

TAX ON VAPOUR PRODUCTS INFORMATION CIRCULAR (RAA-VPT-2022-01-14)

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The purpose of this circular is to provide general information regarding the application of tax on vapour products.

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OVERVIEW OF VAPOUR PRODUCTS TAX

1) Effective Date

Tax on vapour products became effective January 1, 2021.

2) Tax Rate

Under the *Revenue Administration Act (RAA)* a tax rate of 20% is imposed on the purchase price (consideration whether money, goods, services rendered or other and includes the custom duties and excise taxes) for which a vapour product was:

- acquired by a consumer at a retail sale (cash or on credit or a sale where the price is payable by instalments, and includes a barter, an exchange and a contract) in the province, and
- brought or delivered into the province by a consumer.

The tax rate is applied prior to HST and the HST is applied on the purchase price plus the vapour tax. Example as follows:

Purchase Price in Canadian \$, including custom duties and excise taxes	\$20.00
Vapour Product Tax Rate	20%
Vapour Product Tax (\$20.00 X .20)	\$4.00
Vapour Product Subtotal	\$24.00
HST Rate	15%
HST (\$24.00 X .15)	\$3.60
Vapour Product Total	\$27.60

3) When Tax is Payable

A consumer will pay the vapour product tax to the retailer at the time of the purchase.

Where a vapour product is sold on credit, the consumer pays the full amount of the tax at the time of the sale.

A consumer who acquires vapor products outside of the province, exclusive of Newfoundland and Labrador vapour product tax, shall immediately report and pay the tax due.

4) Definition of Vapour Products

A “vapour product” is defined as a vaping device, a vaping substance, or a vaping package. Below is a description of each subcategory under vapour products:

VAPOUR PRODUCTS	
Products	Description
Vaping Device¹	A device containing an electronic or battery powered heating element capable of vaporizing a vaping substance for inhalation or release into the air, including a component or part that can be used to build the product or device. Vape Mods, e-hookahs, sub-ohms, electronic cigarettes (e-cigarettes), vape pens, and vape tank are examples of such devices.
Vaping Substance	A solid, liquid, or gas that is designed for use in a vaping device and on being heated produces a vapour, which may or may not contain nicotine and does not contain cannabis or tobacco.
Vaping Package	A vaping device and vaping substance sold together for a single price.

¹. Vaping devices only capable of vapourizing tobacco or cannabis are not taxable, while vaping devices capable of vapourizing tobacco or cannabis and another vaping substance are taxable at the rate of 20% of the purchase price.

REQUIREMENTS

5) Wholesalers

A wholesaler who keeps or sells vapour products in the province is required to:

- apply for a licence (<https://www.gov.nl.ca/fin/files/Application-of-Vapour-Products-License.pdf>) in respect of each location unless a licence for multiple locations has been approved by the minister;
- hold a license under the RAA authorizing the selling or keeping of vapour products in the province for resale, regardless of whether they have a permanent establishment in the province;
- verify the validity of wholesaler or retailer licenses prior to the sale of vapour products;
- issue invoices to wholesalers or retailers containing the following information:
 - (a) date of sale;
 - (b) seller's name, address and wholesaler's licence number;
 - (c) the name, address and licence number of the purchaser; and
 - (d) the quantity of vapour products sold;
- self-assess and remit tax on vapor products utilized, gifted or consumed; and
- keep and maintain books and records relating to the business and returns and make such records available within the province (or make other satisfactory arrangements) for inspection, examination and audit.

Licensed wholesalers are not required to file a return or collect tax upon the sale of vapour products, when they will sell on a tax-exempt basis to other licensed wholesalers and retailers.

6) Retailers

Retailers who offer or keep vapour products for sale at a retail sale in the province are required to:

- apply for a licence (<https://www.gov.nl.ca/fin/files/Application-of-Vapour-Products-License.pdf>) in respect of each location unless a licence for multiple locations has been approved by the minister;
- hold a licence authorizing the selling or keeping of vapour products for sale directly to consumers, regardless of whether they have a permanent establishment in the province;
- post the licence in a clearly visible place at their premises;
- collect tax on vapour products at the time of the sale;
- issue a receipt, at the time of sale, that clearly states the amount of vapour products tax collected by describing the amount as Vapour Products Tax or VPT;
- remit the tax collected on or before the 20th day of the calendar month immediately following the month in which the tax was collected(e.g. tax collected on a January sale must be remitted by February 20th);

- self-assess and remit tax on vapor products utilized, gifted or consumed by the retailer; and
- keep and maintain books and records relating to the business and returns and make such records available within the province (or make other satisfactory arrangements) for inspection, examination and audit.

7) Consumers

A consumer is a person who purchases or receives delivery of a vapour product in the province or brings into the province a vapour product acquired outside the province, for that person's own use or consumption or for the use or consumption by others at that person's expense, or on behalf of, or as the agent for, a principal who wishes to acquire the vapour product for use or consumption by the principal or other person at the principal's expense.

Consumers are required to:

- pay tax on the purchase of vapour products at the time of the sale; and
- self-assess and remit tax on vapor products acquired outside of the province, upon which NL vapour products tax has not been levied/paid.

TAX RETURNS

A tax return is required to be filed in the prescribed form <https://www.gov.nl.ca/fin/files/Vapour-Products-Retailer-Return.pdf>) and is considered to be filed when received by the department.

8) Separate Returns

A separate return is required for each retail location unless a return for multiple locations has been approved by the minister.

9) Due Date

A taxpayer is required to make a separate tax return for each calendar month and file the return with payment not later than the 20th day of the following month. A return is required to be filed whether or not tax is payable for the month.

10) Penalty for Failure to File

Failure to file a return will result in a \$100 late filing penalty and may result in the assessment of a penalty equal to the tax that should have been remitted as prescribed in the RAA. See below for more information on penalties.

TAX REFUNDS

A refund of the tax shall be paid to the consumer proportionate to the amount of the purchase price of the vapour product that is refunded.

The retailer can deduct the amount of tax refunded to the consumer from the amount of tax due on their tax return.

IMPOSITION OF INTEREST

Interest will be imposed on tax not paid in the correct time or manner.

Interest is imposed upon an amount due for each month or part of a month from the date the amount is required to be paid to the date of payment and is compounded monthly.

The annual rate of interest with respect to unpaid tax is the rate equal to the prime lending rate of the bank holding the province's general revenue fund (determined and adjusted on June 15 and December 15 in each year) plus 4 percentage points.

Interest is not levied for a month in which the amount due is less than \$100.

SUSPENSION, CANCELLATION AND REVOCATION OF LICENCE

11) Suspension and Cancellation of Licence

A licence may be suspended or cancelled where the licensee contravenes a term or condition of the licence; or there is reason to believe that the licensee has failed to comply with the *RAA* or the regulations.

12) Automatic Revocation of Licence

A licence is automatically revoked and shall be returned to the Department within 15 days of the date a wholesaler or retailer stops carrying on the business of selling vapour products.

13) Revocation for Failure to File Returns or to Pay Tax Collected

A retailer's licence may be revoked where the retailer fails to make returns or pay tax as prescribed by regulations under the *RAA*.

PROHIBITED SALES, PURCHASES AND REBATE

14) Retailers

- Shall not sell or offer to sell vapour products at a retail sale unless they hold a valid retailer licence.
- Shall not purchase vapour products for resale from a person who does not have a valid wholesaler licence.
- Shall not sell vapour products for resale to another retailer.
- Shall not advertise, either directly or indirectly, that the tax or a part of the tax shall be assumed or absorbed by the retailer.

15) Wholesalers

- Shall not sell vapour products at a sale that is not a retail sale unless they hold a valid wholesaler's license.
- Shall not sell vapour products for the purpose of resale, unless to a registered retailer.

OFFENCES AND PENALTIES

16) Offences

The RAA contains a number of general offences and offences specific to vapour product tax. The offences specifically relating to vapor products tax are as follows.

- Selling a vapour product to a retailer without a valid wholesaler's licence.
- Selling a vapour product to a retailer who does not have a valid a retailer's licence.
- Selling a vapour product to a consumer without a valid retailer's licence.

Every contravention described above that relates to a separate sale or transaction constitutes a separate offence.

17) Penalties

A person who is guilty of an offence under the RAA is liable on summary conviction to a penalty as prescribed by the RAA.

In addition to the fine imposed, a court shall order:

- the person found guilty of an offence to pay the tax due under the RAA and in default of such payment, a term of imprisonment as prescribed, and
- a person who defaults in the payment of fines be imprisoned for a prescribed period and that period of imprisonment shall be in addition to any other period of imprisonment.

Where a person is guilty of a continuing offence under this Act, the person may be liable to a further fine of not more than \$10,000 for each day during which the offence continues.

INSPECTION AND COMPLIANCE

An inspector may, at all reasonable times, for a purpose related to the administration or enforcement of the vapour products tax, inspect or examine the premises, processes, books and records of a person considered relevant for the purpose of determining compliance, and may, without a warrant,

- enter any premises where
 - (i) a business is carried on,
 - (ii) any property, or books and records are or may be kept, or
 - (iii) anything is or is suspected of being done or stored in connection with a tax imposed under this Act;
- make copies, extracts, photographs or videos the inspector considers necessary;
- require the owner or person in charge of a premises to give all reasonable assistance, including the production of books and records, and to answer all proper questions; and
- require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary to assess the books and records.

ASSESSMENT AND REASSESSMENT

An assessment for any amounts in relation to tax of vapour products becomes binding, notwithstanding an error or omission, when a notice of assessment in writing is served to a taxpayer personally or by express post certified mail addressed to the current address in the Department's records or to another address where the taxpayer is known to reside or maintain an office or place of business. The mailed notice shall be considered to be received on the day it would be received in the normal course of mailing. This notice is for administrative purposes only and does not affect a person's liability.

Any person who receives a notice of assessment is required to pay the tax assessed within 30 days of receiving the notice, regardless of any objection or appeal.

OBJECTIONS AND APPEALS

18) Review of Objection

An objection to an assessment of tax may be made within 90 days of receiving the notice of assessment by providing written notice to the Minister clearly identifying the following:

- the matter objected to;
- the reasons for objection;
- all the relevant facts; and
- the remedy requested.

19) Appeal to Trial Division

A decision of the minister in response to a notice of objection may be appealed to the Trial Division by commencing a proceeding in the Trial Division within 60 days of receiving the minister's reply.

The costs of the proceeding are in the discretion of the judge and he or she may make an order respecting costs in favour of or against the Crown and may fix the amount of them.

20) Appeal to Court of Appeal

A decision upon a point of law raised upon the hearing of a judge of the Trial Division may be taken to the Court of Appeal. The rules governing appeals to the Court of Appeal from a decision of a judge of the Trial Division apply.

Further information regarding this information circular may be obtained at www.gov.nl.ca/fin or by contacting:

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