Ohio Vapor Products Tax

General Information for Taxpayers

Department of Taxation

Vapor Products Tax - Effective October 1, 2019

The purpose of this booklet is to provide guidance following the legislative changes in Am. Sub. H.B. No. 166, which imposes an excise tax on vapor products effective October 1, 2019. This booklet will provide a general overview of the registration, filing and licensing requirements.

Vapor Products – In General

What is a "vapor product"?

A "vapor product" is any liquid solution or other substance that (1) contains nicotine and (2) is depleted as it is used in an "electronic smoking product." It does not include any solution or substance that is regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug and Cosmetic Act," 21 U.S.C. 301, et seq.

An "electronic smoking product" is any noncombustible product, other than a cigarette or tobacco product, that (1) contains or is designed to use vapor products and (2) employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from the vapor product. It includes, but is not limited to, the following:

1. Electronic cigarettes
2. Electronic cigars
3. Electronic cigarillos
4. Electronic pipe
5. Electronic hookah
6. Vape pen
7. Vaporizer
8. Similar products and devices

It does not include a product regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug and Cosmetic Act," 21 U.S.C. 301, et seq.

What is subject to the excise tax on vapor products?

The tax is levied on the sale of vapor products the first time an Ohio distributor receives untaxed vapor products or whenever an out-of-state distributor sells vapor products to an Ohio purchaser at a rate of one cent per one-tenth milliliter or one-tenth gram (equiv. of 10 cents per milliliter or gram), depending on whether sold in liquid or non-liquid form.

The excise tax on vapor products does not apply to electronic smoking products, however, the liquid is always taxable if it contains nicotine, even if it is in a closed-end disposable electronic smoking product. Only one sale of the same article is used to compute the tax due. Additionally, if a previously taxed vapor product is repackaged, reconstituted, diluted or reprocessed, the tax does not apply to a subsequent sale of the vapor product.

Who is liable for the tax?

The tax is imposed on (1) distributors who bring or cause vapor products to be brought into Ohio for distribution within Ohio and (2) any out-of-state distributor who sells vapor products to Ohio purchasers. Distributors include any person that:

1. Sells vapor products to a retail dealer;
2. Is a retail dealer that receives untaxed vapor products which the tax has not or will not be paid by another distributor;
3. Is an Ohio wholesale dealer that receives vapor products from a manufacturer or receives untaxed vapor products; or
4. Is an out-of-state wholesale dealer that sells vapor products to an Ohio wholesale dealer

A "retail dealer" includes any person in Ohio engaged in the business of selling vapor products to ultimate consumers in Ohio, regardless of the quantity, amount, or number of sales.

A "wholesale dealer" includes any person who is engaged in the business of selling vapor products to others for the purpose of resale.

A "secondary manufacturer" is any person in Ohio engaged in the business of repackaging, reconstituting, diluting or reprocessing vapor products for resale to consumers.

The tax is also levied on sellers of vapor products with substantial nexus and on the storage, use, or other consumption of vapor products if the tax has not been paid by the vapor distributor or seller. A "seller" includes any person located outside of Ohio engaged in the business of selling vapor products to consumers for storage, use or other consumption in Ohio.

Licensing and Registration Requirements

Tobacco Products and Vapor Products Distributors

A distributor is required to obtain a license issued by the Department to engage in the business of distributing tobacco products and vapor products. The application fee for a license to engage in the business of distributing both tobacco products and vapor products is $1,000 for each location where tobacco products and vapor products are received or distributed.

Vapor Products Distributors

A vapor distributor is required to obtain a license issued by the Department to engage in the business of distributing vapor products. The application fee for a license to engage solely in the business of distributing vapor products (vapor products distributor's license) is $125 for each location where vapor products are received or distributed. In addition, secondary manufacturers must also obtain a vapor products license. Only secondary manufacturers that are licensed vapor distributors are permitted to reconstitute, dilute or reprocess vapor products to consumers under Ohio law.

A vapor distributor who is not already in the business of distributing tobacco products must apply for a vapor products license by September 30, 2019. A vapor distributor holding an active license to distribute tobacco products on October 1, 2019 may distribute vapor products without obtaining a separate license.

The application for both licenses is form OTP1 and can be found here.

The initial vapor products license is valid until January 31, 2021. If issued after January 31, 2020, the license is valid until January 31st of the following calendar year.

New vapor distributor licenses will be mailed from the Department beginning September 16, 2019. Upon initial registration, taxpayers will receive two licenses. One for the remainder of this license year and another for the next license year. The licenses may arrive separately.

Licenses must be posted and kept constantly displayed in a conspicuous place in the building where such business is conducted.

Manufacturers/Importers

Manufacturers and importers of vapor products are required to register with the Tax Commissioner by July 1, 2020. On or before the 23rd day of each month, every registered manufacturer or importer of vapor products will be required to file a report with the commissioner listing all sales of vapor products to distributors in this state during the preceding month. A tobacco products manufacturer/importer holding an active registration on October 1, 2019 may sell untaxed vapor products to Ohio distributors without obtaining a separate registration.

The application for a manufacturer/importer registration is form OTP8 and can be found here.

"Seller" of Vapor Products

A seller of vapor products with substantial nexus in this state is required to register with the Tax Commissioner. A seller who does not have substantial nexus may voluntarily register. Upon registration, a seller must file returns and remit the tax due.

Retailers

If you are a retailer and you sell vapor products, you will **not** need a vapor only license if the following apply:

1. You purchase all vapor products **tax-paid** from Ohio licensed distributors. (A list of all active OTP and vapor distributors can be found here)

2. You are **not** a secondary manufacturer

Returns and Payments

Returns are filed monthly on or before the twenty- third (23rd) day of the month reflecting the activity of the previous month. The first vapor products return will be due on Monday, November 25, 2019, due to November 23rd occurring on a Saturday. If the return is filed and the amount of tax due is paid on or before the due date, the taxpayer is entitled to a discount of two and five-tenths percent (2.5%) of the amount shown on the return to be due. A return must be filed each month even if no taxable transactions occurred.

Returns are required to be filed electronically on the Ohio Business Gateway.

Penalties

Civil penalties are generally imposed on the taxpayer at the point of an assessment.

Failure to timely file a return and make payment

- Additional charge not exceeding the greater of $50.00 or 10% of the tax due

Failure to file a return or pay any tax, interest, or additional charge

- Penalty of up to 15% of all amounts assessed

Distributing tobacco products or vapor products without a license

- Penalty of up to $1,000.00 in addition to possible criminal penalties after being notified of the requirement to obtain a license and failing to comply

Refunds

A refund may be requested by a taxpayer for the following:

1. Any vapor products tax paid erroneously;
2. Any vapor products tax paid on anillegal or erroneous assessment; or
3. Any tax paid on vapor products that have been sold or shipped to retail dealers, wholesale dealers or vapor distributors outside this state, returned to the manufacturer, or destroyed by the taxpayer with the commissioner's prior approval

The application for refund must be filed with the Tax Commissioner within three years from the date of the payment of tax.

Invoicing

In accordance with R.C. 5743.54, all distributors must retain all invoices, bills of lading, and receipts for three years. In addition, when selling vapor products to retailers, all distributors are required to mark each invoice with the following:

- Account number
- A statement indicating that the Ohio excise tax has been paid
- The total vapor volume in grams or milliliters

**If a vapor product is sold in a liquid form, then vapor volume means one-tenth of one milliliter of the vapor product. If a vapor product is sold in in a non-liquid form, then vapor volume means one-tenth of one gram of the vapor product.*

A retail dealer who is not licensed as a vapor products distributor is prohibited from possessing vapor products upon which the tax has not been paid. Payment of the tax is evidenced by invoices from the vapor distributor.

If tax payment cannot be determined by the invoices provided, the vapor products may be confiscated upon inspection under R.C. 5743.55.

Retail Inspections

Under the authority of R.C. 5743.59, the Department's Criminal Investigations Division (CID) may inspect any place where vapor products subject to the tax are sold or stored. CID frequently conducts retail inspections throughout Ohio. Upon inspection, retailers will be expected to provide CID with the following:

- Current license(s)
- Copies of purchase invoices for all vapor products at your location

Additional Information

Vapor products distributors are subject to the same taxes as other businesses in Ohio (e.g. Commercial Activity, Employer Withholding, Employer Withholding School District, Sales/Use, etc). A complete list of taxes administered by the Department can be accessed by visiting tax.ohio.gov and clicking on *Ohio Taxes* located at the bottom of the page. The information published on the Department's website outlines who is subject to the tax, how to register, file electronically, and payment due dates. The majority of the Department's business taxes require electronic filing and payment. Please visit business.ohio.gov to utilize the Ohio Business Gateway for electronic registration, filing, and payment.

To receive updates, please sign up for tax alerts. If you have questions, please contact the Excise & Energy Tax Division via phone 1-855-466-3921, or via email *at* excisecigarette@tax.ohio.gov