

**138.132 Contraband tobacco products -- Property used in substantial connection with knowing violation of KRS 138.130 to 138.205 -- Seizure -- Sale -- Remission of forfeiture -- Appeal.**

- (1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid tobacco products 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)
  - (a) If a retailer, who is not a licensed retail distributor, purchases tobacco products from a licensed distributor and the purchase invoice does not contain the separate identification and display of the tobacco products tax, the retailer shall, within twenty-four (24) hours, notify the department in writing.
  - (b) The notification shall include the name and address of the person from whom the tobacco products were purchased and a copy of the purchase invoice.
  - (c) The tobacco products for which the required information was not included on the invoice shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the proper notice as required by this subsection.
  - (d) After the fifteen (15) day period, the retailer may pay the tax due on the tobacco products described in paragraph (c) of this subsection according to administrative regulations promulgated by the department, and after which may proceed to sell the tobacco products.
- (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products for resale from a person not licensed under KRS 138.195(7), which is prohibited by KRS 138.140(2), the retailer may not sell those tobacco products until the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b).
- (4) If, upon examination, the department determines that the retailer has failed to comply with the provisions of subsection (3) of this section, the retailer shall pay all tax and interest and applicable penalties due and the following shall apply:
  - (a) For the first offense, an additional penalty shall be assessed equal to ten percent (10%) of the tax due;
  - (b) For a second offense within three (3) years or less of the first offense, an additional penalty shall be assessed equal to twenty-five percent (25%) of the tax due; and
  - (c) For a third offense or subsequent offense within three (3) years or less of the first offense, the tobacco products shall be contraband and subject to seizure and forfeiture as provided in subsection (5) of this section.
- (5)
  - (a) Whenever a representative of the department finds contraband tobacco products within the borders of this state, the tobacco products shall be immediately seized and stored in a depository to be determined by the representative.
  - (b) At the time of seizure, the representative shall deliver to the person in whose custody the tobacco products are found a receipt for the seized products. The receipt shall state on its face that any inquiry concerning any tobacco products seized shall be directed to the commissioner of the Department of Revenue,

Frankfort, Kentucky.

- (c) Immediately upon seizure, the representative shall notify the commissioner of the nature and quantity of the tobacco products seized. Any seized tobacco products shall be held for a period of twenty (20) days, and if after that period no person has claimed the tobacco products as his or her property, the commissioner shall cause the tobacco products to be destroyed.
- (6) All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be contraband and subject to seizure and forfeiture as follows:
  - (a) The department's representative shall seize the property and store the property in a safe place selected by the representative; and
  - (b) The representative shall proceed as provided in KRS 138.165(2). The commissioner shall cause the property to be sold after notice published pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as provided in KRS 138.165(2).
- (7) The owner or any person having an interest in the fixtures, materials, or personal property that has been seized as provided by subsection (6) of this section may apply to the commissioner for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the commissioner that the owner or person having an interest in the property was without fault, the department shall remit the forfeiture.
- (8) Any party aggrieved by an order entered under this section may appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

**Effective:** April 27, 2018

**History:** Amended 2018 Ky. Acts ch. 171, sec. 25, effective April 14, 2018; and ch. 207, sec. 25, effective April 27, 2018. -- Amended 2017 Ky. Acts ch. 74, sec. 81, effective June 29, 2017. -- Created 2013 Ky. Acts ch. 97, sec. 5, effective January 1, 2014.

**Legislative Research Commission Note (4/27/2018).** This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.