

GUIDELINES AND RULES FOR MANUFACTURERS, DISTRIBUTORS, AND RETAIL DEALERS OF LIQUID NICOTINE OR NICOTINE VAPOR PRODUCTS

October 31, 2024

During the 2024 Session, the Virginia General Assembly enacted House Bill [790](#) and Senate Bill [582](#) (2024 *Acts of Assembly*, Chapters 821 and 796), which established that any person engaged in the business of selling, dealing, shipping, or transporting liquid nicotine or nicotine vapor products as a manufacturer, distributor, or retail dealer within Virginia must obtain a license for each location or place of business from the Department of Taxation (“the Department”) for the purposes of the Tobacco Products Tax.

Item [3-5.19](#) (E) of House Bill 6001 (the “2024 Appropriation Act”) and *Va. Code* § [58.1-1021.04:5](#) require the Tax Commissioner to establish guidelines and rules (“guidelines”), including recordkeeping requirements, for implementation of the tobacco products tax on liquid nicotine. The 2024 Appropriation Act and *Va. Code* § 58.1-1021.04:5 further provide that the development and publication of these guidelines shall be exempt from the provisions of the Administrative Process Act (*Va. Code* § [2.2-4000](#) *et seq.*)

These guidelines complement the Department’s existing [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76 (May 4, 2020). Therefore, for information on definitions, the imposition of the tax, the manufacturer’s sale price, exemptions, penalties applicable to unlawful possession of tobacco product, licensing of distributors, filing of monthly returns, penalties and interest, credits and refunds, the manufacturer’s report, appeals and any other topics not addressed by these guidelines, taxpayers should consult the [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76. However, to the extent that there is a conflict between the Department’s existing guidance and 2024 *Acts of Assembly*, Chapters 821 and 796, the provisions of such acts, as interpreted by these guidelines, supersede existing guidance. These guidelines are available online in the Law, Rules and Decisions section of the Department’s website. As necessary, additional guidelines and rules will be published and posted on the Department’s website at www.tax.virginia.gov. For additional information, please contact the Department’s Tobacco Unit at tobaccounit@tax.virginia.gov or call (804) 371-0730.

Definitions

For the purpose of the Tobacco Products Tax:

“Alternative nicotine product” means any noncombustible product containing nicotine that is not made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. “Alternative nicotine product” does not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug

Administration (FDA) under Chapter V (21 U.S.C. § 351 *et seq.*) of the Federal Food, Drug, and Cosmetic Act.

“Consumer” means the person who is the end or final user of tobacco products or liquid nicotine.

“Delivery sale” means a sale of liquid nicotine or nicotine vapor products to a consumer in the Commonwealth in which the consumer submits the order for the sale by telephone, over the Internet, or through the mail or another delivery system, and where the liquid nicotine or nicotine vapor products are shipped through a delivery service. “Delivery sale” does not include a sale of liquid nicotine or nicotine vapor products not for personal consumption to a person who is a manufacturer, distributor, or retail dealer.

“Liquid Nicotine” means a liquid or other substance containing nicotine in a concentration that is sold, marketed, and intended for use in a nicotine vapor product.

“Nicotine vapor product” means any noncombustible product containing nicotine that 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 nicotine in a solution or other form, including liquid nicotine. “Nicotine vapor product” includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, closed system, open system, or similar product or device and any cartridge or other container of nicotine in a solution or other form, including liquid nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Nicotine vapor product” does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 *et seq.*) of the Federal Food, Drug, and Cosmetic Act.

“Retail dealer” means every person that sells or offers for sale any tobacco product or liquid nicotine to consumers at retail in a transaction other than a remote retail sale and includes any person that holds an approved Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products Distributor’s License issued by the Department of Taxation.

“Retail tobacco product” means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by other means, including a cigarette, a heated tobacco product, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. “Retail tobacco product” includes any nicotine vapor product as that term is defined in § 58.1-1021.01. “Retail tobacco product” does not include any drugs or devices, as such terms are defined in 21 U.S.C. § 321, or combination products, as such term is used in 21 U.S.C. § 353, if such drugs, devices, or combination products are authorized for sale by the U.S. Food and Drug Administration.

“Tobacco retailer” means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment. “Tobacco retailer” does not include nonmanagement employees of a tobacco retail establishment.

“Tobacco retail establishment” means any place of business where retail tobacco products are available for sale to the general public, including any grocery store, retail tobacco product shop, kiosk, convenience store, gasoline service station, bar, or restaurant where retail tobacco products are available for sale to the general public.

For all other definitions that were unchanged by 2024 Acts of Assembly, Chapters 821 and 796, please see the Department’s existing [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76 for such definitions.

New Rates Applicable to Liquid Nicotine and Certain Heated Tobacco Products

Pursuant to Va. Code § [58.1-1021.02](#) and Item [3-5.19](#) of the 2024 Appropriation Act and effective July 1, 2024, the following rates are imposed for the Tobacco Products Tax:

- On liquid nicotine at a rate of \$0.11 per milliliter of liquid; and
- On sales of heated tobacco products that do not constitute “cigarettes,” as defined in Va. Code § [58.1-1000](#), as amended by House Bill [1099](#) (2024 Acts of Assembly, Chapter 611), at the rate of 20% of the wholesale price.

On all other tobacco products, the applicable tax rates did not change. As a result, please see the Department’s existing [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76, for the rates on such products.

Heated tobacco products that constitute “cigarettes,” as defined in Va. Code § [58.1-1000](#), they are subject to the Cigarette Tax in lieu of the Tobacco Products Tax. See House Bill [1099](#) (2024 Acts of Assembly, Chapter 611) for additional details.

Licensing of Manufacturers, Distributors, and Retail Dealers of Liquid Nicotine and Nicotine Vapor Products

As set forth by the Department in Tax Bulletin [24-4](#) (July 22, 2024), any person engaged in the business of selling or dealing liquid nicotine or nicotine vapor products, or who ships or transports liquid nicotine or nicotine vapor products to retailers in Virginia, must obtain a license from the Department for each location or place of business. The license must be prominently displayed at the premises covered by the license.

Any retail dealer who holds a Retail Sales and Use Tax Exemption Certificate for Stamped Cigarettes Purchased for Resale or a Tobacco Products (OTP) Distributor’s License is not required to obtain an additional license for liquid nicotine or nicotine vapor products.

Every application for a license must be made on a form prescribed by the Department and the following information must be provided:

- The name and address of the applicant. If the applicant is a firm, partnership, or association, the name and address of each of its members shall be provided. If the application is a corporation, the name and address of each principal officer shall be provided;
- The address of the applicant's principal place of business;
- The place or places where the business to be licensed is to be conducted; and,
- Such other information as the Department may require.

The relevant forms, Form TT-10, Application for Liquid Nicotine and Nicotine Vapor Products License, and Form TT-10A, Application for Liquid Nicotine and Nicotine Vapor Products License Personal Data Form, are available on the Department's web site at www.tax.virginia.gov. Each application must be accompanied by a non-refundable application fee of \$400. All dealers subject to the new licensing requirements must submit their applications by December 31, 2024.

The Department will conduct a background investigation of the applicant or its responsible principals and managers, including a Virginia criminal history records search that shall be submitted to the Federal Bureau of Investigation if the Department deems a national criminal records search necessary.

The Department may refuse to issue a liquid nicotine and nicotine vapor products license or may suspend, revoke or refuse to renew a manufacturer's, distributor's, or retail dealer's license if it determines that the applicant or any of its principals and managers have been 1) found guilty of any fraud or misrepresentation in any connection; 2) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or 3) convicted of a felony within the last five years. Any person who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an application for a liquid nicotine and nicotine vapor products license is guilty of a Class 1 misdemeanor.

The liquid nicotine and nicotine vapor products license is valid for two years. The Department may at any time suspend or revoke the approved license, permit, or registration issued in accordance with Va. Code § [58.1-1021.04:1](#) (C) to any person who is found guilty of violating or noncompliance with any of the provisions of Chapter 10 of Title 58.1 of the *Virginia Code* or any of the rules of the Department adopted and promulgated under the authority of that chapter.

Penalties Applicable to the Sale of Retail Tobacco Products to Underage Individuals

Virginia Code § [59.1-293.12](#) requires the Department to impose penalties on a retail dealer of retail tobacco products if the Department has determined that it has sold a retail tobacco product to a person under 21 years of age or violated subsection A or B of *Va. Code* § [18.2-371.2](#). The penalties are as follows:

- Upon the first violation, a penalty of no less than \$1,000;
- Upon a second violation in a 36-month period, a penalty of no less than \$5,000;
- Upon a third violation in a 36-month period, a penalty of no less than \$10,000, and a 30-day suspension of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an OTP Distributor's License;
- Upon a fourth violation in a 36-month period, revocation of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or OTP Distributor's License, and ineligibility to possess that license for a period of 36 months from the date of the most recent violation.

For the purposes of determining if a retail dealer has violated the restrictions on the sale of retail tobacco products to minors, unannounced investigations at least every 24-months will be conducted. The Department is required to collaborate with Virginia Alcoholic Beverage Control Authority and local law enforcement to the extent possible to enforce these provisions.

Enhanced Penalties Applicable to Sales of Liquid Nicotine or Nicotine Vapor Products to Underage Individuals By Unlicensed Sellers

In addition to the *Va. Code* § 59.1-293.12 penalties, *Va. Code* § [58.1-1021.04:1](#) imposes penalties on any retail establishment that: (i) sells liquid nicotine or nicotine vapor products to a person who has not attained the legal age for that purchase, and (ii) makes a sale without a valid liquid nicotine and nicotine vapor products license. The penalties are as follows:

- Upon the first violation, a penalty of no less than \$1,000.
- Upon the second violation in a 36-month period, a penalty of no less than \$5,000, and a 30-day suspension of the liquid nicotine and nicotine vapor products license.
- Upon the third violation in a 36-month period, a penalty of no less than \$10,000, revocation of the liquid nicotine and nicotine vapor products license for a period of three years from the date of the most recent violation.

Records

Under the Department's existing [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76, various record-keeping rules apply to distributors. Those rules have not changed. As a result, distributors should continue to follow the Department's existing [Guidelines and Rules for the Tobacco Products Tax](#), Public Document 20-76, for information regarding record-keeping.

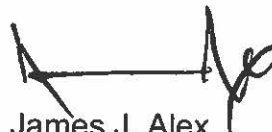
However, *Va. Code* § [58.1-1021.02](#), as amended by House Bill [790](#) and Senate Bill [582](#) (2024 *Acts of Assembly*, Chapters 821 and 796) now requires retail dealers to maintain certain records. Specifically, in any transaction of liquid nicotine or nicotine vapor products between a distributor and a retail dealer, both the distributor and the retail dealer must keep records of all invoices or sales receipts. These records must detail the types of products included in such transaction, the tax due on each product and the total taxes paid.

Persons failing to make records available for inspection by the Department during regular business hours are guilty of a Class 2 misdemeanor under *Va. Code* § 58.1-103.

Additional Information

These Guidelines and rules are available on-line in the Laws, Rules, and Decisions section of the Department's website, located at www.tax.virginia.gov. For additional information, please contact the Department's Tobacco Unit @ tobaccounit@tax.virginia.gov or call (804) 371-0730.

Approved,



James J. Alex
Tax Commissioner
Commonwealth of Virginia