

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100002	Vapor Products Tax - Common Questions

State of Wisconsin
Department of Revenue

Vapor Products Tax

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

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2. Who is subject to the vapor products tax?
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11. Is there a maximum number of rows of data that can be entered or uploaded on a tax return when filing in My Tax Account (MTA)?
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15. How do I print a copy of my return and schedules in My Tax Account?

16. On the TT-101, *Uniform Tobacco and Vapor Products Transaction Schedule*, can I list all vapor products of the same brand (different flavors) on one line? Do I need to list every flavor and product variation separately?
17. I hold a tobacco and vapor products distributor permit (selling vapor products at wholesale to retailers) and I am also a vapor products retailer selling vapor products to the ultimate consumer at a vape shop. Am I required to report retail sales to the ultimate consumer on the schedule of disbursements attached to the TT-100, *Wisconsin Distributor's Tobacco and Vapor Products Tax Return*? Specifically, am I required to report all of my sales as transaction code 2C (vapor products disbursed to an end user) on TT-101, *Uniform Tobacco and Vapor Products Transaction Schedule*?

1. **What is the vapor products tax?**

Effective October 1, 2019, Wisconsin law imposes an excise tax on vapor products received by distributors in Wisconsin. A distributor includes an out-of-state business that sells vapor products to retailers in Wisconsin, and a business that sells untaxed vapor products at retail in Wisconsin who brings, or causes to be brought, such products into Wisconsin (sec. 139.75(4), Wis. Stats.).

As defined in sec. 139.75(14), Wis. Stats., "vapor product" means a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or substance contains nicotine.

The tax is imposed on the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or other disposition for any purpose of vapor products at the rate of 5 cents per milliliter of the liquid or other substance based on the volume listed by the manufacturer and at a proportionate rate for any other quantity or fractional part thereof. The tax is due at the time of receipt of untaxed product within the state.

2. **Who is subject to the vapor products tax?**

A. A person engaged as a distributor (secs. 139.75(4) and 139.76(1m), Wis. Stats.).

"Distributor" means any of the following:

- Any person engaged in the business of selling vapor products in Wisconsin who brings, or causes to be brought, into Wisconsin from outside Wisconsin any vapor products for sale;
- Any person who makes, manufactures or fabricates vapor products in Wisconsin for sale in Wisconsin; or
- Any person engaged in the business of selling vapor products outside Wisconsin who ships or transports vapor products to retailers in Wisconsin to be sold by those retailers.

Note: A distributor includes a retailer that makes sales of untaxed vapor products in Wisconsin which are brought into Wisconsin from another state.

B. Consumers. A use tax is imposed on the use or storage of untaxed vapor products in Wisconsin (sec. 139.78(1m), Wis. Stats.).

If you currently hold a tobacco products distributor permit, you do not need to apply for a new permit.

You must obtain a permit from the Wisconsin Department of Revenue if you are:

- A manufacturer, distributor, or subjobber selling vapor products to Wisconsin customers (Sec. 139.79, Wis. Stats.)
- A Wisconsin retailer purchasing untaxed vapor products (Sec. 139.78(1m), Wis. Stats.)

If you are a Wisconsin retailer, review the Wisconsin Tobacco Products Permit Listing on our website to see if you are purchasing vapor products from businesses that hold a Wisconsin tobacco and vapor products distributor's permit. The [list](#) can be found here.

3. **Do I need a permit to sell vapor products?**

Distributors of vapor products that do not currently hold a tobacco distributor permit must apply for a permit by completing Form CTP-129, *Cigarette and Tobacco /Vapor Products Permit*, found on the [Cigarette, Tobacco and Vapor Products Forms](#) page.

Retailers that bring untaxed vapor products into Wisconsin for sale to consumers must obtain a distributor permit.

Section 139.79(1), Wis. Stats.

4. **How do I report the vapor products tax?**

The tax first applies to vapor products received by distributors on or after October 1, 2019. The first monthly return is due November 15, 2019.

The vapor products tax is reported on the newly revised TT-100, *Wisconsin Distributor's Tobacco and Vapor Products Tax Return*, and supporting schedules. The sample tax forms and instructions can be found on the [Cigarette, Tobacco and Vapor Products Forms](#) page.

Tax returns are required to be filed electronically using one of the following methods:

- [My Tax Account](#), the department's self-service business tax filing system.
- Transmitting an approved XML data file to the department. See the [XML page](#) on the Department website for more information.

Review the Tobacco and Vapor Products tax forms to determine if you need to make bookkeeping and/or software programming changes to your accounting systems in preparation for filing your Wisconsin tobacco and vapor products tax return.

Sign up for the Cigarette, Tobacco and Vapor Products Excise Tax E-file [electronic mailing list](#) to receive up-to-date information about the changes.

5. **I purchased untaxed vapor products (received and/or consumed in Wisconsin). Do I owe excise tax?**

Yes, you owe use tax on vapor products that you use or store in Wisconsin at the rate of 5 cents per milliliter of the liquid or other substance, regardless of whether the liquid or substance contains nicotine. The use tax does not apply on the vapor products if the excise tax has been paid by the manufacturer, distributor, or retailer or if an exemption applies (e.g., vapor products sold by post exchanges of the U.S. armed forces).

The vapor products use tax is reported on Form TT-104s, *WI Tobacco and Vapor Products Use Tax Return*, found on the [Cigarette, Tobacco and Vapor Products Forms](#) page.

6. **We have been filing via My Tax Account. Can I switch to XML filing?**

Yes. You should give the department six weeks' notice of your intent to switch to XML filing.

An FTP directory must be created and test files must be submitted prior to filing a return.

7. Can I get an extension of time to start filing vapor products returns?

There are no special extensions provided to start filing returns for vapor products. However, the department offers a standard 30-day extension upon request. See #8 below for another option.

8. Am I required to submit all of the requested information on the tobacco and vapor products tax returns?

Yes, all information requested on the returns is required. If additional time is needed to update systems and procedures to report the vapor product transaction details, you may contact the department to request an agreement to report summary transaction data for the October through December filing periods. However, the agreement will specify that those returns are required to be amended no later than March 30, 2020 to provide the vapor product transaction details.

Send your request to: DORExciseTaxpayerAssistance@wisconsin.gov

Note: This option does not apply to cigarette or tobacco products transactions.

9. Can I enter and save tax return information in My Tax Account before filing the return?

Yes. You can create, save, and edit a return in My Tax Account for up to two years. This means that you do not have to enter an entire month's worth of transactions at once. You can enter transactions for the period on a daily or weekly basis. You can save your progress and edit previous entries.

If you are having a problem with a saved return, you can call customer service and they will be able to see your return in progress to help resolve your issue.

10. Is a spreadsheet available to enter data throughout the month as transactions occur, that I can later upload directly into My Tax Account when I am ready to file my return?

Microsoft Excel spreadsheets are available below to assist with filing your returns in [My Tax Account](#). Download and save the appropriate spreadsheet to your computer and begin entering your transaction data. When you are ready to file your return, you can upload the data from the spreadsheet directly into My Tax Account. Data for other areas of the tax returns (other schedules) must be entered directly into My Tax Account. See the User Guideline below for additional information about using the Excel spreadsheet.

- [TT-101, Uniform Tobacco and Vapor Products Transaction Schedule, Excel Spreadsheet](#)
- [User Guideline for Excel Spreadsheet](#)

11. Is there a maximum number of rows of data that can be entered or uploaded on a tax return when filing in My Tax Account (MTA)?

Yes, the MTA filing method cannot be used for returns with more than 32,000 transaction rows. If your return has more than 32,000 transaction rows of data, you will be required to file via XML. For more information regarding XML schema necessary to program an XML file, visit the [Excise Tax e-File Cigarette, Tobacco, and Vapor Products Uniformity Program page](#).

12. **Entering the UPC and manufacturer information requires a significant amount of keying (address, FEIN). Is there a way to autofill the manufacturer's address and FEIN?**

Not at this time; however, My Tax Account allows the user to duplicate lines of reported data and make necessary changes to the duplicated data, which may reduce the amount of keying required. Utilizing the downloadable Excel template may also address this concern. Data can be copied and pasted into the Excel template and then uploaded into My Tax Account.

13. **What is the format for entering dates on the schedules?**

The date can be entered in any format and My Tax Account will automatically change it to the correct format.

14. **Do I have to report both the SSN and the FEIN for transactions?**

No, only one of the two must be reported.

15. **How do I print a copy of my return and schedules in My Tax Account?**

You will not be able to print a copy of a return filed via My Tax Account but you can view the return. If needed, you may print screen shots to have a physical copy for your files.

16. **On the TT-101, *Uniform Tobacco and Vapor Products Transaction Schedule*, can I list all vapor products of the same brand (different flavors) on one line? Do I need to list every flavor and product variation separately?**

Vapor products of the same brand but of different flavors cannot be listed on one line. Every flavor or product variation must be listed separately.

17. **I hold a tobacco and vapor products distributor permit (selling vapor products at wholesale to retailers) and I am also a vapor products retailer selling vapor products to the ultimate consumer at a vape shop. Am I required to report retail sales to the ultimate consumer on the schedule of disbursements attached to the TT-100, *Wisconsin Distributor's Tobacco and Vapor Products Tax Return*? Specifically, am I required to report all of my sales as transaction code 2C (vapor products disbursed to an end user) on TT-101, *Uniform Tobacco and Vapor Products Transaction Schedule*?**

If you hold a tobacco and vapor products distributor permit and sell vapor products at retail to the ultimate consumer of the products, you are not required to report your sales of vapor products disbursed to an end user (transaction code 2C) on TT-101.

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes in effect as of July 15, 2019: Chapter 139 Wis. Stats.

Laws enacted and in effect after July 15, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to July 15, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.


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