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SPECIAL NOTICE

Electronic Cigarette Products Tax

Purpose: This Special Notice describes the imposition of tax beginning on October 1, 2019, on all sales in this state of electronic cigarette products.

New Tax on Electronic Cigarette Products: Beginning on October 1, 2019, a tax is imposed on the first sale or use in Connecticut of any electronic cigarette product at a rate of either (1) \$0.40 per milliliter of the electronic cigarette liquid contained within an electronic cigarette product that is prefilled, sealed by the manufacturer and not intended to be refillable, or (2) 10% of the wholesale sales price of any other electronic cigarette product.

Definitions: As used in this Special Notice:

DRS means Department of Revenue Services.

Electronic cigarette liquid means a liquid that, when used in an electronic nicotine delivery system or vapor product, produces a vapor that includes nicotine and is inhaled by the user of such electronic nicotine delivery system or vapor product.

Electronic cigarette products means electronic nicotine delivery systems, liquid nicotine containers, vapor products and electronic cigarette liquids.

Electronic cigarette wholesaler means

- Any person engaged in the business of selling electronic cigarette products at wholesale in the state;
- Any person in this state who purchases electronic cigarette products at wholesale from a manufacturer; **or**
- Any dealer, retailer or other person that otherwise imports, or causes another person to import, untaxed electronic cigarette products into this state.

Electronic nicotine delivery system means an electronic device used in the delivery of nicotine or other substances to a person inhaling from the device, and includes, but is not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or electronic hookah and any related

device and any cartridge or other component of such device, including, but not limited to, electronic cigarette liquid.

Liquid nicotine container means a container that holds a liquid substance containing nicotine that is sold, marketed or intended for use in an electronic nicotine delivery system or vapor product. A “liquid nicotine container” **does not include** a container that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

Person includes any individual, corporation, limited liability company or partnership and any officer or employee of any corporation, including a dissolved corporation, and a member or employee of any partnership or limited liability company who, as such officer, employee or member, is under a duty to file a tax return under this section on behalf of an electronic cigarette wholesaler or to collect or truthfully account for and pay over the tax imposed under this section on behalf of an electronic cigarette wholesaler.

Sale means any transfer of title or possession or both, exchange, barter, distribution or gift, of electronic cigarette products, with or without consideration.

Vapor product means any product that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, to produce a vapor that may include nicotine and is inhaled by the user of such product. A “vapor product” **does not include** the following medicinal or therapeutic products:

- A device used by a licensed health care provider to treat a patient in a health care setting;
- A device used by a patient, as prescribed or directed by a licensed health care provider in any setting;
- Any drug or device, as defined in the federal Food, Drug and Cosmetic Act, 21 USC 321;
- Any combination product, as described in the federal Food, Drug and Cosmetic Act, 21 USC 353(g); **or**

- Any biological product, as described in 42 USC 262, and 21 CFR 600.3 authorized for sale by the United States Food and Drug Administration.

Wholesale sales price means the price of electronic cigarette products when sold or, if no price has been set, the wholesale value of such products.

Tax Rates on Electronic Cigarette Products:

Effective October 1, 2019, and applicable to sales occurring on or after October 1, 2019, a tax is imposed on the first sales or use of electronic cigarette products made in Connecticut by electronic cigarette wholesalers as follows:

- \$0.40 per milliliter of the electronic cigarette liquid (“juice”) contained within an electronic cigarette product that is prefilled, sealed by the manufacturer and not intended to be refillable.
- 10% of the wholesale sales price of any other electronic cigarette product, whether or not sold at wholesale, or if not sold, then the wholesale value of the product.

There are two primary types of delivery systems used to heat electronic cigarette liquid to produce a vapor that is then inhaled.

1. The “closed system,” which consists of a single-use, disposable vapor product prefilled with electronic cigarette liquid or a vapor product and “pods” or “cartridges” that are prefilled, sealed by the manufacturer and not intended to be refilled.
2. The “open system,” which consists of any electronic nicotine delivery system or vapor product that is intended to be refillable.

Both systems, and all of the products used in those systems, are subject to the electronic cigarette products tax with the exception of electronic cigarette liquid that does not contain nicotine.

Examples of Electronic Cigarette Products Subject to Tax:

- \$0.40 per milliliter of the electronic cigarette liquid (“juice”) contained within:
 - Manufacturer-prefilled cartridges and pods; **and**
 - Manufacturer pre-filled disposable/ one-time use electronic cigarettes.
- 10% of the wholesale sales price:
 - Refillable liquid nicotine containers;

- Electronic cigarette liquid containing nicotine;
- Reusable electronic cigarettes, vape pens, electronic cigars, electronic cigarillos, electronic pipes or electronic hookahs;
- Any other product that is used to produce a vapor, including the following:
 - Advanced Personal Vaporizers (APV) or “mods” (modified electronic cigarettes), which are larger units that have replaceable batteries, and can either be mechanical, variable voltage, or variable wattage;
 - Vapor “box mods,” which are vapor products shaped like a box that is typically wider than electronic cigarettes;
 - Cartomizers, which are vapor products with a tank system that is filled with a polyfill material, used to soak with electronic cigarette liquid, which is then heated to produce vapor.
 - Clearomizers, which are vapor products with a transparent tank system, without polyfill material, usually made of thin plastic, which is heated to produce vapor; **and**
 - Atomizers, which are the part of an electronic cigarette that houses a coil and wick that is heated to produce vapor from electronic cigarette liquid.

➤ Special Rules for Bundled Items:

Electronic cigarette wholesalers may sell electronic cigarette products that are bundled together in one package. These packages can contain a combination of items that are subject to tax at the \$0.40 per milliliter rate, and other items subject to tax at 10% of the wholesale sales price.

An example of a bundled package is an electronic cigarette starter kit, which typically contains one or two electronic cigarettes, a charger, and a pack of pre-filled pods.

Although such kits are typically sold to a retail customer for a single price, an electronic cigarette wholesaler may separately assess, based upon the relative value of the items in the kit, the portion of the sales price that is attributed to items subject to the \$0.40 per milliliter tax and items subject to the 10% wholesales sales price and calculate the appropriate rate of tax on that portion of the sales price. If the wholesaler does not separately assess the sales price, tax will be calculated on the wholesale sales price of the entire kit at the 10% wholesale rate.

Examples of Products Not Subject to the Electronic Cigarette Products Tax: Products related to electronic cigarettes that are not subject to the tax **include** the following items:

- Non-nicotine electronic cigarette liquids;
- Separately sold batteries used for vapor products;
- Separately sold charging units used for vapor products;
- Separately sold vapor product cases intended solely for protection of the product; **and**
- Separately sold vapor product accessories such as electronic cigarette decals or “skins,” and other items used only to enhance the appearance of the electronic cigarette product.

Who is required to file a return and pay the electronic cigarette products tax?

All electronic cigarette wholesalers making sales or use in Connecticut on or after October 1, 2019, of electronic cigarette products are required to pay tax on such sales or use by electronically filing a monthly return (**Form ECIG-351, *Electronic Cigarette Products Tax Return***) and making electronic payments of the tax to DRS.

The first due date for electronic cigarette wholesalers making sales in Connecticut to file a return and pay the tax is November 30, 2019. **There is no grace period.**

File Form ECIG-351 if you are:

- Engaged in the business of selling electronic cigarette products at wholesale in Connecticut;
- A dealer, or retailer that imports, or causes another person to import, untaxed electronic cigarette products into this state; **or**
- Any person who purchases electronic cigarette products at wholesale from a manufacturer.

Individuals who import untaxed electronic cigarette products into Connecticut for their own personal use must file **Form AU-351, *Tax Return for Persons in Possession of Untaxed Electronic Cigarette Products***, to report their purchases of untaxed electronic cigarette products.

All electronic cigarette products are also subject to Connecticut sales and use tax, which means that individuals importing untaxed electronic cigarette products for personal use in Connecticut will calculate and pay the use tax due on these products on the Form AU-351.

Prohibition on Sales of Electronic Delivery Systems and Vapor Products to Persons under 21 Years of Age: Effective October 1, 2019, DRS, in conjunction with the Department of Mental Health and Addiction Services (DMHAS) and the Department of Consumer Protection is authorized to enforce restrictions against the sale, giving or delivering of electronic nicotine delivery systems and vapor products to any person under 21 years of age, including the use of false identification by a person under 21 years of age to purchase such products.

As part of this enforcement effort, these agencies may conduct unannounced compliance checks of registered businesses, impose civil penalties and suspend or revoke the dealer registration of the business entity involved.

For more information, visit the DMHAS website at www.ct.gov/dmhas/site/default.asp.

Effective Date: October 1, 2019.

Statutory Authority: 2019 Conn. Pub. Acts 117, § 351; Conn. Gen. Stat. § 21a-415, as amended by 2019 Conn. Pub. Acts 13, § 9; 2019 Conn. Pub. Acts 13, § 12; Conn. Gen. Stat. § 53-344b, as amended by 2019 Conn. Pub. Acts 13, § 16.

Effect on Other Documents: None.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in state or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS.

For Further Information: Call DRS during business hours, Monday through Friday:

- **800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at portal.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at portal.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Choose a payment date up to the due date of the tax and mail a paper return to complete the filing process.

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