

**138.195 License required for various dealers -- Fees -- Revocation of licenses -- Appeals -- Records -- Reports -- Administrative regulations -- Tax returns -- Grounds for denial of license.**

- (1)
  - (a) 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.
  - (b) No person shall act as a distributor of tobacco products without first obtaining a license from the department as set out in this section.
  - (c) For licenses effective for periods beginning on or after July 1, 2015, no individual, entity, or any other group or combination acting as a unit may be eligible to obtain a license under this section if the individual, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit has been convicted of or entered a plea of guilty or nolo contendere to:
    1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
    2. A crime involving fraud, falsification of records, improper business transactions or reporting;for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.
- (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 administrative 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)
  - (a)
    1. Each distributor shall secure a license for the privilege of selling tobacco products in this state. Each license 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 year or portion thereof for which the license is secured.
    2.
      - a. A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.
      - b. An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products in this state. The license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars (\$450) for each year or portion thereof for which the license is secured.
    3. The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars (\$500) for each year or portion thereof for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.
  - (b) The department may, upon application, grant a retail distributor's license to a retailer for the privilege of purchasing tobacco products from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars (\$100) for each year or portion thereof for which the license is secured.
- (8) 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.

- (9)
  - (a) The department may by administrative regulation require any person requesting a license or holding a license under 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.
  - (b) Failure on the part of the applicant or licensee to comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative 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 denial or revocation of any license issued by the department, after due notice and a hearing by the department.
  - (c) The commissioner may assign a time and place for the hearing and may appoint a conferee who shall conduct a hearing, receive evidence, and hear arguments.
  - (d) The conferee shall thereupon file a report with the commissioner together with a recommendation as to the denial or revocation of the license.
  - (e) From any denial or revocation made by the commissioner on the report, the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law.
  - (f) Any person whose license has been revoked for the willful violation of any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder shall not be entitled to any license provided for in this section, or have any interest in any license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of two (2) years after the revocation.
- (10) No license issued pursuant to 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.
- (11) Every manufacturer located or doing business in this state and the first person to import cigarettes into this state shall keep written records of all shipments of cigarettes to persons within this state, and shall submit to the department monthly reports of such shipments. All books, records, invoices, and documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.
- (12) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.
- (13)
  - (a) Licensed distributors of tobacco products shall pay and report the tax levied by KRS 138.140(4)(a) on or before the twentieth day of the calendar month following the month in which the possession or title of the tobacco products

are transferred from the licensed distributor to retailers or consumers in this state, as the case may be.

- (b) Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products from a person who is not a distributor licensed under KRS 138.195(7)(a) shall report and pay the tax levied by KRS 138.140(4)(c)2. on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.
  - (c) If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.
  - (d) The department shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (14) A tax return shall be filed for each reporting period whether or not tax is due.
- (15) Any license issued by the department under this section shall not be construed to waive or condone any violation that occurred or may have occurred prior to the issuance of the license and shall not prevent subsequent proceedings against the licensee.
- (16) (a) The department may deny the issuance of a license under this section if:
- 1. The applicant has made any material false statement on the application for the license; or
  - 2. The applicant has violated any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.754, or 248.756 or any administrative regulations promulgated thereunder.
- (b) If the department denies the applicant a license under this section, the department shall notify the applicant of the grounds for the denial, and the applicant may request a hearing and appeal the denial as provided in subsection (9) of this section.

**Effective:** July 1, 2015

**History:** Amended 2015 Ky. Acts ch. 55, sec. 16, effective July 1, 2015. -- Amended 2013 Ky. Acts ch. 97, sec. 3, effective August 1, 2013. -- Repealed and reenacted 2009 Ky. Acts ch. 86, sec. 2, effective March 24, 2009. -- Amended 2008 Ky. Acts ch. 132, sec. 2, effective April 24, 2008. -- Amended 2005 Ky. Acts ch. 85, sec. 350, effective June 20, 2005; and ch. 168, sec. 85, effective June 1, 2005. -- Amended 1988 Ky. Acts ch. 40, sec. 1, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 386, sec. 4, effective July 15, 1982. -- Amended 1964 Ky. Acts ch. 141, sec. 26. -- Created 1962 Ky. Acts ch. 92, sec. 4.

**Legislative Research Commission Note** (3/24/2009). 2009 Ky. Acts ch. 86, sec. 17, provides that "The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008."

**Legislative Research Commission Note** (3/24/2009). 2009 Ky. Acts ch. 86, sec. 18, provides "To the extent that any provision included in this Act is considered new

language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding."

**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.

**Legislative Research Commission Note** (6/20/2005). 2005 Ky. Acts ch. 168, sec. 85, contained a reference in the newly created subsection (12) of this section to "subsections (3) and (4) of Section 81 of this Act" (KRS 138.140). In merging the provisions of 2005 Ky. Acts chs. 168 and 173 in codification, subsections (3) and (4) became subsections (4) and (5).