales for the preceding six (6) months by the
3 wholesaler's total sales for the same period and the product thereof shall be the
4 cost of doing cigarette business.

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

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

23 (b) In the absence of proof of a lesser or higher cost of doing cigarette business by
24 the retailer making the sale, the cost of doing cigarette business by the retailer
25 shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the
26 retailer.