

1 AN ACT relating to taxation.

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) **1.** Effective July 1, 2018, **through July 31, 2022,** a surtax shall be paid in
7 addition to the tax levied in paragraph (a) of this subsection at a
8 proportionate rate of one dollar and six cents (\$1.06) on each twenty
9 (20) cigarettes; **and**
- 10 **2. Effective August 1, 2022, a surtax shall be paid in addition to the tax**
11 **levied in paragraph (a) of this subsection at a proportionate rate of**
12 **seven dollars and six cents (\$7.06) on each twenty (20) cigarettes.**
- 13 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this
14 subsection and in addition to the surtax levied by paragraph (b) of this
15 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)
16 cigarettes. The revenues from this surtax shall be deposited in the cancer
17 research institutions matching fund created in KRS 164.043.
- 18 (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be
19 paid at the time that the tax imposed by paragraph (a) of this subsection is
20 paid.
- 21 (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of
22 selling tobacco products in this state at the following rates:
- 23 1. **a. Prior to August 1, 2022,** upon snuff at the rate of nineteen cents
24 (\$0.19) per each one and one-half (1-1/2) ounces or portion thereof
25 by net weight sold; **and**
- 26 **b. On or after August 1, 2022, upon snuff at the rate of six dollars**
27 **and nineteen cents (\$6.19) per each one and one-half (1-1/2)**

1 ounces or portion thereof by net weight sold;

2 2. a. Prior to August 1, 2022, upon chewing tobacco at the rate of:

3 i.[a.] Nineteen cents (\$0.19) per each single unit sold;

4 ii.[b.] Forty cents (\$0.40) per each half-pound unit sold; or

5 iii.[c.] Sixty-five cents (\$0.65) per each pound unit sold.

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

11 b. On or after August 1, 2022, upon chewing tobacco at the rate of:

12 i. Six dollars and nineteen cents (\$6.19) per each single unit
13 sold;

14 ii. Thirteen dollars and three cents (\$13.03) per each half-
15 pound unit sold; or

16 iii. Twenty-one dollars and seventeen cents (\$21.17) per each
17 pound unit sold.

18 If the container, pouch, or package on which the tax is
19 levied contains more than sixteen (16) ounces by net
20 weight, the rate that shall be applied to the unit shall equal
21 the sum of twenty-one dollars and seventeen cents (\$21.17)
22 plus six dollars and nineteen cents (\$6.19) for each
23 increment of four (4) ounces or portion thereof exceeding
24 sixteen (16) ounces sold; and

25 3. a. Prior to August 1, 2022, upon tobacco products sold, at the rate of
26 fifteen percent (15%) of the actual price for which the distributor
27 sells tobacco products, except snuff and chewing tobacco, within

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the Commonwealth; and

b. On or after August 1, 2022, upon tobacco products sold at the rate of eighty-five percent (85%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth;

4. a. Prior to August 1, 2022, upon closed vapor cartridges, one dollar and fifty cents (\$1.50) per cartridge; and

b. On or after August 1, 2022, upon closed vapor cartridges, seven dollars and fifty cents (\$7.50) per cartridge; and

5. a. Prior to August 1, 2022, upon open vaping systems, fifteen percent (15%) of the actual price for which the distributor sells:

i.[a.] The open vaping system when the actual price includes the items described in both KRS 138.130(10)(a)1. and 2.; or

ii.[b.] The liquid solution described in KRS 138.130(10)(a)2. when the solution is sold separately; and

b. On or after August 1, 2022, upon open vaping systems, eighty-five percent (85%) of the actual price for which the distributor sells:

i. The open vaping system when the actual price includes the items described in both KRS 138.130(10)(a)1. and 2., or

ii. The liquid solution described in KRS 138.130(10)(a)2. when the solution is sold separately.

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

(c) 1. A retailer located in this state shall not purchase tobacco products for resale to consumers from any person within or outside this state unless

1 that person is a distributor licensed under KRS 138.195(7)(a) or the
2 retailer applies for and is granted a retail distributor's license under KRS
3 138.195(7)(b) for the privilege of purchasing untax-paid tobacco
4 products and remitting the tax as provided in this paragraph.

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

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

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

11 c. On purchases of untax-paid tobacco products, except snuff and
12 chewing tobacco, **at the same rate levied by paragraph (a)3. of**
13 **this subsection**~~[fifteen percent (15%) of the total purchase price as~~
14 ~~invoiced by the retail distributor's supplier];~~

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

17 e. On purchases of untax-paid open vaping systems, **at the same rate**
18 **as levied by paragraph (a)5. of this subsection**~~[fifteen percent~~
19 ~~(15%) of the total purchase price as invoiced by the retail~~
20 ~~distributor's supplier as described in paragraph (a)5. of this~~
21 ~~subsection].~~

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

27 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco

- 1 products or vapor products to another distributor licensed under KRS
2 138.195(7)(a) without payment of the excise tax. In such case, the
3 purchasing licensed distributor shall be the distributor liable for the tax.
- 4 3. A licensed distributor or licensed retail distributor shall:
- 5 a. Identify and display the distributor's or retail distributor's license
6 number on the invoice to the retailer; and
- 7 b. Identify and display the excise tax separately on the invoice to the
8 retailer. If the excise tax is included as part of the product's sales
9 price, the licensed distributor or licensed retail distributor shall list
10 the total excise tax in summary form by tax type with invoice
11 totals.
- 12 4. It shall be presumed that the excise tax has not been paid if the licensed
13 distributor or licensed retail distributor does not comply with
14 subparagraph 3. of this paragraph.
- 15 (e) No tax shall be imposed on tobacco products or vapor products under this
16 subsection that are not within the taxing power of this state under the
17 Commerce Clause of the United States Constitution.
- 18 (3) (a) The taxes imposed by subsections (1) and (2) of this section:
- 19 1. Shall not apply to reference products; and
- 20 2. Shall be paid only once, regardless of the number of times the cigarettes
21 or tobacco products may be sold.
- 22 (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
23 section shall be reduced by:
- 24 1. Fifty percent (50%) on any product as to which a modified risk tobacco
25 product order is issued under 21 U.S.C. sec. 387k(g)(1); or
- 26 2. Twenty-five percent (25%) for any product as to which a modified risk
27 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).

- 1 (4) A reference product shall carry a marking labeling the contents as a research
2 cigarette, research vapor product, or a research tobacco product to be used only for
3 tobacco-health research and experimental purposes and shall not be offered for sale,
4 sold, or distributed to consumers.
- 5 (5) The department may prescribe forms and promulgate administrative regulations to
6 execute and administer the provisions of this section.
- 7 (6) The General Assembly recognizes that increasing taxes on tobacco products should
8 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The
9 relative taxes on tobacco products proposed in this section reflect the growing data
10 from scientific studies suggesting that although smokeless tobacco poses some
11 risks, those health risks are significantly less than the risks posed by other forms of
12 tobacco products. Moreover, the General Assembly acknowledges that some in the
13 public health community recognize that tobacco harm reduction should be a
14 complementary public health strategy regarding tobacco products. Taxing tobacco
15 products according to relative risk is a rational tax policy and may well serve the
16 public health goal of reducing smoking-related mortality and morbidity and
17 lowering health care costs associated with tobacco-related disease.
- 18 (7) Any person subject to the taxes imposed under subsections (1) and (2) of this
19 section that:
- 20 (a) Files an application related to a modified risk tobacco product shall report to
21 the department that an application has been filed within thirty (30) days of that
22 filing; and
- 23 (b) Receives an order authorizing the marketing of a modified risk tobacco
24 product shall report to the department that an authorizing order has been
25 received.
- 26 (8) Upon receipt of the information required by subsection (7)(b) of this section, the
27 department shall reduce the tax imposed on the modified risk tobacco product as

1 required by subsection (3)(b) of this section on the first day of the calendar month
2 following the expiration of forty-five (45) days following receipt of the information
3 required by subsection (7)(b) of this section.

4 ➔Section 2. KRS 138.143 is amended to read as follows:

5 (1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and
6 unclassified acquirer shall:

7 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
8 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
9 in their control at 11:59 p.m. on July 31, 2022~~[June 30, 2018]~~. Inventory of
10 cigarettes in vending machines may be accomplished by:

- 11 1. Taking an actual physical inventory;
- 12 2. Estimating the cigarettes in vending machines by reporting one-half
13 (1/2) of the normal fill capacity of the machines, as reflected in
14 individual inventory records maintained for vending machines; or
- 15 3. Using a combination of the methods prescribed in subparagraphs 1. and
16 2. of this paragraph;

17 (b) File a return with the department on or before August 10, 2022~~[July 10,~~
18 ~~2018]~~, showing the entire wholesale and retail inventories of cigarettes in
19 packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette
20 tax stamps possessed by them or in their control at 11:59 p.m. on July 31,
21 2022~~[June 30, 2018]~~; and

22 (c) Pay a floor stock tax at a proportionate rate equal to six dollars (\$6)~~[fifty cents~~
23 ~~(\$0.50)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky tax
24 stamp and unaffixed Kentucky tax stamps in their possession or control at
25 11:59 p.m. on July 31, 2022~~[June 30, 2018]~~.

26 (2) Every retailer and sub-jobber shall:

27 (a) 1. Take a physical inventory of all units of snuff possessed by them or in

- 1 their control at 11:59 p.m. on July 31, 2022~~[March 31, 2009]~~;
- 2 2. File a return with the department on or before August 10, 2022~~[April 10,~~
- 3 ~~2009]~~, showing the entire inventory of snuff possessed by them or in
- 4 their control at 11:59 p.m. on July 31, 2022~~[March 31, 2009]~~; and
- 5 3. Pay a floor stock tax for each unit of snuff in their possession or
- 6 control at 11:59 p.m. on July 31, 2022, at a proportionate rate equal to
- 7 six dollars (\$6)~~[nine and one-half cents (\$0.095)]~~ per each one and
- 8 one-half (1-1/2) ounces or portion thereof~~[on each unit of snuff in their~~
- 9 ~~possession or control at 11:59 p.m. on March 31, 2009]~~; ~~and]~~
- 10 **(b) 1. Take a physical inventory of all units of chewing tobacco possessed by**
- 11 **them or in their control at 11:59 p.m. on July 31, 2022;**
- 12 **2. File a return with the department on or before August 10, 2022,**
- 13 **showing the entire inventory of chewing tobacco possessed by them or**
- 14 **in their control at 11:59 p.m. on July 31, 2022; and**
- 15 **3. Pay a floor stock tax for each unit of chewing tobacco in their**
- 16 **possession or control at 11:59 p.m. on July 31, 2022, at proportionate**
- 17 **rates equal to the following:**
- 18 **a. Six dollars (\$6) on each single unit;**
- 19 **b. Twelve dollars and sixty-three cents (\$12.63) on each half-pound**
- 20 **unit;**
- 21 **c. Twenty dollars and fifty-two cents (\$20.52) on each pound unit**
- 22 **of chewing tobacco; and**
- 23 **if the container, pouch, or package on which the tax is levied**
- 24 **contains more than sixteen (16) ounces by net weight, the rate**
- 25 **that shall be applied to the unit shall be equal to the sum of**
- 26 **twenty dollars and fifty-two cents (\$20.52) plus six dollars**
- 27 **(\$6.00) for each increment of four (4) ounces or portion thereof**

- 1 exceeding sixteen (16) ounces sold;
- 2 (c) 1. a. Take a physical inventory of all vapor products possessed by
- 3 them or in their control at 11:59 p.m. on July 31, 2022;
- 4 b. File a return with the department on or before August 10, 2022,
- 5 showing the entire inventories of vapor products possessed by
- 6 them or in their control at 11:59 p.m. on July 31, 2022; and
- 7 c. i. Pay a floor stock tax on closed vapor cartridges at a
- 8 proportionate rate equal to six dollars (\$6) per cartridge in
- 9 their possession or control at 11:59 p.m. on July 31, 2022;
- 10 and
- 11 ii. Pay a floor stock tax on open vapor systems at a
- 12 proportionate rate equal to seventy percent (70%) of the
- 13 purchase price for each open vapor system in their
- 14 possession or control on July 31, 2022.
- 15 2. a. As used in this paragraph, "purchase price" means the actual
- 16 amount paid for the open vapor system subject to the tax
- 17 imposed by this subsection.
- 18 b. If the retailer or sub-jobber cannot determine the actual amount
- 19 paid for each open vapor system, the retailer or sub-jobber may
- 20 use the amount per unit paid as reflected on the most recent
- 21 invoice received prior to August 1, 2022, for the same category of
- 22 vapor product.
- 23 c. To prevent double taxation, if the invoice used by the retailer or
- 24 sub-jobber to determine the purchase price of the vapor product
- 25 does not separately state the tax paid by the wholesale, the
- 26 retailer or sub-jobber may reduce the amount paid per unit by
- 27 fifteen percent (15%); and

- 1 ~~(d)(b)~~ 1. a. Take a physical inventory of all other tobacco products
 2 possessed by them or in their control at 11:59 p.m. on July 31,
 3 2022~~[March 31, 2009]~~;
- 4 b. File a return with the department on or before August 10,
 5 2022~~[April 10, 2009]~~, showing the entire inventories of other
 6 tobacco products possessed by them or in their control at 11:59
 7 p.m. on July 31, 2022~~[March 31, 2009]~~; and
- 8 c. Pay a floor stock tax at a proportionate rate equal to seventy
 9 percent (70%)~~[seven and one half percent (7.5%)]~~ on the purchase
 10 price of other tobacco products in their possession or control at
 11 11:59 p.m. on July 31, 2022~~[March 31, 2009]~~.
- 12 2. a. As used in this paragraph, "purchase price" means the actual
 13 amount paid for the other tobacco products subject to the tax
 14 imposed by this paragraph.
- 15 b. If the retailer or sub-jobber cannot determine the actual amount
 16 paid for each item of other tobacco product, the retailer or sub-
 17 jobber may use as the purchase price the amount per unit paid as
 18 reflected on the most recent invoice received prior to August 1,
 19 2022~~[April 1, 2009]~~, for the same category of other tobacco
 20 product.
- 21 c. To prevent double taxation, if the invoice used by the retailer or
 22 sub-jobber to determine the purchase price of the other tobacco
 23 product does not separately state the tax paid by the wholesaler,
 24 the retailer or sub-jobber may reduce the amount paid per unit by
 25 fifteen percent (15%)~~[seven and one half percent (7.5%)]~~.
- 26 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
 27 first installment, in an amount equal to at least one-third (1/3) of the total

1 amount due, shall be remitted with the return provided by the department on
2 or before August 10, 2022~~[July 10, 2018]~~. The second installment, in an
3 amount that brings the total amount paid to at least two-thirds (2/3) of the total
4 amount due, shall be remitted on or before September 10, 2022~~[August 10,~~
5 ~~2018]~~. The third installment, in an amount equal to the remaining balance,
6 shall be remitted on or before October 10, 2022~~[September 10, 2018]~~.

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

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

16 ➔Section 3. Section 1 of this Act takes effect August 1, 2022.