

**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
100212	Tobacco Products Tax - Common Questions

State of Wisconsin
Department of Revenue

Tobacco 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.

1. What are the definitions of "tobacco products," "moist snuff," "person" and "permittee?"
2. What is the tax rate on tobacco products?
3. Do I need a permit to handle tobacco products?
4. What requirements does a retailer need to meet to sell tobacco products to consumers in the State of Wisconsin?
5. Who pays the tobacco products tax?
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11. Are any tobacco products exempt from the tobacco products tax?
12. Will the Wisconsin Department of Revenue (DOR) refund or credit any tobacco products taxes I paid?
13. How do I correct a tobacco products return I already filed?
14. If I file an incorrect tobacco products return, will I have to pay interest or penalties?
15. Should I notify the Department of Revenue (DOR) if the business has a change to its name, address, or ownership or if the business no longer operates in Wisconsin?
16. What records should I keep for Wisconsin tax purposes, and how long should I keep them?

1. What are the definitions of "tobacco products," "moist snuff," "person," "permittee," "distributor," "retailer" and "subjobber?"

- **Tobacco products** - Wisconsin law defines tobacco products as cigars, cheroots, granulated, plug cuts, snuff, chewing tobacco, clippings, and other forms of tobacco prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise. The definition includes tobacco that can be used for "roll your own" cigarettes, but it does not include cigarettes. [[sec. 139.75\(12\)](#), Wis. Stats.].
- **Moist snuff** - Any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth. [[sec. 139.75\(5d\)](#), Wis. Stats.].
- **Person** - Includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of this subchapter. [[sec. 139.75\(5p\)](#), Wis. Stats.].
- **Permittee** - A person who holds a tobacco products permit issued by the Wisconsin Department of Revenue (DOR).
- **Distributor** -
 - a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;
 - b. Any person who makes, manufactures or fabricates tobacco products in this state for sale in this state; or
 - c. Any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers. [[sec. 139.75\(4\)](#), Wis. Stats.].
- **Retailer** - Any person engaged in the business of selling tobacco products to ultimate consumers. [[sec. 139.75\(8\)](#), Wis. Stats.].
- **Subjobber** - Any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers. [[sec. 139.75\(11\)](#), Wis. Stats.].

2. What is the tax rate on tobacco products?

Tax Type	Tax Rate
Tobacco Products	71% of manufacturer's established list price to distributors
Moist Snuff	100% of manufacturer's established list price to distributors
Cigars	Lesser of 71% of manufacturer's established list price to distributors or \$0.50 per cigar

3. Do I need a permit to handle tobacco products?

Yes. If one of the following applies, you must have a permit to handle tobacco products:

- a. You handle tobacco products at the wholesale level in Wisconsin as a distributor or subjobber
- b. You are a retailer who purchases tobacco products from sources outside Wisconsin that do not hold a Wisconsin distributor permit

If you apply for a tobacco products permit, you must hold a Business Tax Registration (BTR) Certificate [[sec. 73.03\(50\)](#), Wis. Stats.].

To apply for a BTR Certificate and a tobacco products permit:

- Call the Excise Tax Unit at: (608) 266-6701 or use the department's [Business Tax Online Registration](#).

BTR Certificate

- o There is a \$20 registration fee for the BTR Certificate
- o The certificate is renewable every two years for \$10

Note: The BTR certificate and tobacco products permits are valid until canceled by the permittee or until revoked by the department. You only need one BTR certificate regardless of the number of permits or licenses you hold with DOR.

DOR issues these *wholesale tobacco products permits*

Types of Wholesale Permits / (Account Prefix)	Statute	Fee	Term of Permit
Wisconsin distributor (405)	sec. 139.79	none	2 years
Wisconsin subjobber (406)	sec. 139.79	none	2 years
Out-of-state distributor (411)	sec. 139.79	none	2 years
Wisconsin and out-of-state tobacco products salespersons	sec. 139.81	none	2 years

If you are a Tobacco Products Distributor permittee and purchased tobacco products from an out-of-state wholesaler that does not hold a permit with DOR, our Alcohol & Tobacco Enforcement Unit may confiscate the tobacco products possessed and/or offered for sale in this state on which the tobacco products tax is unpaid (after the due date). A Tobacco Products Subjobber permittee is not permitted to possess or purchase untaxed tobacco products from out-of-state sources. Only a Tobacco Products Distributor permittee in Wisconsin may possess, receive, acquire, or purchase untaxed tobacco products. [sec. 139.83, Wis. Stats.].

- o **Security required**
 - If you are responsible for paying the tobacco products tax, you must have security (e.g., cash, surety bond) on file with DOR
 - The amount of security cannot exceed three times a permittee's average monthly liability for tobacco products tax [sec. 139.84, Wis. Stats.]

4. **What requirements does a retailer need to meet to sell tobacco products to consumers in the State of Wisconsin?**

As a retailer, you must meet the following requirements for **all** tobacco products sold to Wisconsin consumers:

You must purchase your tobacco products for sale to Wisconsin consumers from permitted wholesalers (distributors or subjobbers) who sell tobacco products on which the Wisconsin tobacco products excise taxes have been paid and sold to you with the Wisconsin excise tax included (in the purchase/sales price), unless you hold a valid tobacco products distributor permit with DOR to pay the excise taxes on all untaxed tobacco products purchased from sources outside Wisconsin. All purchases of tobacco

products from distributors or subjobbers permitted with DOR whose business is located within Wisconsin are required to be sold to you with the Wisconsin excise tax included. Distributors are liable for the Wisconsin excise taxes on all out-of-state purchases, including tax-included tobacco products purchased from distributors outside Wisconsin who do not pay the excise taxes to the state. Provide a copy of your valid DOR distributor permit to all out-of-state sources and confirm the excise tax status on those purchases prior to purchase. Invoices marked "State and/or local excise taxes are the responsibility of the purchaser/receiver" are untaxed.

- o **Security required**

- If you are responsible for paying the tobacco products tax, you must have security (e.g., cash, surety bond) on file with DOR
- The amount of security cannot exceed three times a permittee's average monthly liability for tobacco products tax [sec. 139.84, Wis. Stats.]

You must hold a valid retail license to sell tobacco products to consumers in Wisconsin. Licenses are issued by the municipality (city, village or town) for each location where tobacco products are received and stored for sale to consumers. You must contact the clerk for the city, village or town where you want to do business and apply for the tobacco products retail license with the clerk. All tobacco products must be sold as allowed under the license, over-the-counter or in a vending machine. Vending machine sales are allowed in "adult-only" facilities (defined as premises where no one under the age of eighteen is allowed to enter.). No person inside or outside Wisconsin may ship/deliver tobacco products direct to consumers via the mail or other delivery services.

- o **Note:** Retailers must obtain a Tobacco Products Distributor permit prior to purchasing untaxed tobacco products from an out-of-state company. (See Form, [CTP-129, Tobacco/Vapor Products Permits Application.](#))

You may not sell/transfer tobacco products to another retailer, wholesaler or location, even if owned by the same person, unless you hold a valid tobacco products wholesale (distributor or subjobber) permit with the department. All sales/transfers of tobacco products require a wholesale invoice showing the seller's legal name, "doing business as name", and business address as permitted, as well as the purchaser's legal name, "doing business as name", and business address as permitted or licensed.

- o **Note:** If a retailer holds a tobacco products distributor permit at the same business address as the retail license, all tobacco products purchased (taxed and untaxed) are purchased at wholesale under the distributor permit. As a result, all transfers/disbursements of tobacco products from wholesale require an invoice from the wholesaler to the retailer, even if to the same permitted/licensed address.

You may not sell, or offer or possess for sale cigarettes or roll-your-own (RYO) cigarette tobacco not included on the Attorney General's [Directory of Certified Tobacco Manufacturers and Brands](#). Only those manufacturer's brands listed on the directory may be advertised, solicited, marketed or sold as cigarettes or RYO. Pursuant to the Tobacco Master Settlement Agreement (MSA) statute, tobacco may not be advertised, solicited, marketed or sold as RYO and little cigars may not be advertised, solicited, marketed or sold as cigarettes or cigarette alternatives, [sec. 995.12\(2\)\(c\)](#), Wis. Stats. Any retailer

who violates the requirements for the legal sale of cigarettes (or little cigars) or RYO in this state is subject to confiscation of those products and/or criminal charges, and suspension or revocation of their distributor permit.


As a licensed retailer, you are required to purchase your tobacco products for sale to Wisconsin consumers from permitted wholesalers (distributors or jobbers) who sell tobacco products on which the Wisconsin excise taxes have been paid. If the wholesaler is not reimbursed by the retailer for the sale of the tax-included tobacco products, the department may bill the retailer for the portion of tax unpaid to the wholesaler on which they claimed credit from the state. Tobacco products possessed and/or offered for sale to consumers in this state on which the tobacco products tax has not been paid are unlawful property and subject to seizure.

5. **Who pays the tobacco products tax?**

The following permittees pay DOR the tobacco products tax [sec. 139.76(1), Wis. Stats.]:

- Any person in Wisconsin who acquires tobacco products for sale or resale from sources that do not hold a valid distributor or subjobber permit with us
- Any person who manufactures tobacco products in Wisconsin for sale in Wisconsin
- Any person outside Wisconsin who ships tobacco products to persons in Wisconsin who do not hold a valid tobacco products distributor permit with DOR

6. **What is the tobacco products use tax?**

Any person, including consumers, in Wisconsin who acquires tobacco products and the Wisconsin tobacco products tax is due and has not been paid, must file a  ([Form TT-104S](#)), *Wisconsin Combined Tobacco and Vapor Products Use Taxes Return*. Purchases from sources outside Wisconsin who do not hold a permit with DOR as a Tobacco Products Distributor are untaxed. No person inside or outside Wisconsin is permitted to sell tobacco products direct to consumers via the mail or other delivery service.

7. **How do I pay the tobacco products tax?**

The tobacco products tax is paid by distributors or reported by subjobbers with one of the following returns [sec. 139.77(1), Wis. Stats.]:

- **Wisconsin Distributor's Tobacco and Vapor Products Tax Return**, Form TT-100
- **Subjobbers Quarterly Report of Tax-Paid Tobacco and Vapor Products**, Form TT-114 (quarterly informational report, no tax owing)

Note: You can pay your taxes by electronic funds transfer (EFT). For more information, visit the [Electronic Funds Transfer page](#) or contact us at (608) 264-9918.

8. **How do I file my tobacco products tax return?**

The tobacco products tax is reported on the 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.

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

Note: Tobacco Master Settlement Agreement (MSA) Reporting requirement for all distributor permittees

All distributors must properly report all transactions of Roll-Your-Own (RYO) **cigarette** tobacco, by manufacturer, brand, and ounces **per brand, per invoice** to the Wisconsin Department of Revenue on their monthly reporting forms and maintain all records for at least five years.

9. What should I do if filing electronically causes a hardship?

If the Secretary of Revenue determines the requirement causes a hardship, the Secretary may waive your requirement to file electronically. If you feel filing electronically causes you a hardship, you must request a waiver.

To request a waiver, you must do the following:

- Request the waiver in writing. Mail your written request to:
Excise Tax Unit
Mandate Waiver Request
Wisconsin Department of Revenue
PO Box 8900
Madison, Wisconsin 53708-8900
- Clearly state why the requirement causes a hardship
- The Secretary of Revenue may consider the following factors when deciding if this requirement causes a hardship:
 1. An unusual circumstance that may prevent you from filing electronically.
Example: You do not have access to a computer connected to the internet.
 2. Any other factor the Secretary determines is relevant.
- If you have any questions, contact us at (608) 266-6701.

10. When is the tobacco products tax return due?

All returns are due by the 15th day of the month following the month or quarter covered by the return [sec. 139.82(2), Wis. Stats.]. **Example:** a return for October is due November 15.

If you file a late return, you will be charged:

- Late-filing fee - \$10 [sec. 139.82(5), Wis. Stats.]
- Delinquent interest - 1.5% of the amount of tax due with the return per month until paid [sec. 139.85(1), Wis. Stats.]
- Late-filing penalty - 5% of the amount of tax due with the return per month until paid, maximum of 25% [sec. 139.85(2), Wis. Stats.]

11. Are any tobacco products exempt from the tobacco products tax?

Yes. The following are exempt from the Wisconsin tobacco products tax [sec. 139.76(2), Wis. Stats.]:

- Tobacco products shipped by interstate commerce to customers in other states for sale outside Wisconsin
- Tobacco products sold to the Armed Forces (e.g., Fort McCoy, Coast Guard stations, etc.) or state or federally operated veterans' hospitals and clinics
- Tobacco products sold to interstate carriers of passengers for hire to be resold to bona fide passengers being transported

12. Will DOR refund or credit any tobacco products taxes I paid?

Yes. There are distributor refunds/credits and Tribal refunds:

- a. **Distributor Refunds/credits** - a licensed tobacco products distributor can receive a refund or credit on the following [sec. 139.80, Wis. Stats.]:
 - Tobacco products upon which the Wisconsin tobacco products tax has been paid and shipped to customers outside Wisconsin
 - Tobacco products upon which the Wisconsin tobacco products tax has been paid and returned to the manufacturer and/or short shipments
 - Tobacco products upon which the Wisconsin tobacco products tax has been paid and destroyed due to damage or becoming unfit for sale. Call (608) 266-6701 for requirements that must be met to destroy tobacco products and claim a tax credit

- b. **Tribal Refunds** [effective December 1, 1999, per 1999 Wis. Act 9]:

If your tribal council entered into agreements with the State of Wisconsin, your tribe is eligible for two refunds:

 - **50% refund** - the tribal council can receive a 50% refund of the tobacco products tax paid on tobacco products, sold by authorized retailers on reservation or trust land, over which a tribe has jurisdiction. The land must have been designated a reservation or trust land on or before January 1, 1983, or on a later date as determined by an agreement between DOR and the tribal council. Only two refund claims (Form TT-001) may be filed within a calendar month [secs.139.803 and 139.805, Wis. Stats.].
 - **50% refund** - the tribal council can receive a 50% refund of the tobacco products tax paid for tobacco products sold by authorized retailers to enrolled tribal members living on the reservation or on trust land over which the tribe has jurisdiction. The land must have been designated a reservation or trust land on or before January 1, 1983, or on a later date as determined by an agreement between DOR and the tribal council. The tribe must send the refund claim to DOR at the end of each quarter [secs. 139.803 and 139.805, Wis. Stats.].

13. How do I correct a tobacco products return I already filed?

- You must electronically file an amended return. You are required to electronically file all tobacco products tax reports, returns and amended returns with the Department of Revenue (see question #8).
- If you are filing an amended tobacco products tax return, you must file a true, corrected and complete return. The amended return must include all previously reported unchanged transactions as well as the corrected information.
- Do not file a return that only reports the changes.

14. If I file an incorrect tobacco products return, will I have to pay interest or penalties?

Yes. If you file an incorrect tobacco products return, the following will be imposed:

- Unpaid taxes - 12% interest per year [sec. 139.85(1), Wis. Stats.]
- Refunded taxes - 3% interest per year [sec. 139.85(1), Wis. Stats.]
- Negligence penalty - 25% of the tax if there was negligence in filing a return [sec. 139.85(1), Wis. Stats.]

15. Should I notify the Department of Revenue (DOR) if the business has a change to its name, address, or ownership or if the business no longer operates in Wisconsin?

Yes. You must notify us when your business has any change to its name, address, or ownership, or when you stop operating in Wisconsin.

- You can tell us by letter or attach a note to your return

- o If your name or ownership changes or you receive a new Federal Employer Identification Number (FEIN), you must file a new application and update your security
- o When you end operations, you must file a return for the last month (or quarter) of operations even if you were in business only a few days during that period
- o If you have any questions about your tobacco products tax permit, contact us at (608) 266-6701

16. What records should I keep for Wisconsin tax purposes and how long should I keep them?

- o You must keep a complete copy of your tobacco products tax returns and all records related to your business for at least five years so DOR employees can verify your tax liabilities and your compliance with Master Settlement Agreement (MSA) requirements [secs. 139.82(1), 139.83, Wis. Stats., and 995.12(2)(a)9.]
- o Required records include, but are not limited to: purchases and sales, receipts (whether taxable or exempt), inventories, distribution, and product consumption records
- o You must keep your records organized in a format and place available for review by DOR. Records must be available for inspection at all reasonable hours, including all business hours.
- o If you do not adequately maintain your records, all products purchased or received are subject to tax without benefit of any deductions

17. How can I get additional information regarding tobacco products tax?

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 18, 2019: Sections 71.74, 73.03, 78.11, 134.65, 134.66, 139.34, 139.38, 139.39, 139.40, 139.44, 139.75, 139.76, 139.77, 139.78, 139.79, 139.80, 139.803, 139.805, 139.81, 139.82, 139.83, 139.84, 139.85, 995.10 and 995.12, Wis. Stats., and secs. Tax 9.001, 9.68 and 9.69, Wis. Adm. Code.

Laws enacted and in effect after October 18, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 18, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

WISCONSIN DEPARTMENT OF REVENUE

Excise Tax Unit

PO Box 8900

Madison, WI 53708-8900

Phone: (608) 266-6701

Fax: (608) 261-7049

Email additional questions to DORExciseTaxpayerAssistance@wisconsin.gov

Guidance Document Certification: <https://www.revenue.wi.gov/Pages/Certification-Statement.aspx>

Guidance Document Number: 100212

October 18, 2019

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