



Comptroller of Maryland • Field Enforcement Bureau
 P.O. Box 2397 • Annapolis, Maryland 21404-2397
 Telephone: 410-260-7314 • Fax: 410-974-3201
www.marylandtaxes.gov

TT-78

February 24, 2021

TO: All Cigarette and Other Tobacco Products (OTP) Wholesalers, Retailers, and Tobacconists; and Electronic Smoking Devices (ESD) Manufacturers, Wholesaler Distributors, Wholesaler Importers, Retailers, and Vape Shop Vendors

SUBJECT: Cigarette and OTP Tax Increase and Floor Tax; and Electronic Smoking Devices (ESD) Sales Tax

The 2021 Session of the Maryland General Assembly (MGA) voted to override Governor Hogan's veto of House Bill 732 from the 2020 session of the MGA which established a definition for ESD, broadened the definition of OTP, created a sales and use tax on ESD, and changed the excise tax rate on cigarettes and on the wholesale price of OTP as follows:

	From	To
Cigarettes	\$2.00 per pack	\$3.75 per pack
OTP (with exceptions)	30% of wholesale cost	53% of wholesale cost
ESD	6% sales tax	12% sales tax
ESD Liquid ≤ 5ml	6% sales tax	60% sales tax

- **OTP exceptions - Excise tax rates remain unchanged for cigars currently at 70% of wholesale cost, pipe tobacco at 30% of wholesale cost, and premium cigars at 15% of the wholesale cost.**
- The new tax rate applies to all cigarette and OTP floor stock in Maryland as of 12:01 a.m. on March 14, 2021.
- In order to report and remit the additional tax due on your cigarette, cigarette stamps, and OTP inventory, you will need to complete the 2021 Cigarette and Other Tobacco Products Floor Tax Returns which will be available in coming days on www.marylandtaxes.gov.
- Please read the forms carefully and complete them, or collect the necessary data for completion, before moving or selling any OTP on March 14, 2021.

- A physical inventory is required of all OTP held in your possession at 12:01 a.m. on March 14, 2021 and must be entered in the proper space on the tax return.
- The 2021 Cigarette and Other Tobacco Products Floor Tax Returns can be filed any time after March 14, 2021 but must be remitted no later than June 13, 2021.
- Any cigarettes or OTP not accounted for in accordance with the above would be considered contraband and subject to confiscation.

Important Dates to Consider

February 12, 2021 - MGA override of Governor Hogan's veto of 2020 House Bill 732

March 14, 2021 - Effective date of House Bill 732

June 13, 2021 - Final remittance date of the floor tax return and additional tax

For your benefit, please find enclosed a list of Frequently Asked Questions (FAQs). These FAQs also contain useful information on the proper filing of the cigarette and OTP floor tax. The floor tax returns, FAQs, and other information related to cigarette and OTP will be available on the Comptroller of Maryland's Website at www.marylandtaxes.gov. Questions related to the cigarette and OTP floor tax can be directed to Taxpayer Services at 410-260-7980, 1-800-638-2937, or taxhelp@marylandtaxes.gov.

Jeffrey A. Kelly
Director, Field Enforcement Bureau

**Frequently Asked Questions Regarding the
Cigarette and OTP Floor Tax, and ESD
Updated 3/12/2021**

1. When are the cigarette and OTP tax increases effective?

The tax increases are effective 3/14/21.

2. Are there floor tax requirements?

Yes, there is a floor tax due on the inventory of cigarette packs, tax stamps and OTP.

3. When do we have to count the inventory?

As the tax increases are effective March 14, 2021, the inventory should be counted at the close of business March 13, 2021. If your business is open 24 hours, inventory should be counted at 12:01 a.m. on March 14, 2021.

4. When are the floor tax returns due to be submitted and how do I get the forms?

The floor tax returns must be submitted after March 13, and no later than June 13, 2021. Regardless of the date you submit the return(s), it must be based on the cigarette packs, cigarette stamps, and OTP in stock on March 14, 2021. The tax forms, the bulletin, and the FAQs can be obtained online at: <http://www.marylandtaxes.gov>.

5. How can I obtain a copy of the Cigarette and OTP Floor Tax Return(s)?

You can obtain a copy of the floor tax form online at: www.marylandtaxes.gov.

6. How much is the floor tax and is there a discount?

Cigarettes

The floor tax for cigarettes is \$1.75 per pack. Under the Tax General Article, Section 12-303(b), the Comptroller can allow a licensed wholesaler a discount of 0.82% for the purchase price of tax stamps. You may calculate the appropriate discount and enter it in the space provided on the Form 600F.

OTP

The OTP tax rates and floor taxes, where applicable, are described below:

Premium Cigars - 15% of wholesale cost; no rate change/no floor tax

Cigars - 70% of wholesale cost; no rate change/no floor tax

Pipe Tobacco - 30% of wholesale cost; no rate change/no floor tax

All other OTP - 53% of wholesale cost; a floor tax is required

7. What products are OTP?

NOTE: The category of OTP as defined in the 2020 session of the MGA is significantly broader than the previous definition of OTP. Products that were not previously taxed as OTP are now subject to the excise tax; see some examples in paragraph three.

Other Tobacco Products (OTP) are ones that are intended for human consumption or likely to

be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other manner, and that is made of or derived from, or that contains tobacco, or nicotine, or a component or part used in a consumable product described above.

Though taxed at different rates, a non-exhaustive list of examples of OTP includes cigars, premium cigars, pipe tobacco, chewing tobacco, snuff, snus, filters, rolling paper, pipes of all types, hookahs, cigar wraps, and other types of paraphernalia that could be used for consumption.

8. What products are not OTP?

OTP does not include cigarettes, electronic smoking devices (ESD), or drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

9. How is a premium cigar defined?

Section 16.5-101 of the Business Regulation Article of the Annotated Code of Maryland, defines premium cigars as follows:

(p) “Premium cigars” means cigars that:

- (1) have hand-rolled wrappers made from whole tobacco leaves where the filler, binder, and wrapper are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor; or
- (2) are designated as premium cigars by the Comptroller by regulation.

COMAR 03.02.02.09 further defines premium cigars as those that are made from 100 percent whole tobacco leaves where the filler, binder, and wrapper, are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor and includes no tips, filters or nontobacco mouthpieces.

10. My wholesaler pays the tax on my OTP and stamps my cigarettes. Do I need to complete the floor tax return?

Yes. The floor tax return is required to pay the difference in the tax rate your wholesaler paid and the new tax rates effective March 14, 2021 on your existing inventory of OTP and cigarettes. Please note specific lines on form 600F for tax paid OTP purchases from Wholesalers.

11. I don't sell cigarettes or OTP anymore or I haven't been in business for a while, what do I need to do?

Indicate on the tax return, in writing, that you no longer sell cigarettes or OTP, or that you are out of business and return it to Comptroller at the address on Form 600F.

12. What is the new minimum price that can be charged for cigarettes?

Retailers

Actual minimum prices are not available due to the differences in wholesaler markups. The retailer to consumer minimum selling price is marked up 8% from the retailer's purchase price

from their wholesaler. The 6% sales tax rate is then applied to the selling price.

Wholesalers

Commercial Law Article, Section 11-503 requires a minimum markup of 5% of wholesale price unless an adjustment to the markup is applied for and approved each year. The COVID-19 outbreak interfered with any adjusted markups for 2020 therefore wholesalers may continue to use the previously approved minimum markup of 0.39% until further notice.

Wholesalers may use the minimum price calculator at:

<https://www.marylandtaxes.gov/business/tobacco/minimum-price.php>

13. If I have more than one store, can I combine them and send in one payment for all stores?

Yes, but you must submit the floor tax returns for each store and identify the Central Registration Numbers #s on the combined check.

14. Can I pay the floor tax by direct debit?

Yes, contact Taxpayer Services at 410-260-7980 or 1-800-638-2937 for details if you are not already set up to make direct debit payments.

15. Do I need to raise my cigarette price up \$1.75?

Your cigarettes now cost you \$1.75 more per pack of 20. It is an economic/business decision whether or not you should raise your price by \$1.75. However, you are responsible for ensuring that your final sales price to consumers is in accordance with state law regarding minimum pricing for cigarettes.

16. Is there an ESD excise tax?

No, there is no ESD excise tax. There is, however, an enhanced sales and use tax (SUT) for ESD and containers of vaping liquid. The SUT for ESD is 12% of the retail sales price and the SUT for vaping liquid is 60% of the retail sales price for containers of 5 ml or less.

17. What is an Electronic Smoking Device?

An Electronic Smoking Device, or ESD, includes items such as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and, with few exceptions, any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device.

18. What is not an ESD?

ESD does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; or a battery or battery charger when sold separately.

19. I am a wholesaler who possesses unaffixed cigarette stamps. How do I receive the tax collection discount on the unaffixed stamps in my possession?

Licensed cigarette wholesalers may apply the discount of 0.82% of the price of cigarette

stamps when calculating the floor tax due. Wholesalers should multiply the additional tax times 0.0082 to arrive at the Tobacco Wholesaler discount amount to report on Form 600F.

20. What sales and use tax rate is applied to vaping liquid containers greater than 5ml?

Business Regulation Article 16.7, Section 101(c)(1) defines Electronic Smoking Devices and includes in that definition “vaping liquid.” Therefore, vaping liquid containers in excess of 5ml have a sales and use tax of 12% as do other electronic smoking devices.

21. Are packages comprised of multiple containers of vaping liquid (multi-packs) that are 5ml or less, yet total over 5ml per multi-pack, subject to the sales and use tax at 60% or 12%?

Regardless of the total multi-pack volume of vaping liquid, any package with one or more containers of vaping liquid in sizes of 5ml or less is subject to the 60% sales and use tax.

22. I am selling electronic smoking devices in combination packages with one or more containers of vaping liquid totaling 5ml or less per container. What sales and use tax rate to I need to apply?

If you are selling any packages that include one or more containers of vaping liquid in a quantity of 5ml or less, the entire package is subject to 60% sales and use tax. Electronic smoking devices that are sold separately from containers of vaping liquid are taxed at 12%.

23. Is the sales and use tax on the purchase of electronic smoking devices applied after manufacturer promotions and discounts?

The sales tax is applied to the actual sales price charged to a customer during the sales transaction.

24. I am an Other Tobacco Products (OTP) retailer who must submit a floor tax on products now considered to be OTP such as filters, rolling papers, pipes, and hookahs. How do I determine the wholesale cost upon which to apply the 53% excise tax?

Paragraph 2 of Section 3 of House Bill 732 from the 2020 session of the Maryland General Assembly states...” (2) the Comptroller may provide an alternative method of assessing and collecting the additional tax....”

OTP retailers who cannot obtain the wholesale cost for those products previously not subject to the OTP excise tax will determine the OTP floor tax assessment by using the Comptroller’s approved alternative method of calculation: multiply the retailer’s total net invoice for the products by the adjusted rate of 44% (0.0044) and enter on line 6 of the Other Tobacco Products section of Form 600F.

25. Where can I get additional information?

For additional information, you can visit www.marylandtaxes.gov or contact Taxpayer Services at 410-260-7980, 1-800-638-2937, or email to: attaxhelp@marylandtaxes.gov.