

### **365.270 Definitions for KRS 365.260 to 365.380.**

As used in KRS 365.260 to 365.380, unless the context otherwise requires:

- (1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, the Commonwealth of Kentucky and any municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator.
- (2) "Commissioner" means the commissioner of the Department of Revenue of the Commonwealth of Kentucky.
- (3) "Department" means the Department of Revenue.
- (4) "Cigarettes" means and includes any roll for smoking made wholly or in part of 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.
- (5) "Wholesaler" means any person who sells cigarettes at wholesale or distributes cigarettes to be sold at retail, and includes any manufacturer, distributor, jobber, subjobber as defined in KRS 138.130(12), broker, agent, or other person, whether or not enumerated in this subsection, who sells or distributes cigarettes.
- (6) "Retailer" means and includes any person who sells cigarettes in this state to a consumer or to any person for any purpose other than resale.
- (7) "Sale" or "sell" means any transfer for consideration or gift.
- (8) "Sell at wholesale," "sale at wholesale," and "wholesale sales" means and includes any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.
- (9) "Sell at retail," "sale at retail," or "retail sales" means and includes any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business.
- (10) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, less all trade discounts, except customary cash discounts, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the invoice cost of the cigarettes to the wholesaler or retailer, as the case may be.
- (11) (a) "Cost to wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing cigarette business by the wholesaler. In determining the cost of doing cigarette business by the wholesaler, the cost of doing business by the wholesaler shall first be determined by applying the standards and methods of accounting regularly employed by him, and includes labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business by the wholesaler shall then be multiplied by the fraction obtained through dividing the wholesaler's cigarette sales for the preceding six (6) months by the

wholesaler's total sales for the same period and the product thereof shall be the cost of doing cigarette business.

- (b) In the absence of proof of a lesser or higher cost of doing cigarette business by the wholesaler making the sale, the cost of doing cigarette business by the wholesaler shall be presumed to be two percent (2%) of the basic cost of the cigarettes to the wholesale dealer, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer. Cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be three-fourths of one percent (0.75%) of the basic cost of the cigarettes to the wholesaler.
- (12) (a) "Cost to the retailer" means the basic cost of cigarettes involved to the retailer plus the cost of doing cigarette business by the retailer. In determining the cost of doing cigarette business by the retailer, the cost of doing business by the retailer shall first be determined by applying the standards and methods of accounting regularly employed by him and includes labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business by the retailer shall then be multiplied by the fraction obtained through dividing the retailer's cigarette sales for the preceding six (6) months by the retailer's total sales for the same period and the product thereof shall be the cost of doing cigarette business.
- (b) In the absence of proof of a lesser or higher cost of doing cigarette business by the retailer making the sale, the cost of doing cigarette business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer.

**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 84, sec. 2, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 687, effective June 20, 2005. -- Amended 1990 Ky. Acts ch. 280, sec. 2, effective July 13, 1990. -- Created 1956 Ky. Acts ch. 243, sec. 2, effective May 18, 1956.