

DEPARTMENT OF STATE REVENUE

Information Bulletin #206
General Tax
August 2023
Effective Date: July 1, 2023
(Replaces Bulletin #206, dated March 2023)

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

REFERENCES: [IC 6-7-2](#), [IC 6-7-4](#)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

Aside from nonsubstantive, technical changes, this bulletin has been updated to reflect changes made in Senate Enrolled Act 382 (2022), Senate Enrolled Act 419 (2023) and House Enrolled Act 1454 (2023) that are effective July 1, 2023, including the means of calculating the OTP and CSC taxes on the sale of taxable products by remote sellers. It has been updated to include a matrix that contains examples of different types of products and whether the products are subject to the CSC tax or the electronic cigarette tax.

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, the consumable material (e.g., e-liquid, vape juice, etc.) used in such containers, and vapor products associated with those containers.

The definitions of these terms are found below. For guidance on which types of products are subject to either the CSC tax or the electronic cigarette tax, as well as sales tax, refer to the matrix at the end of this bulletin.

DEFINITIONS

Product 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 U.S. 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 U.S. 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 the CSC tax, **"consumable material"** means any liquid solution or other material (whether or not it contains nicotine, Cannabidiol (CBD), or any other substance) used in a closed system container that is depleted as the vapor product is used. In the context of the Electronic Cigarette tax, "consumable material" means any liquid solution or other material (whether or not it contains nicotine, CBD, or any other substance) 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.

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.

Sales Definitions

"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.

Seller Definitions

"Distributor" means a person who:

- manufactures, sells, barter, exchanges, or distributes taxable products in Indiana to retail dealers for the purpose of resale;
- purchases taxable products directly from a manufacturer of taxable products; or
- purchases for resale taxable products from a wholesaler, jobber, or distributor outside of Indiana who is not a distributor holding a license issued under this chapter.

"Retail dealer" or "retailer" means a person engaged in the business of selling the products discussed in this bulletin to the ultimate consumers. In the context of the OTP and CSC taxes, the term includes a "remote seller" that meets one or both of the economic thresholds under [IC 6-2.5-2-1\(d\)](#).

"Remote seller" means a retail dealer that meets one or both of the economic thresholds under [IC 6-2.5-2-1\(d\)](#) and sells taxable products to an ultimate consumer under either of the following circumstances:

- (1) By means of a telephone or other method of voice transmission, the mail, or the Internet or other electronic service.
- (2) When the taxable products are delivered to the consumer by common carrier, private delivery service, or other method of delivery.

For more information on Indiana's economic nexus thresholds for remote sellers, refer to Sales Tax Information Bulletin #89, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

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. Effective January 1, 2024, the tax for cigars remains 24% of the wholesale price of a cigar. However, the tax imposed per cigar shall not exceed \$1.

The OTP tax is also imposed on the distribution of alternative nicotine products in Indiana at a rate of \$0.40 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. However, if a remote seller makes the sale where a distributor has not already collected the tax, the remote seller is responsible for the tax. Please refer to the section below for further information.

Distributors

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.

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 and is not transferable.

Remote Sellers

Effective July 1, 2023, the OTP tax is also imposed on the sale of taxable products in Indiana by remote sellers if

an Indiana distributor has not already collected the tax. The tax shall be calculated based on one of the following methods:

- For remote sellers using an actual cost method, the tax shall be calculated by applying the rate to the actual cost of each individual product.
- For remote sellers using an actual cost list method, the tax shall be calculated by applying the rate to the cost established for each individual product in the remote seller's actual cost list.

The OTP tax is imposed at the time of purchase by an ultimate consumer. The remote seller of taxable products is liable for the tax.

A remote seller, including a person that sells taxable products through an Internet web site, must obtain a license under this section before a remote seller can sell taxable products in Indiana. The department shall issue licenses to applicants that qualify. A license issued is valid for one year unless revoked or suspended by the department and is not transferable. An applicant for a license must submit proof to the department of the appointment of an agent for service of process in Indiana if the applicant is:

- an individual whose principal place of residence is outside Indiana; or
- a person, other than an individual, that has their principal place of business outside Indiana.

In order to obtain or renew a license under this section, a person must satisfy all of the following criteria:

- Submit an application that includes all information required by the department.
- Meet one or both of the sales tax economic thresholds under [IC 6-2.5-2-1\(d\)](#) and obtain a registered retail merchant certificate. A person who does not meet the sales tax economic thresholds under [IC 6-2.5-2-1\(d\)](#) may, but is not required to, obtain a license.
- Attest that the person uses third party age verification technology. A remote seller must use age verification through an independent, third-party age verification service that compares:
 - information available from a commercially available data base (or aggregate of data bases) that are regularly used by government agencies and businesses for the purpose of age and identity verification; and
 - personal information entered by the individual during the ordering process;that establishes that the individual is of the required minimum age.
- Pay a fee of \$25 at the time of application.
- Post a bond at the time of application, issued by a surety company approved by the department, in an amount not less than \$1,000 and conditioned on the applicant's compliance with the rules pertaining to the OTP tax.

A remote seller that collects the tax using the actual cost list method to calculate the tax must provide to the department a certified actual cost list for each individual product offered for sale in the subsequent calendar year. The actual cost list shall be updated annually as new products are added to a remote seller's inventory. New products must be added to the actual cost list using the actual cost first paid for each individual product.

If a business owns multiple entities that qualify as a remote seller, a separate license must be obtained for each remote seller. Each license must be numbered, show the name and address of the remote seller, and be kept at the place of business for which it is issued.

If the department determines that a bond provided by a licensee is inadequate, the department may require a new bond in the amount necessary to fully protect the state.

A license issued does not permit the remote seller to sell cigarettes, vapor products, or other products subject to the cigarette tax or the electronic cigarette tax, which have separate licensing and registration requirements.

General Information

An Indiana resident unlicensed wholesaler/retailer/remote seller 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/remote seller 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.

Distributors and remote sellers are 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.

People that sell in interstate commerce must also file Form OTP-PACT (Other Tobacco Products/ENDS PACT Act Report) if they sell roll-your-own and/or smokeless tobacco shipped into another state, locality, or Indian nation that taxes the sale or use of roll-your-own and/or smokeless tobacco. "PACT" refers to the federal Prevent All Cigarette Trafficking Act and "ENDS" refers to electronic nicotine delivery systems. These reports must be filed on or before the 10th day of the month immediately following the last day of the month being reported.

NOTE: Filing Form OTP-M (Other Tobacco Products Monthly Return) or Form ECG-103 (Electronic Cigarette Tax Monthly Return) does not satisfy the obligation of a remote retailer (delivery seller) to file Form OTP-PACT by the 10th day of each month, as required by the federal PACT Act, when shipping Products covered by PACT to consumers in Indiana.

A distributor or remote seller 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.

A distributor or remote seller that changes its place of business shall return its license, and the department shall issue, free of charge, a new license for the new place of business.

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. However, if a remote seller makes the sale where a distributor has not already collected the tax, the remote seller is responsible for the tax. Please refer to the section below for further information.

NOTE: If a closed system cartridge is sold in the same package as a vapor product device, the CSC tax only applies 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.

For information on how the CSC tax applies to various products, please refer to the Taxability Matrix at the end of this document.

Distributors

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 and is not transferable.

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.

Remote Sellers

Effective July 1, 2023, the CSC tax is also imposed on the sale of taxable products in Indiana by remote sellers if an Indiana distributor has not already collected the tax. The tax shall be calculated based on one of the following methods:

- For remote sellers using an actual cost method, the tax shall be calculated by applying the rate to the actual cost of each individual product.
- For remote sellers using an actual cost list method, the tax shall be calculated by applying the rate to the cost established for each individual product in the remote seller's actual cost list.

The CSC tax is imposed at the time of purchase by an ultimate consumer. The remote seller of taxable products is liable for the tax.

A remote seller, including a person that sells taxable products through an Internet web site, must obtain a license under this section before a remote seller can sell taxable products in Indiana. The department shall issue licenses to applicants that qualify. A license issued is valid for one year unless revoked or suspended by the department and is not transferable. An applicant for a license must submit proof to the department of the appointment of an agent for service of process in Indiana if the applicant is:

- an individual whose principal place of residence is outside Indiana; or
- a person, other than an individual, that has their principal place of business outside Indiana.

In order to obtain or renew a license under this section, a person must satisfy all of the following criteria:

- Submit an application that includes all information required by the department.
- Meet one or both of the sales tax economic thresholds under [IC 6-2.5-2-1\(d\)](#) and obtain a registered retail merchant certificate. A person who does not meet the sales tax economic thresholds under [IC 6-2.5-2-1\(d\)](#) may, but is not required to, obtain a license.
- Attest that the person uses third-party age verification technology. A remote seller must use age verification through an independent, third-party age verification service that compares:
 - information available from a commercially available data base (or aggregate of data bases) that are regularly used by government agencies and businesses for the purpose of age and identity verification; and
 - personal information entered by the individual during the ordering process;that establishes that the individual is of the required minimum age.
- Pay a fee of \$25 at the time of application.
- Post a bond at the time of application, issued by a surety company approved by the department, in an amount not less than \$1,000 and conditioned on the applicant's compliance with the rules pertaining to the OTP tax.

A remote seller that collects the tax using the actual cost list method to calculate the tax must provide to the department a certified actual cost list for each individual product offered for sale in the subsequent calendar year. The actual cost list shall be updated annually as new products are added to a remote seller's inventory. New products must be added to the actual cost list using the actual cost first paid for each individual product.

If a business owns multiple entities that qualify as a remote seller, a separate license must be obtained for each remote seller. Each license must be numbered, show the name and address of the remote seller, and be kept at the place of business for which it is issued.

If the department determines that a bond provided by a licensee is inadequate, the department may require a new bond in the amount necessary to fully protect the state.

A license issued does not permit the remote seller to sell cigarettes, vapor products, or other products subject to the cigarette tax or the electronic cigarette tax, which have separate licensing and registration requirements.

General Information

An Indiana resident unlicensed wholesaler/retailer/remote seller 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/remote seller 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.

Distributors and remote sellers are 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.

People that sell in interstate commerce must also file Form OTP-PACT (Other Tobacco Products/ENDS PACT Act Report) if they sell roll-your-own and/or smokeless tobacco shipped into another state, locality, or Indian nation that taxes the sale or use of roll-your-own and/or smokeless tobacco. "PACT" refers to the federal Prevent All Cigarette Trafficking Act and "ENDS" refers to electronic nicotine delivery systems. These reports must be filed on or before the 10th day of the month immediately following the last day of the month being reported.

NOTE: Filing Form OTP-M (Other Tobacco Products Monthly Return) or Form ECG-103 (Electronic Cigarette Tax Monthly Return) does not satisfy the obligation of a remote retailer (delivery seller) to file Form OTP-PACT by the 10th day of each month, as required by the federal PACT Act, when shipping Products covered by PACT to consumers in Indiana.

A distributor or remote seller 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 CSC tax applies 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.

A distributor or remote seller that changes its place of business shall return its license, and the department shall issue, free of charge, a new license for the new place of business.

ELECTRONIC CIGARETTE TAX

The electronic cigarette tax is imposed on the retail sale of consumable material (e.g., e-liquid, vape juice, etc.) and vapor products (including open system containers) in Indiana at the rate of 15% of the gross retail income received by the retail dealer for the sale.

NOTE: For information on how the electronic cigarette tax applies to various products, please refer to the Taxability Matrix at the end of this document.

A retail dealer is responsible for collecting the tax as a separate added amount to the consideration in the transaction. The person who acquires consumable material or vapor products in a retail transaction is liable for the tax on the transaction.

NOTE: 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.

A retail dealer is required to collect and remit the electronic cigarette tax as an agent for the state. This includes dealers that either have a physical presence in Indiana or that are remote sellers (including a marketplace facilitator) that meets one of Indiana's economic nexus thresholds for purposes of sales tax. For more information on Indiana's economic nexus thresholds for remote sellers, please see Sales Tax Information Bulletin #89, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

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.

People that sell in interstate commerce must also file Form OTP-PACT (Other Tobacco Products/ENDS PACT Act Report) if they sell roll-your-own and/or smokeless tobacco shipped into another state, locality, or Indian nation that taxes the sale or use of roll-your-own and/or smokeless tobacco. "PACT" refers to the federal Prevent All Cigarette Trafficking Act and "ENDS" refers to electronic nicotine delivery systems. These reports must be filed on or before the 10th day of the month immediately following the last day of the month being reported.

NOTE: Filing Form OTP-M (Other Tobacco Products Monthly Return) or Form ECG-103 (Electronic Cigarette Tax Monthly Return) does not satisfy the obligation of a remote retailer (delivery seller) to file Form OTP-PACT by the 10th day of each month, as required by the federal PACT Act, when shipping Products covered by PACT to consumers in Indiana.

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 (Open System 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 on such products once they've obtained a certificate. If a retailer only sells closed system cartridges and not vapor products and consumable material, they do not need to obtain this 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 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.

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 is available at 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 closed system 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. If the wholesale cost of the closed system cartridge cannot be isolated from the device, the entire amount is subject to the CSC 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.

APPENDIX A - TAXABILITY MATRIX

Item Type	Description	Taxability			Explanation
		Closed System Cartridge Tax	Electronic Cigarette Tax	Sales Tax on Retail Sales	
Closed System Cartridges (sold separately)	Cartridges containing consumable material to be inserted into a vapor product to produce vapor.	Yes		Yes	Meets the definition of a closed system cartridge.
Closed System Cartridges Sold with Battery Device (sold for one price)	Cartridges containing consumable material sold with a battery device (a type of vapor product) into which they are intended to be inserted.	Yes (whole amount subject to closed system cartridge tax)		Yes	The law provides that if a closed system cartridge is sold in the same package as a vapor product device, the CSC tax only applies 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.
Closed System Cartridges Sold with Battery Device (items listed separately on bill)	Cartridges containing consumable material sold with a battery device (a type of vapor product) into which they are intended to be inserted.	Yes		Yes	Because the cartridge price is broken out from the vapor product within the package, only the cartridge is subject to the closed system cartridge tax.
Disposables	A single use, self-contained device that includes a battery, atomizer, & e-liquid. It cannot be refilled or serviced.	Yes		Yes	Contains a closed system cartridge permanently affixed to a vapor product (the atomizer/battery). Because the cost of the closed system cartridge is not broken out from vapor product,

					entire amount subject to the CSC tax.
Disposable Atomizer/Pod	An empty disposable device consisting of a chamber that can be refilled and an atomizer that cannot be serviced.		Yes	Yes	Meets the first part of the definition of "vapor products:" It is a device that employs a mechanical heating element that can be used to produce vapor from consumable material.
E-liquid	A water-soluble solution that may or may not contain nicotine that is intended to be vaporized and inhaled.		Yes	Yes	Meets the definition of consumable material.
Open System Device	A device that can be filled and refilled with consumable material to produce vapor (e.g., electronic cigarettes, pens, etc.).		Yes	Yes	Meets the first part of the definition of "vapor products:" It is a device that employs a mechanical heating element that can be used to produce vapor from consumable material.
Power Supply/'Mod'	A device that with a built-in or removable/replaceable battery, or a wired A/C power source, which has a threaded connection. Besides connecting to a vapor product, it could be used to connect with different attachments with functions other than for vaping.			Yes	Does not meet the definition of vapor products or consumable material.
Loose Batteries/Cells	Any type of battery that can provide power for a power supply/mod (e.g., alkaline batteries, lithium batteries, lithium polymer battery packs, etc.).			Yes	Does not meet the definition of vapor products or consumable material.
Battery Charger	Multi-use battery chargers that would be capable of charging any of the battery types listed above in the definition of "loose battery cells."			Yes	Does not meet the definition of vapor products or consumable material.
Tank	A refillable & serviceable container that is composed of a connector (threaded,		Yes	Yes	Meets the second part of the definition of "vapor products:" It is an open system container of a consumable

	mechanical, magnetic, etc.) for attachment to a power supply/'mod', a chamber (glass, plastic, etc.) to contain e-liquid, a fixed or removable mouthpiece, seals and/or O-rings, and a space for an atomizing head/heating element.				material in a solution or other form that is intended to be used with a mechanical heating element/battery to produce vapor.
Rebuildable atomizer (RBA, RTA, RDA, etc.)	A device that is sold unassembled and intended to be assembled and used by the end user. Consisting of a connector (threaded, mechanical, magnetic, etc.) to attach to a power supply/'mod', and a positive & a negative terminal for attaching resistance wire to. May or may not include chamber to hold vapable liquid, or a space for an absorbent material that holds and wicks an e-liquid to the resistance wire.		Yes	Yes	Meets the first part of the definition of "vapor products:" It is a device that employs a mechanical heating element that can be used to produce vapor from consumable material.
Replacement Glass or Plastic Tubes	A removable/replaceable glass or plastic tube or cylinder that is a component of a tank and is meant to contain a vapable liquid inside the tank. Can replace broken OEM parts, or upgrade/customize the user's tank.		Yes	Yes	Meets the second part of the definition of "vapor products:" It is an open system container of a consumable material in a solution or other form that is intended to be used with a mechanical heating element/battery to produce vapor.
O-ring/Seals	Used to seal the liquid chamber of a tank. Can come in different colors to customize an end user's tank.			Yes	Does not meet the definition of vapor products or consumable material.
Mouthpieces	Designed for tanks that have a removable mouthpiece. Available in different colors and styles for user's customization, or as a replacement for a broken or lost OEM part.			Yes	Does not meet the definition of vapor products or consumable material.
Atomizer Head/Heating Element	A semi durable component consisting of a		Yes	Yes	Meets the first part of the definition of "vapor products:" It

	metal chassis, some form of wicking material (e.g., cotton, tea tree or bamboo fiber, silica wick, porous ceramic, polyester fiber fill), some form of a resistor (e.g., wire, mesh, semiconductive ceramics) for the purpose of creating heat, and a positive and a negative electrical connector.				is a device that employs a mechanical heating element that can be used to produce vapor from consumable material.
Complete Kit (does not include e-liquid)	A kit typically consisting of a tank, power supply/'mod', and spare parts.		Yes	Yes	Meets the first part of the definition of "vapor products:" It is a device that employs a mechanical heating element that can be used to produce vapor from consumable material.
Silicone Protector/Sleeve/Barrel	A molded silicone protector used to accessorize and/or protect devices. Can be molded to fit specific power supplies/'mods', tanks, or replacement glass or plastic tubes.			Yes	Does not meet the definition of vapor products or consumable material.
Storage Devices (e.g., Carrying Case, Lanyards, etc.)	Made to accessorize, store, or to make more convenient carrying possible.			Yes	Does not meet the definition of vapor products or consumable material.
Cotton	Common loose cotton used for making wicks for Rebuildable atomizer (RBA, RTA, RDA)			Yes	Does not meet the definition of vapor products or consumable material.
Spooled Resistance Wire or Mesh	Resistive material created for industrial use that is repurposed for use in rebuildable atomizer (RBA, RTA, RDA). Can be made of alloys such as Kanthal, Nickel Chromium, Stainless Steel, or Mostly Pure metals such as Titanium or Nickel.			Yes	Does not meet the definition of vapor products or consumable material.
Tool Set for Rebuilding	Set of tools packaged solely for the purpose of servicing rebuildable atomizers (RBA, RTA, RDA)			Yes	Does not meet the definition of vapor products or consumable material.

Indiana Register

Spare Parts (screws, conductive pins, electric connectors etc.)	Can be used to service power supplies/'mods', tanks, or rebuildable atomizers (RBA, RTA, RDA)			Yes	Does not meet the definition of vapor products or consumable material.
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If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.

Robert J. Grennes, Jr.
Commissioner

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