

### **138.146 Evidence of tax payments.**

- (1) The 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) The tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes. A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the tax on the package. The affixed stamp shall be prima facie evidence of payment of tax. 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. 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. 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) 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. 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. 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 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) In the event any retailer 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. Such notice shall be in writing, and shall give the name of the person from whom such cigarettes were received, and the quantity of such cigarettes, and 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 such notice is given by means of the United States mail, it shall be sent by certified mail. Any such 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 any such cigarettes according to rules and regulations to be prescribed by the department, and proceed to sell the same after such payment.
- (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.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 347, effective June 20, 2005; ch. 168, sec. 83, effective June 1, 2005; and ch. 173, Part XXV, sec. 3, effective March 20, 2005. -- Amended 2001 Ky. Acts ch. 150, sec. 11, effective January 1, 2002. -- Amended 1990 Ky. Acts ch. 216, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 386, sec. 3, effective July 15, 1982. -- Created 1962 Ky. Acts ch. 92, sec. 5.

**Legislative Research Commission Note (3/20/2005).** This section was amended by 2005 Ky. Acts chs. 85, 168, and 173, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (6/1/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97,

98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.