



Indiana Department of Revenue

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General Tax Information Bulletin #206

Subject: Other Tobacco Products Tax, Closed System Cartridge Tax, and the Electronic Cigarette Tax

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References: IC 6-7-2, IC 6-7-4

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Summary of Changes

Only nonsubstantive, technical changes have been made to this bulletin. It has been primarily changed to reflect updated formatting.

Introduction

The purpose of this bulletin is to provide guidance regarding the Other Tobacco Products (OTP) tax, the Closed System Cartridge (CSC) Tax, and the Electronic Cigarette Tax. The OTP tax and the CSC tax are taxes collected by distributors on the wholesale price of specified taxable products (either tobacco products, alternative nicotine products, or closed system cartridges, or a combination thereof). The Electronic Cigarette Tax is a tax collected by retailers on the retail price of open system containers and vapor products.

Definitions

"Taxable product" means tobacco products, alternative nicotine products, or closed system cartridges, or any combination thereof.

"Tobacco product" means any product containing, made, or derived from tobacco that is intended for human consumption, or is likely to be consumed, whether chewed, smoked, heated, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product. The term includes, but is not limited to:

- cigars;
- pipe tobacco;
- chewing tobacco;
- moist snuff;
- snus; and
- other similar kinds and forms of tobacco.

The term does not include:

- cigarettes (as defined in IC 6-7-1-2);
- closed system cartridges;
- consumable material;
- open system containers;
- vapor products;
- alternative nicotine products; or
- any drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration and defined in the Federal Food, Drug, and Cosmetic Act.

“Alternative nicotine product” means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any means. The term does not include cigarettes (as defined in IC 6-7-1-2), tobacco products, closed system cartridges, consumable material, open system containers (as defined in IC 6-7-4-5), vapor products (as defined in IC 6-7-4-8), or any product regulated as a drug or device by the United States Food and Drug Administration under 21 U.S.C. 351 to 360fff-7.

“Cigar” means a tobacco product that is a roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette within the meaning of IC 6-7-1-2). The term includes tobacco products commonly known as “little cigars,” which are cigars with an integrated cellulose acetate filter and that are wrapped in a substance containing tobacco.

“Closed system cartridge” means a sealed, prefilled, and disposable container of consumable material in which the container is inserted directly into a vapor product, and is not intended to be opened or accessible through customary or reasonably foreseeable handling or use.

In the context of a closed system cartridge, “consumable material” means any liquid solution or other material used in a closed system container that is depleted as the vapor product is used. In the context of an open system cartridge, “consumable material” means any liquid solution or other material used in an open system container that is depleted as the vapor product is used, but not including closed system cartridges.

“Moist snuff” means any finely cut, ground, or powdered tobacco that is not meant to be smoked or placed in the nasal cavity.

“Open system container” means all containers of consumable material for intended use in a vapor product and for which the container is intended to be refillable. The term does not include closed system cartridges (as defined in IC 6-7-2-0.5).

"Pipe tobacco" means a tobacco product that, because of its appearance, type, packaging, or labeling, is suitable and likely to be smoked in a pipe.

"Vapor product" means any of the following:

- (1) A device, such as an electronic cigarette, that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to produce vapor from consumable material that may or may not be sold with the device.
- (2) Any open system container of a consumable material in a solution or other form that is intended to be used with or in a device described above.
- (3) Disposable vapor product devices that are attached to a closed system cartridge and intended for single use.

A kit that contains various parts that when assembled becomes a device that can produce vapor through the mechanical heating of consumable material would be considered a vapor product. Further, separately sold or replacement atomizers or other mechanical heating devices, as well as tanks, tubes, or other containers for the purpose of holding consumable material, would be considered "vapor products." However, the term "vapor products" does not include separately sold replacement parts or accessories for vapor products that do not themselves meet the definition of a vapor product. Such items include replacement batteries for a battery-powered vapor product device (e.g., AA batteries, button cell batteries, etc.), battery chargers, power supplies, mouthpieces, o-rings, sleeves, storage cases, or tools to install any of the above. Furthermore, the term "vapor product" does not include closed system cartridges.

"Wholesale price" means the net price shown on an invoice and at which the manufacturer of the tobacco products sells tobacco products other than moist snuff to distributors, excluding any discount or other reduction in price that is not shown on the invoice.

"Actual cost" means the price paid by a remote seller for an individual taxable product. "Actual cost list" means an annual list (prepared, maintained, and certified by each remote seller) of the cost of each individual taxable product. For purposes of this subdivision, the actual cost for each individual product in a cost list shall be the average of the actual price paid by a remote seller for the individual product over the 12 calendar months prior to January 1 of the year in which the sale by the remote seller occurs.

OTP Tax

The OTP tax is imposed on the distribution of tobacco products in Indiana at the rate of 24% of the wholesale price of the tobacco products other than moist snuff. For moist snuff, the OTP tax is \$.40 per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for the fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than four, the amount of the OTP tax must be rounded to the next additional cent.

The OTP tax is also imposed on the distribution of alternative nicotine products in Indiana at a rate of \$.40 per ounce, and a proportionate tax at the same rate on all fractional parts of an

ounce, calculated based upon the product weight as listed by the manufacturer. If the tax calculated for a fractional part of an ounce carried to the third decimal place being greater than four, the amount of the OTP tax shall be rounded to the next additional cent.

The distributor of the tobacco products or alternative nicotine products is liable for the tax. The tax is imposed at the time the distributor:

- (1) Brings or causes tobacco products to be brought into Indiana for distribution;
- (2) Manufactures tobacco products in Indiana for distribution;
- (3) Transports tobacco products to retail dealers in Indiana for resale by those retail dealers;
- or
- (4) First receives the tobacco products in Indiana in the case of a distributor or distributor transactions.

However, if a consumer purchases untaxed tobacco products from a distributor or retailer, the consumer is liable for the tax.

A distributor, including a nonresident person who sells tobacco products or alternative nicotine products through an Internet website, catalogs, or other media, must obtain a license before distributing tobacco products in Indiana. A license is valid for one year unless it is suspended or revoked by the department.

An Indiana resident unlicensed wholesaler/retailer purchasing tobacco products or alternative nicotine products through an Internet website, catalog, or other media from a person not licensed as an Indiana distributor must register as a distributor and pay the tax on the wholesale price of the alternative nicotine products or other tobacco products or, if purchasing moist snuff, pay the tax based on the number of ounces. A wholesaler/retailer failing to register and comply with the law commits a Class B misdemeanor. However, the offense is a Level 6 felony if it is committed with intent to evade the tax imposed or to defraud the state. Further, retailers that purchase taxable products from an unregistered distributor, or whose registration is suspended or revoked by the department, is subject to a penalty, which is the greater of 100% of the retail value of the cigarettes purchased or \$5,000 on each purchase.

The distributor is required to remit the tax and file Form OTP-M (Other Tobacco Products Monthly Return) by the 15th day of each month, reporting transactions and taxes due for the preceding month. Any person who is liable for the payment of the OTP tax must file returns electronically and submit payments electronically. Electronic payments are made through an ACH Credit transaction.

A distributor who files a complete return and pays the tax due on a timely basis is entitled to a collection allowance of 0.007 of the amount of tax due.

Temporary price reductions or discounts for the purpose of promoting certain tobacco products or alternative nicotine products are deductible from the original price in determining the "wholesale price" of tobacco products or alternative nicotine products if the finished tobacco product(s) container or container of alternative nicotine products is prepackaged indicating a monetary discount. The "wholesale price" for other tobacco products or alternative nicotine

products prepackaged in multiple units is the actual price paid and not an imputed cost based on the manufacturer's price per single unit. Purchase discounts, quantity discounts, trade discounts, or any other reductions in price are deductible when determining the "wholesale price" of tobacco products or alternative nicotine products for purposes of imposing the OTP tax if the discount is shown on the invoice.

A manufacturer, an importer, a broker, or a shipper of other tobacco products, alternative nicotine products, or moist snuff bringing such products into Indiana for the purpose of giving such products away for any type of promotional purpose must pay the tax due on all such products. In applying the OTP tax to samples, the "wholesale price" is the standard price charged for the single-unit tobacco product or alternative nicotine product before deduction of any discount, including temporary promotional discounts.

CSC Tax

The CSC tax is imposed on the distribution of closed system cartridges in Indiana at the rate of 15% of the wholesale price of the closed system cartridges.

The distributor of the closed system cartridges is liable for the tax. The tax is imposed at the time the distributor:

- (1) Brings or causes closed system cartridges to be brought into Indiana for distribution;
- (2) Manufactures closed system cartridges in Indiana for distribution; or
- (3) Transports closed system cartridges to retail dealers in Indiana for resale by those retail dealers.

However, if a consumer purchases untaxed closed system cartridges from a distributor or retailer, the consumer is liable for the tax.

A distributor, including a nonresident person who sells closed system cartridges through an Internet website, catalogs, or other media, must obtain a license before distributing closed system cartridges in Indiana. A license is valid for one year unless it is suspended or revoked by the department.

An Indiana resident unlicensed wholesaler/retailer purchasing closed system cartridges through an Internet website, catalog, or other media from a person not licensed as an Indiana distributor must register as a distributor and pay the tax on the wholesale price of the closed system cartridges. A wholesaler/retailer failing to register and comply with the law commits a Class B misdemeanor. However, the offense is a Level 6 felony if it is committed with intent to evade the tax imposed or to defraud the state.

The distributor is required to remit the tax and file Form OTP-M (Other Tobacco Products Monthly Return) by the 15th day of each month, reporting transactions and taxes due for the preceding month. Any person who is liable for the payment of the CSC tax must file returns electronically and submit payments electronically. Electronic payments are made through an ACH Credit transaction.

A distributor who files a complete return and pays the tax due on a timely basis is entitled to a collection allowance of 0.007 of the amount of tax due.

NOTE: If a closed system cartridge is sold in the same package as a vapor product device, the tax imposed under this subsection shall only apply to the wholesale price of the closed system cartridge if the wholesale cost of the closed system cartridge can be isolated from the vapor product device on the invoice.

Temporary price reductions or discounts for the purpose of promoting certain closed system cartridges are deductible from the original price in determining the “wholesale price” of closed system cartridges if the finished tobacco product(s) container is prepackaged indicating a monetary discount. The “wholesale price” for closed system cartridges prepackaged in multiple units is the actual price paid and not an imputed cost based on the manufacturer’s price per single unit. Purchase discounts, quantity discounts, trade discounts, or any other reductions in price are deductible when determining the “wholesale price” of closed system cartridges for purposes of imposing the CSC tax if the discount is shown on the invoice.

A manufacturer, an importer, a broker, or a shipper of closed system cartridges bringing such products into Indiana for the purpose of giving such products away for any type of promotional purpose must pay the tax due on all such products. In applying the CSC tax to samples, the “wholesale price” is the standard price charged for the single-unit closed system cartridges before deduction of any discount, including temporary promotional discounts.

Electronic Cigarette Tax

The electronic cigarette tax is imposed on the retail sale of consumable material and vapor products in Indiana at the rate of 15% of the gross retail income received by the retail dealer for the sale.

The person who acquires consumable material or vapor products in a retail transaction is liable for the tax on the transaction, and, except as otherwise stated below, shall pay the tax to the retail dealer as a separate added amount to the consideration in the transaction.

A retail dealer that either has a physical presence in Indiana, or is a remote seller (including a marketplace facilitator) that meets one of Indiana’s economic nexus thresholds for purposes of sales tax, is required to collect and remit the electronic cigarette tax as an agent for the state. For more information on Indiana’s economic nexus thresholds for remote sellers, please see [Sales Tax Information Bulletin #89](https://www.in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/), available online at [in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/](https://www.in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/). A retail dealer that is required to collect and remit the electronic cigarette tax is jointly and severally liable for uncollected tax absent proof of exemption or payment by the purchaser. However, if the tax is not collected by the retail dealer (e.g., when purchasing from a dealer that is not required to collect the tax), the consumer is responsible to remit the tax to the department.

The retail dealer is required to remit the tax and file Form ECG-103 (Electronic Cigarette Tax Monthly Return) by the 15th day of each month, reporting transactions and taxes due for the preceding month. Any person who is liable for the payment of the electronic cigarette tax must file returns electronically and submit payments electronically. Electronic payments are made through an ACH Credit transaction.

The electronic cigarette tax is collected in addition to the sales tax. In other words, the merchant collecting the electronic cigarette tax must also impose and collect sales tax on the transaction for products subject to the electronic cigarette tax. Further, sales tax is imposed on the electronic cigarette tax collected on the transaction. Similarly, when closed system cartridges are sold at retail, the sales tax is imposed on the CSC tax collected at wholesale.

In general, the electronic cigarette tax is imposed and administered in the same manner as the sales tax. All of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the electronic cigarette tax, except to the extent such provisions are in conflict or inconsistent with the specific provisions relating to the electronic cigarette tax.

A retail dealer must obtain a Form ECG-1A (Retail Dealer's Certificate) before selling consumable material or vapor products in Indiana. This certificate is only required for retailers that offer for sale taxable vapor products and consumable material, and only these retailers are required to collect and remit the electronic cigarette tax such products once they've obtained a certificate. A certificate is valid for one year unless it is suspended or revoked by the department. An electronic cigarette retail dealer's certificate may be revoked or suspended by the department in the same manner, for the same reasons, and is subject to the same procedures as for the revocation or suspension of a retail merchant's certificate. If a retail dealer's retail merchant's certificate expires or is revoked by the department, an electronic cigarette retail dealer's certificate issued to the retail dealer under this subsection shall automatically be revoked without notice otherwise required by law.

A retail dealer failing to register, or who operates with a suspended or revoked certificate, commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person knowingly fails to collect and remit the electronic cigarette tax. An individual who is an individual retail dealer or an employee, an officer, or a member of a corporate or partnership retail dealer that has a duty to remit electronic cigarette taxes to the department holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

NOTE: All retailers selling tobacco products or products subject to the electronic cigarette tax are required to obtain and maintain a Tobacco Sales Certificate from the Indiana Alcohol Tobacco Commission. Information on the Tobacco Sales Certificate can be found at the following web address: in.gov/atc/tobacco-resources/tobacco-applications-and-forms/

Examples

Example #1: Product A is a device comprised of a closed system cartridge that is permanently affixed to a vapor product. Product A is intended for single use. Once the consumable material is depleted, it cannot be opened to be refilled. Instead, the entire device is intended to be thrown away. Product A is treated as a closed system cartridge for purposes of the CSC tax. The entire amount of the wholesale price is subject to the CSC tax. These disposable devices are not also subject to the electronic cigarette tax imposed at the retail level.

Example #2: Product B is a replaceable cartridge product. Cartridges can be sold separately or with a device into which the cartridges are inserted. The device is considered a vapor product. Individually sold cartridges are subject to the CSC tax. When cartridges are sold with the devices for a single amount, the CSC tax is imposed on the wholesale price of the closed system cartridge only if the wholesale cost of the closed system cartridge can be isolated from the device. The device would then be subject to the electronic cigarette tax. If the wholesale cost of the closed system cartridge cannot be isolated from the device, the entire amount is subject to the CSC tax, and the vapor product is not subsequently subject to the electronic cigarette tax.

Example #3: Product C is a vapor product device, as it employs a mechanical heating element that can be used to produce vapor from consumable material. However, it can also be used to heat tobacco or other plant-based material. Even though it can be used for other purposes, and the purchaser may intend to use it exclusively for other purposes, the device still meets the definition of a vapor product and would therefore be subject to the electronic cigarette tax.

Example #4: A customer purchases several items to repair a vaping device. They purchase a new atomizer, tank, and mouthpiece to replace the broken parts, as well as a charger and a silicone sleeve for the device. They also purchase two containers of "e-liquid." The atomizer and tank meet the definition of vapor products, and are therefore subject to the electronic cigarette tax. The e-liquid is a consumable material, and is therefore also subject to the electronic cigarette tax. The mouthpiece, charger, and silicone sleeve do not meet either definition, and are therefore not subject to the electronic cigarette tax. All of the items are subject to sales tax, which must be calculated on the electronic cigarette tax collected.

If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.



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