



Nicotine Products Bulletin

Date Issued July 1, 2020
Wyoming Department of Revenue

On March 10, 2020, Governor Mark Gordon signed into law House Bill 73 (Enrolled Act No. 32).

This bill goes into effect July 1, 2020 and imposes an excise tax on nicotine products. This tax is to be paid by the Wyoming licensed wholesaler. If a retailer purchases these products from other than a Wyoming licensed wholesaler, the retailer will be responsible to pay the tax directly to the Department, as if they were the wholesaler.

Definitions

As it pertains to the sale of electronic cigarettes and vapor material:

Wholesaler means any person who:

- A. Whether located within or without Wyoming imports, sells or distributes nicotine products into this state for sale or resale;
- B. Purchases nicotine products in this state for sale or resale;

Electronic cigarette means any device that can be used to deliver aerosolized or vaporized nicotine or synthetic nicotine to the person using the device and includes any component, part and accessory of the device and any vapor material intended to be aerosolized or vaporized during the use of the device. “Electronic Cigarette” does not include a battery or battery charger if sold separately from the electronic cigarette and does not include any product regulated as a

drug or device by the United States Food and Drug Administration under subchapter V of the Food, Drug, and Cosmetic Act...”

Vapor material “means any liquid solution or other material containing nicotine or synthetic nicotine that is depleted as an electronic cigarette is used. “Vapor material” includes liquid solution or other material containing nicotine or synthetic nicotine that is sold with or inside an electronic cigarette...”

Nicotine product “means tobacco products as defined by W.S. 14-3-301(a)(i), electronic cigarettes and vapor material...”

Wholesale purchase price “means the established price for which a manufacturer sells the nicotine product to the wholesaler exclusive of any discount or other reduction;”

Licensing Requirements

Any person who meets the definition of a wholesaler must apply for a Cigarette Wholesalers, Cigarette Importer, Cigarette Manufacturer, and Nicotine Products Wholesaler License. You may apply for the license online at <https://excise-wyifs.wy.gov> or print the application from our website at <http://revenue.wyo.gov> This license is required to be renewed each year by July 1st and requires a \$10.00 license fee to be submitted with the application.

Tax Rate and Reporting Requirements

Beginning July 1, 2020, electronic cigarettes and vapor materials are subject to an excise tax at the rate of fifteen percent (15%) of the wholesale purchase price. This tax is to be paid by the Wyoming licensed wholesaler. If a retailer purchases these products from other than a Wyoming licensed wholesaler, the retailer will be responsible to pay the tax directly to the Department, and license as if the retailer is the wholesaler.

The excise tax will be paid on a calendar quarter basis, beginning with the third quarter 2020 (July through September 2020) filing period. The return and payment is due by the 20th day of the month following the end of the calendar quarter. The wholesaler is entitled to retain four percent (4%) of any tax collected. This discount is calculated on the return, and subtracted from the total tax due on the return. The wholesaler/retailer would report the 15% excise tax on a Form 71.

The excise tax is also imposed on the use or storage by consumers of electronic cigarettes and vapor material in this state at a rate of 7.5% of the retail price. The tax would be remitted by the consumer directly to the Department on a Consumer's Cigarette and Tobacco Products return form 72. This tax does not apply if the excise tax has been paid by the wholesaler.

These products are also subject to sales tax when sold at retail. The vendor will collect the sales tax from the customer in the retail transaction and remit the sales tax on their periodic sales/use tax return.

What is subject to the Excise Tax

Items subject to the excise tax on electronic cigarettes and vapor material, include the

actual electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hooka, vapor pen, or any similar product, and the vapor material as defined above. The tax is also imposed on components, parts and accessories. This would include but is not limited to, items such as; tanks, O rings or seals, drip tips, atomizer, and gauges. A battery or battery charger sold separately from the electronic cigarette itself, is not subject to the excise tax.



Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to: **DOR_taxability@wyo.gov**

Supporting Authority -

W.S. 39-18-101(a)(v) "Wholesaler" means any person who:

(A) Whether located within or without Wyoming, imports, sells or distributes nicotine products into this state for sale or resale;

(B) Purchases nicotine products in this state for sale or resale;

W.S. 39-18-101(a)(iv) "Wholesale purchase price" means the established price for which a manufacturer sells the nicotine product to the wholesaler exclusive of any discount or other reduction;

W.S. 39-18-101(a)(ix) "Electronic cigarette: means any device that can be used to deliver aerosolized or vaporized nicotine or synthetic nicotine to the person using the device and includes any component, part and accessory

of the device and any vapor material intended to be aerosolized or vaporized during the use of the device. "Electronic cigarette: includes, without limitation, any electronic cigar, electronic cigarillo, electronic pipe, electronic hooka, vapor pen and any similar product or device. "Electronic cigarette" does not include a battery or battery charger if sold separately from the electronic cigarette and does not include any product regulated as a drug or device by the United States food and drug administration under subchapter V of the Food, Drug and Cosmetic Act;

W.S. 39-18-101(a)(x) "Vapor material" means any liquid solution or other material containing nicotine or synthetic nicotine that is depleted as an electronic cigarette is used. "Vapor material" includes liquid solution or other material containing nicotine or synthetic nicotine that is sold with or inside an electronic cigarette;

W.S. 39-18-101(a)(xi) "Nicotine product" means tobacco products as defined by W.S. 14-3-301(a)(i), electronic cigarettes and vapor material.

W.S. 39-18-102(b) The taxes imposed by W.S. 39-18-103(a)(iii) and (v) shall be paid by the wholesaler. The wholesaler shall be entitled to retail four percent (4%) of any tax collected under W.S. 39-18-103(a)(iii) and (v).

W.S. 39-18-103(a)(v) In addition to the other taxes imposed by this subsection, there is levied and assessed upon electronic cigarettes and vapor material purchased or imported into this state by wholesalers for resale an excise tax at the rate imposed by W. S. 39-18-104(g);

W.S. 39-18-103(a)(vi) The tax imposed by paragraph (v) of this subsection shall also be

imposed upon the use or storage by consumers of electronic cigarettes and vapor material in this state, and upon those consumers, at the rate imposed by W.S. 39-18-104(g). This tax shall not apply if the tax imposed by paragraph (v) of this subsection has been paid.

W.S. 39-18-104(g) In addition to the other taxes imposed by this section, there is levied and assessed upon electronic cigarettes and vapor material purchased or imported into this state by wholesalers for resale, an excise tax at the rate of fifteen percent (15%) of the wholesale purchase price at which the electronic cigarettes and vapor material are purchased by wholesalers from manufacturers.

W.S. 39-18-104(h) The tax imposed by subsection (g) of this section shall also be imposed upon the use or storage by consumers of electronic cigarettes and vapor material in this state, and upon those consumers, at the rate of seven and one-half percent (7.5%) of the retail price of the electronic cigarettes and vapor material. This tax shall not apply if the tax imposed by subsection (g) of this section has been paid.

W.S. 39-18-106(a) Every wholesaler, cigarette importer and cigarette manufacturer who sells or offers to sell nicotine products in this state must have a license to do so issued by the department. No license or renewal of a license shall be granted under this section unless the wholesaler states in writing under penalty for false swearing, that he shall comply fully with W.S. 9-4-1201 through 9-4-1209. The license fee is ten dollars (\$10.00) per year or fraction thereof and is valid through wholesalers who own or operate the place from which sales are made and additional licenses must be obtained for each separate location. The licenses are

transferable pursuant to rules and regulations promulgated by the department.

W.S. 39-18-107(a) Returns, and reports. The following shall apply:

(ii) On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of nicotine products for use or storage in this state, upon which products the tax imposed by W.S. 39-18-103(a)(iii) and (v) has not been paid, shall file a return with the department showing the quantity of such products so acquired. The return shall be made upon a form furnished and prescribed by the department and shall contain such other information as the department may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

W.S. 39-18-107(c) Timelines. The following shall apply:

(i) No later than the twentieth day of the month following the sale of cigarettes, or the month following the end of the calendar quarter for nicotine products other than cigarettes, each wholesaler shall return to the department the following information on forms furnished by the department:

W.S. 39-15-103(a)(i)(A) Taxable event. The following shall apply:

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(A) The sales price of every retail sale of tangible personal property within the state;