

AN ACT relating to taxation.

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

âSection 10. KRS 139.200 is amended to read as follows:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

(1) Retail sales, regardless of the method of delivery, made within this Commonwealth; and

(2) The furnishing of the following:

(a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;

(b) Sewer services;

(3) The sale of admissions except those taxed under KRS 138.480; and

***(4) The furnishing of the following services:***

***(a) Sewer services;***

***(b) Prepaid calling service and prepaid wireless calling service;***

***(c) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195;***

***(d) Ring tones as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and***

***(e) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:***

1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or

2. To a seller or reseller of natural gas;

*(f) Commercial janitorial services, including carpet, upholstery, and window cleaning;*

*(g) Armored car services;*

*(h) Security services;*

*(i) Chartered air flight services if a pilot is furnished, including hot air balloon flights; and*

*(j) Commercial linen services, excluding:*

*1. Commercial uniform services; and*

*2. Commercial linen services provided to hospitals and nursing homes.*

âSection 10. KRS 138.130 is repealed, reenacted, and amended to read as follows:

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

- (1) "Department" means the Department of Revenue.
- (2) "Manufacturer" means any person who manufactures or produces cigarettes, snuff, or other tobacco products within or without this state.
- (3) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale.
- (4) "Sale at retail" means a sale to any person for any other purpose other than resale.
- (5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco. "Cigarettes" shall not mean reference cigarettes.
- (6) "Reference cigarettes" means cigarettes made by a manufacturer specifically for a state public university to be held by the university until sale or transfer to a laboratory, hospital, medical center, institute, college or university, manufacturer, or other institution. A reference cigarette package shall carry a marking labeling the contents as research cigarettes to be used only for tobacco-health research and

experimental purposes, which shall not be offered for sale, sold, or distributed to consumers.

- (7) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, other tobacco products, or snuff, and distribution in any manner or by any means whatsoever.
- (8) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by regulation as a means of denoting the payment of tax.
- (9) "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular.
- (10) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes, other tobacco products, or snuff purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes, other tobacco products, or snuff.
- (11) "Nonresident wholesaler" means any person who purchases cigarettes, other tobacco products, or snuff directly from the manufacturer and maintains a permanent location or locations outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid.
- (12) "Sub-jobber" means any person who purchases cigarettes, other tobacco products, or snuff from a wholesaler licensed under KRS 138.195 on which the tax imposed by KRS 138.140 has been paid and makes them available to retailers for resale. No person shall be deemed to make cigarettes, other tobacco products, or snuff available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes, other tobacco products, or

snuff for resale in the regular course of business.

(13) "Vending machine operator" means any person who operates one (1) or more cigarette, other tobacco products, or snuff vending machines.

(14) "Transporter" means any person transporting untax-paid cigarettes, other tobacco products, or snuff obtained from any source to any destination within this state, other than cigarettes, other tobacco products, or snuff transported by the manufacturer thereof.

(15) "Unclassified acquirer" means any person in this state who acquires cigarettes, other tobacco products, or snuff from any source on which the tax imposed by KRS 138.140 has not been paid, and who is not a person otherwise required to be licensed under the provisions of KRS 138.195.

(16) **(a)** "Other tobacco products" means:

1. Cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;

2. Cavendish, plug and twist tobacco, fine-cut, and other chewing tobacco;~~or~~

3. Shorts, dry snuff, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking; **and**

**4. Beginning August 1, 2008, moist snuff, cigarette paper, and any other consumable product that is used to smoke or otherwise consume any form of tobacco or any similar substance.**

**(b)** "Other tobacco products" does not include cigarettes~~as defined in subsection (5) of this section~~, reference cigarettes, or **prior to August 1, 2008**, moist snuff taxed under the provisions of **subsection (6) of Section 3 of this Act**~~KRS 138.140(5)~~.

(17) "Wholesale sale" means a sale made for the purpose of resale in the regular course of

business.

(18) "Cigarette paper" means paper or a similar material suitable for use by consumers to wrap or roll tobacco into the form of a cigarette.

âSection 10. KRS 138.140 is repealed, reenacted, and amended to read as follows:

(1) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents (\$0.03) on each twenty (20) cigarettes. ~~[This tax shall be paid only once, regardless of the number of times the cigarettes may be sold in this state.]~~

(2) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and all other surtaxes levied by this section at a proportionate rate of twenty-six cents (\$0.26) on each twenty (20) cigarettes. ~~[This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid, regardless of the number of times the cigarettes may be sold in the state.]~~

(3) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and all other surtaxes ~~[in addition to the surtax]~~ levied by subsection (2) of this section, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. ~~[This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid, regardless of the number of times the cigarettes may be sold in the state.]~~

(4) Effective August 1, 2008, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and all other surtaxes levied by this section, at a proportionate rate of twenty-five cents (\$0.25) on each twenty (20) cigarettes.

(5) (a) Effective August 1, 2005, and prior to August 1, 2008, an excise tax shall be imposed upon all wholesalers of other tobacco products at the rate of seven and one-half percent (7.5%) of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.

(b) Effective August 1, 2008, an excise tax shall be imposed upon all wholesalers

of other tobacco products at the rate of thirteen and three-quarters percent (13.75%) of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth~~This excise tax shall be paid only once, regardless of the number of times the tobacco product may be sold in the state.~~

(6) (a)(5)} Effective August 1, 2005, and prior to August 1, 2008, a tax shall be imposed upon all wholesalers of moist snuff at a rate of nine and one-half cents (\$0.095) per unit.

(b) Effective August 1, 2008, moist snuff shall be taxed pursuant to subsection (5)(b) of this section.

(c) As used in this section unit means a hard container not capable of containing more than one and one-half (1-1/2) ounce. In determining the quantity subject to the tax under this subsection, if a package on which the tax is levied, contains more than an individual unit, the taxable quantity shall be calculated by multiplying the total number of individual units by the rate set in this subsection.~~The tax imposed under this subsection shall be paid only once, regardless of the number of times the snuff may be sold in this state.~~

(7)(6) (a) Effective June 1, 2006, every person licensed under KRS 138.195 to affix tax evidence, every wholesaler required to pay the tax imposed by subsection (5)(4) of this section, and every other person selling cigarette paper at wholesale in this state shall pay an excise tax on the sale of cigarette paper.

(b) Prior to August 1, 2008, the tax shall be in the amount of twenty-five cents (\$0.25) per package of thirty-two (32) sheets. For packages of greater or less than thirty-two (32) sheets, the tax shall be calculated at seventy-eight ten-thousandths of one cent (\$0.0078) per sheet. Effective August 1, 2008, cigarette paper shall be taxed pursuant to subsection (5)(b) of this section.

(c) The tax shall be remitted to the department~~of Revenue~~ at the same time and in the same manner as the tax imposed in subsection (5)(4) of this section.

~~(d) The tax shall be paid only once, regardless of the number of times the cigarette~~

~~paper may be sold in this state.]~~

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

(9) *The taxes and surtaxes imposed by this section shall be paid only once, regardless of the number of times the cigarette, tobacco product, snuff, or cigarette paper may be sold in this state.*

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

âSection 10. KRS 138.143 is amended to read as follows:

(1) Every retailer, resident wholesaler, nonresident wholesaler, and unclassified acquirer shall:

(a)¶(1)} Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on May 31, 2005. Inventory of cigarettes in vending machines may be accomplished by:

1.¶(a)} Taking an actual physical inventory;

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

3. (c) Using a combination of the methods provided by subparagraph 1. and 2. of this paragraph [in prescribed paragraphs (a) and (b) of this subsection];

(b) (2) File a return with the department [of Revenue] on or before June 10, 2005, showing the entire wholesale and retail inventories of cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on May 31, 2005;

(c) (3) Pay a floor stock tax at a rate equal to that imposed by subsection (3) of Section 3 of this Act [KRS 138.140(2)] with the calculation based upon a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on May 31, 2005; and

(d) (4) Pay a floor stock tax at a rate equal to that imposed by KRS 138.140(2), with the calculation based upon a proportionate rate of twenty-six cents (\$0.26) on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on May 31, 2005.

1. (a) The tax imposed by this subsection [section] shall be paid in three (3) equal installments, with the first installment to be remitted with the return on or before June 10, 2005. The second installment shall be paid on or before July 10, 2005, and the third installment shall be paid on or before August 10, 2005.

2. (b) Interest shall not be imposed against any outstanding installment payment not yet due from any retailer, resident wholesaler, nonresident wholesaler or unclassified acquirer who files the return and makes payments as required under this subsection [section]. Any retailer, resident wholesaler, nonresident wholesaler or unclassified acquirer who fails to file a return or make a payment on or before the dates provided in this

subsection[section] shall, in addition to the tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the return was required to be filed.

(2) Every retailer, resident wholesaler, nonresident wholesaler, dealer in other tobacco products, dealer in snuff, and unclassified acquirer shall:

(a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on July 31, 2008. Inventory of cigarettes in vending machines may be accomplished by:

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

(b) Take a physical inventory of all units of moist snuff and all other tobacco products held for retail sale and possessed by them or in their control at 11:59 p.m. on July 31, 2008;

(c) File a return with the department on or before August 10, 2008, showing the entire wholesale and retail inventories of cigarettes in packages bearing Kentucky tax stamps, all unaffixed Kentucky cigarette tax stamps, all units of moist snuff, and all other tobacco products possessed by them or in their control at 11:59 p.m. on July 31, 2008; and

(d) Pay a floor stock tax at a rate equal to that imposed by:

1. Subsection (4) of Section 3 of this Act with the calculation based upon a proportionate rate of twenty-five cents (\$0.25) on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on

July 31, 2008; and

2. Subsection (5)(b) of Section 3 of this Act with the calculation based upon the rate of six and one-quarter percent (6.25%) of the estimated wholesale value of the other tobacco products and moist snuff in their possession or control and invoiced to a customer at 11:59 p.m. on July 31, 2008.

(3) (a) The tax imposed by subsection (2) of this section may be paid in three (3) equal installments, with the first installment to be remitted with the return on or before August 10, 2008. If paid in three (3) installments, the second installment shall be paid on or before September 10, 2008, and the third installment shall be paid on or before October 10, 2008.

(b) Interest shall not be imposed against any outstanding installment payment not yet due from any retailer, resident wholesaler, nonresident wholesaler, dealer in other tobacco products, dealer in snuff, or unclassified acquirer who files the return and makes payments as required under this subsection. Any retailer, resident wholesaler, nonresident wholesaler, dealer in other tobacco products, dealer in snuff, or unclassified acquirer who fails to file a return or make a payment on or before the dates provided in this section shall, in addition to the tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the return was required to be filed.

âSection 10. KRS 138.146 is amended to read as follows:

- (1) The ~~taxes~~[tax] imposed by KRS 138.130 to 138.205 shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.
- (2) a. 1. The ~~taxes~~[tax] shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes.  
2. A stamp shall be affixed to each package of an aggregate denomination

not less than the amount of the tax on the package.

3. The affixed stamp shall be *prima facie* evidence of payment of the taxes[tax].
4. Unless stamps have been previously affixed, they shall be affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state.
- (b) The evidence of tax payment shall be affixed to each individual package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state.
- (c) The evidence of tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by the unclassified acquirer.

(3) (a) The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.

(b) All cigarette tax evidence prescribed by the department shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence.

(c) The department shall maintain for at least three (3) years information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.

(4) (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence purchased at face value and attributable to the tax assessed in KRS 138.140(1). No compensation shall be allowed for tax evidence

purchased at face value attributable to the tax assessed in subsection (2), (3), or (4) of Section 3 of this Act~~KRS 138.140(2) or (3)~~].

- (b)
  - 1. Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of offsetting the costs associated with paying the tax imposed under KRS 138.140(2), the department shall allow a limited amount of compensation in addition to the compensation provided in paragraph (a) of this subsection for a restricted time to any licensed wholesaler. The additional compensation shall be an amount of tax evidence, attributable to the tax assessed in KRS 138.140(1), equal to twelve cents (\$0.12) face value for each three dollars (\$3) of tax evidence purchased at face value on or after June 1, 2005, and before December 1, 2005. The additional compensation provided shall sunset 12 midnight November 30, 2005.
  - 2. During the six (6) month period beginning on June 1, 2005, and ending before December 1, 2005, no licensed wholesaler or stamping agent shall receive the additional compensation provided under subparagraph 1. of this subsection on the purchase of an amount of stamps over one hundred fifty percent (150%) of the total number of stamps purchased by the same licensed wholesaler or stamping agent for the period beginning on December 1, 2004, and ending before May 31, 2005.
- (c) The department shall have the power to withhold compensation as provided in paragraphs (a) and (b) of this subsection from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205 or any regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.

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

sold, traded, or loaned to any other person. Unaffixed tax evidence may be returned to the department for credit or refund for any reason satisfactory to the department.

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

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

(8) During the period beginning on the effective date of this Act and ending August 1, 2008, a licensed wholesaler or unclassified acquirer shall not purchase within any calendar month tax evidence in an amount which exceeds the monthly average of tax evidence purchased by that licensed wholesaler or unclassified acquirer during the calendar year 2007, unless the licensed wholesaler or unclassified acquirer can demonstrate to the department in writing that his or her business has substantially changed.

âSection 10. KRS 138.195 is amended to read as follows:

- (1) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.
- (2) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received. Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid. Such a license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (3) Each sub-jobber shall secure a separate license for each place of business from which Kentucky tax-paid cigarettes are made available to retailers, whether such place of business is located within or without this state. Such license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (4) Each vending machine operator shall secure a license for the privilege of dispensing Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of twenty-five dollars (\$25) for each year or portion thereof for which such license is secured. No vending machine shall be operated within this Commonwealth without having prominently affixed thereto the name of its operator, together with the license number assigned to such operator by the department. The department shall prescribe by regulation the manner in which the information shall be affixed to the vending machine.

- (5) Each transporter shall secure a license for the privilege of transporting cigarettes within this state. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured. No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing the name and address of the consignor and consignee, the date acquired by the transporter, the name and address of the transporter, the quantity of cigarettes being transported, together with the license number assigned to such transporter by the department.
- (6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured.
- (7) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of such person's business is so diversified as to justify such requirement.
- (8) The department may by regulation require any person licensed under the provisions of this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of such licensees, and to protect the revenues of the state. Failure on the part of such licensee to comply with the provisions of KRS 138.130 to 138.205 or any regulations promulgated thereunder, or to permit an inspection of premises, machines or vehicles by an authorized agent of the department at any reasonable time shall be grounds for the revocation of any license issued by the department, after due notice and a hearing by the department. The commissioner of the Department of Revenue may assign a time and place for such hearing and may appoint a conferee who shall conduct a hearing, receive evidence and hear arguments. Such conferee shall thereupon file a

report with the commissioner together with a recommendation as to the revocation of such license. From any revocation made by the commissioner of the Department of Revenue on such report, the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law. Any person whose license has been revoked for the willful violation of any provision of KRS 138.130 to 138.205 shall not be entitled to any license provided for in this section, or have any interest in any such license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of one (1) year after such revocation.

- (9) No license issued pursuant to the provisions of this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.
- (10) Every manufacturer located or doing business in this state shall keep written records of all shipments of cigarettes, other tobacco products, or snuff to persons within this state, and shall submit reports of such shipments as the department may require by regulation.
- (11) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.
- (12) Wholesalers of other tobacco products and snuff shall pay and report the tax levied by subsections (5) and (6) of Section 3 of this Act~~[KRS 138.140(4) and (5)]~~ on or before the twentieth day of the calendar month following the month in which the possession or title of the other tobacco products or smokeless tobacco products are transferred from the wholesaler to retailers or consumers in this state. The Department of Revenue shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (13) A tax return shall be filed for each reporting period whether or not tax is due.

âSection 10. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

- (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the department in a manner and form prescribed by the department, supported by proper evidence which in the sole judgment of the department substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the department. The department may make any investigation deemed necessary to establish the bona fide claim of the loss;
- (2) "Gasoline dealer" or "special fuels dealer" means any person who is:
  - (a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;
  - (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;
  - (c) Distributing gasoline from bulk storage in this state;
  - (d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's-length transactions;
  - (e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or
  - (f) Regularly exporting gasoline or special fuels;
- (3) "Department" means the Department of Revenue;
- (4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of

power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are *prima facie* commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

- (b) "Special fuels" means and includes all combustible gases and liquids capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off-highway equipment and in nonlicensed motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS 234.100;

- (c) "Diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. Diesel fuel does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;
- (d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service;

(5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:

- (a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the department; and
- (b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in

transport truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;

- (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;
- (7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;
- (8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;
- (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;
- (10) "Average wholesale price" means[shall mean]:
  - (a) The weighted average per gallon wholesale tank wagon price of gasoline, as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish to the department within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month as required by the department. The "average wholesale price" shall be determined exclusive of:
    - 1. The nine cents (\$0.09) per gallon federal tax in effect on January 1,

1984:~~1984~~

2. Any increase in the federal gasoline tax after July 1, 1984:~~1984~~ and

3. Any fee on imported oil imposed by the Congress of the United States after July 1, 1986~~[, as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the department]~~; and
- (b) 1. The Department of Revenue shall determine the "average wholesale price" on a quarterly basis, and shall adjust the "average wholesale price" used in determining the tax rate under Section 8 of this Act as provided in subparagraph 2. of this paragraph. Notwithstanding the provisions of this subparagraph and the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall the "average wholesale price" be set at~~[deemed to be]~~ less than one dollar and seventy-eight and six-tenths cents (\$1.786)~~[thirty-four and two-tenths cents (\$1.342)]~~ per gallon.

2. The "average wholesale price" adjustment for each fiscal year shall not exceed~~[, and in no case shall "average wholesale price" be deemed to be]~~ more than one dollar and fifty cents (\$1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than~~[,]~~ ten percent (10%) over the "average wholesale price" at the close of fiscal year;
- (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;

- (12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;
- (13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;
- (14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle; and
- (15) "Financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

âSection 10. KRS 138.220 is amended to read as follows:

- (1) **(a)** An excise tax at the rate of nine percent (9%) of the average wholesale price rounded to the nearest one-tenth of one cent (\$0.001)~~third decimal when computed on a per gallon basis~~ shall be paid on all gasoline and special fuel received in this state. The tax shall be paid on a per gallon basis.
- (b) The average wholesale price shall be determined and adjusted as provided in subsection (10) of Section 7 of this Act.**
- (c)** For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the amount calculated under this subsection shall be reduced by the amount calculated in subsection (3) of this section.
- (d)** Except as provided by KRS Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or special fuel by the state or any political subdivision of the state.
- (e)** The tax herein imposed shall be paid by the dealer receiving the gasoline or special fuel to the State Treasurer in the manner and within the time specified in KRS 138.230 to 138.340 and all such tax may be added to the selling price

charged by the dealer or other person paying the tax on gasoline or special fuel sold in this state.

**(f)** Nothing herein contained shall authorize or require the collection of the tax upon any gasoline or special fuel after it has been once taxed under the provisions of this section, unless such tax was refunded or credited.

(2) **(a)** In addition to the excise tax provided in subsection (1) of this section, there is hereby levied a supplemental highway user motor fuel tax to be paid in the same manner and at the same time as the tax provided in subsection (1) of this section.

**(b)** *The*~~*[Such]*~~ tax shall be calculated, starting with the quarter beginning July 1, 1986, by taking the excise tax resulting from the calculation provided for in subsection (1) of this section and adjusting *the*~~*[such]*~~ tax calculated, for each quarter, to reflect decreases in the average wholesale price, as defined in KRS 138.210(10)~~(a)~~. The adjustment shall be made by calculating the difference between the average wholesale price computed for the quarter beginning October 1, 1985, as provided for in subsection (4) of this section, and the average wholesale price computed for the quarter beginning July 1, 1986 and each succeeding quarter, as provided for in subsection (4) of this section.

**(c)** *If there is*~~*[In the event of]*~~ a decrease in the average wholesale price computed for the quarter beginning October 1, 1985, and ending December 31, 1985, and the average wholesale price computed for the quarter beginning July 1, 1986, and each succeeding quarter, the excise tax shall be adjusted upward for that quarter. The upward adjustment shall equal one-half (1/2) of the decrease between the two (2) quarterly periods, rounded to the third decimal.

**(d)** In no case shall the adjustment provided by this subsection result in a supplemental highway user motor fuel tax greater than five cents (\$0.05) on gasoline or two cents (\$0.02) on special fuel and, notwithstanding any adjustment which may be calculated as provided by this subsection, in no case

shall the supplemental highway user motor fuel tax for any quarter be less than the previous quarter.

**(e)** The supplemental highway user motor fuel tax provided by this subsection and the provisions of subsections (1) and (3) of this section shall constitute the tax on motor fuels imposed by KRS 138.220.

(3) Effective July 1, 2005, one cent (\$0.01), and effective July 1, 2006, two and one-tenth cents (\$0.021), of the tax collected under subsection (1) of this section shall be excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this subsection shall be deposited into the state road fund.

(4) Effective with the calendar quarter beginning July 1, 1980, the department shall determine on a consistent basis the average wholesale price for each calendar quarter, on the basis of sales data accumulated for the first month of the preceding quarter. Notification of the average wholesale price shall be given to all licensed dealers at least twenty (20) days in advance of the first day of each calendar quarter.

(5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale price becomes effective, shall be subject to additional tax or appropriate tax credit to reflect the increase or decrease in the average wholesale price for the new quarter. The department shall promulgate such rules and regulations to properly administer this provision.

âSection 10. Section 1 of this Act takes effect August 1, 2008.

âSection 10. It is the intent of the General Assembly by repealing and reenacting Section 3 of this Act to reaffirm the original intent of the amendment to KRS 138.140 contained in 2006 Ky. Acts ch. 252, and to provide for its implementation as of the original effective date of 2006 Ky. Acts ch. 252.