138.165 Contraband cigarettes -- Vending machines and motor vehicles -- Seizure -- Sale -- Remission of forfeiture -- Appeal.

(1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-paid cigarettes held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.

(2) Whenever any peace officer of this state, or any representative of the department, finds any untax-paid cigarettes within the borders of this state in the possession of any person other than a licensee authorized to possess untax-paid cigarettes by the provisions of KRS 138.130 to 138.205, such cigarettes shall be immediately seized and stored in a depository to be selected by the officer or agent. At the time of seizure, the officer or agent shall deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face that any inquiry concerning any goods seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky. Immediately upon seizure, the officer or agent shall notify the commissioner of the Department of Revenue of the nature and quantity of the goods seized. Any seized goods shall be held for a period of twenty (20) days and if after such period no person has claimed the cigarettes as his property, the commissioner shall cause the same to be exposed to public sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale, from the sale shall be paid into the Kentucky State Treasury for general fund purposes.

(3) It is declared to be the legislative intent that any vending machine used for dispensing cigarettes on which Kentucky cigarette tax has not been paid is contraband and subject to seizure and forfeiture. In the event any peace officer or agent of the department finds any vending machine within the borders of this state dispensing untax-paid cigarettes, he shall immediately seize the vending machine and store the same in a safe place selected by him. He shall thereafter proceed as provided in subsection (2) of this section and the commissioner of the Department of Revenue shall cause the vending machine to be sold, and the proceeds applied, as set out in subsection (2) of this section.

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

(5) The owner or any person having an interest in any goods, machines or vehicles seized as provided under subsections (1) to (4) of this section may apply to the commissioner of the Department of Revenue for remission of the forfeiture for good

cause shown. If it is shown to the satisfaction of the Department of Revenue that the owner was without fault in the possession, dispensing, or transportation of the untax-paid cigarettes, the Department of Revenue shall remit the forfeiture. If the Department of Revenue determines that the possession, dispensing, or transportation of untax-paid cigarettes was willful or intentional, the Department of Revenue may nevertheless remit the forfeiture on condition that the owner pay a penalty to be prescribed by the Department of Revenue of not more than fifty percent (50%) of the value of the property forfeited. All taxes due on untax-paid cigarettes shall be paid in addition to the penalty, if any.

(6) Any party aggrieved by an order entered hereunder may appeal to the Kentucky Board of Tax Appeals in the manner provided by law.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 85, sec. 349, effective June 20, 2005; and ch. 168, sec. 84, effective June 1, 2005. -- Amended 1966 Ky. Acts ch. 239, sec. 140. -- Amended 1964 Ky. Acts ch. 141, sec. 25. -- Created 1962 Ky. Acts ch. 92, sec. 7(1) to (6).

Legislative Research Commission Note (6/1/2005). This section was amended by 2005 Ky. Acts chs. 85 and 168, 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.