



Vapor Products Dealer Registration and Filing Requirements

Effective December 1, 2019, a 20% supplemental sales tax is imposed on all vapor products sold at retail in this state. Any person who intends to sell vapor products at retail on or after December 1, 2019, must obtain a Vapor Products Dealer Certificate of Registration from the Tax Department for each retail location, online location, and vending machine in which vapor products are sold. Each Vapor Products Dealer Certificate of Registration must be renewed annually. Vapor products dealers are also required to file returns and remit the supplemental sales tax to the Tax Department.

The 20% supplemental sales tax applies to retail sales of vapor products and is collected by the vapor products dealer from the purchaser at the time of sale. A use tax is imposed on the purchaser when the supplemental sales tax on vapor products has not been collected by the seller.

Definitions

Vapor product means noncombustible liquids and gels (with or without nicotine) that are manufactured into a finished product for use in an electronic cigarette, cigar, cigarillo, or pipe, vaping or hookah pen, or similar device. Vapor products do not include any product approved by the United States food and drug administration as a drug or medical device or manufactured and dispensed as medical marijuana.¹

Vapor products dealer means a person who has been issued a Certificate of Registration to sell vapor products by the Commissioner of Taxation and Finance.

Vapor products dealer registration and renewal

Any business currently selling vapor products at retail must be registered with the Tax Department as a vapor products dealer before December 1, 2019. Businesses that intend to sell vapor products must register before they begin selling these products. The nonrefundable application fees for a Certificate of Registration are:

- \$300 for **each** retail or online location
- \$300 for **each** vending machine

If a business does not already possess a valid sales tax *Certificate of Authority*, it must obtain one before registering as a vapor products dealer. See Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

To register as a vapor products dealer, use a *Business Online Services* account. If the business doesn't have an *Online Services* account, visit www.tax.ny.gov to create one. Once the application for registration is approved, the Tax Department will issue:

- Form DTF-720.1, *Retail Dealer Certificate of Registration for Vapor Products* and/or

¹ Public Health Law, Article 33, Title 5-A

- Form DTF-721.1, *Vending Machine Registration Certificate for Vapor Products* (collectively, Vapor Products Dealer Certificate of Registration).

A Vapor Products Dealer Certificate of Registration must be publicly displayed in each place of business, or affixed to the vending machine, where vapor products are sold at retail. It is not assignable or transferable. A Vapor Products Dealer Certificate of Registration must be destroyed immediately when the vapor products dealer ceases doing business or never begins business.

A Vapor Products Dealer Certificate of Registration is valid for the calendar year for which it is issued, unless it is suspended or revoked. It must be renewed annually and applications for renewal must be filed on or before September 20 of each calendar year. There is a \$300 nonrefundable application renewal fee for each retail location, online location, and vending machine.

If the information reported in connection with a Vapor Products Dealer Certificate of Registration changes, the business is required to update the information in its *Business Online Services* account by the last day of the month in which the change occurred.

Note: If a person sells cigarettes and tobacco products, they must also register as a vapor products dealer if making retail sales of vapor products. A Retail Dealer Certificate of Registration and/or Vending Machine Registration Certificate for cigarettes and tobacco products does not allow a person to sell vapor products.

Denial, suspension, or revocation of a Vapor Products Dealer Certificate of Registration

An application for a Vapor Products Dealer Certificate of Registration may be denied, or a Vapor Products Dealer Certificate of Registration may be suspended or revoked if an applicant or vapor products dealer:

- has a past-due tax liability that is fixed and final;
- has a Vapor Products Dealer Certificate of Registration or any license or registration issued under the Tax Law that was revoked and that revocation occurred within one year from the date on its application for registration;
- has been convicted of a crime under the Tax Law and that conviction occurred within one year from the date on the application for registration;
- has willfully failed to file a return or report related to retail sales of vapor products required under Article 28-C of the Tax Law;
- willfully files, causes to be filed, gives or causes to be given a report, return, certificate, or affidavit required under Article 28-C of the Tax Law that is false;
- has willfully failed to collect, truthfully account for or pay over any tax imposed under Article 28-C of the Tax Law; **or**
- occupies a place of business at the same location as a vapor products dealer whose registration was revoked and that revocation is still in effect, unless the applicant or vapor products dealer demonstrates to the Tax Department that the business or location was acquired through an arm's length transaction as described in Tax Law § 480-a.

If the Tax Department suspends or revokes a Vapor Products Dealer Certificate of Registration, the certificate is null and void and must be immediately destroyed. Also, the retail location where the Vapor Products Dealer Certificate of Registration was issued must immediately stop selling vapor products in this state.

In addition, the Tax Department may refuse, cancel, or suspend a Vapor Products Dealer Certificate of Registration if the Tax Department is directed to do so by a public health enforcement officer.

Penalties for certain retail sales

Any person, including a vapor products dealer, that sells vapor products at an unregistered location or while a registration for such retail location is suspended or revoked, may be subject to a civil fine and suspension or revocation of one or more of its Vapor Products Dealer Certificate(s) of Registration. The following penalties per violation may apply:

- First violation: A civil fine of not less than \$5,000 and not more than \$25,000 and suspension of a Vapor Products Dealer Certificate of Registration for a period of not more than 6 months.
- Second or subsequent violation within 3 years of a prior violation: A civil fine of not less than \$10,000 and not more than \$35,000 and suspension of a Vapor Products Dealer Certificate of Registration for up to 36 months.

If a third violation occurs within 5 years of a prior violation, the Tax Department may refuse to issue a Vapor Products Dealer Certificate of Registration and/or revoke all Vapor Product Dealer Certificate(s) of Registration issued to each place of business owned or operated by the vapor products dealer, for a period of up to 5 years.

Recordkeeping and filing returns

A vapor products dealer has all the same obligations and rights as a sales tax vendor, including but not limited to:

- obtaining a *Certificate of Authority*
- collecting tax, filing returns, and remitting tax due
- the right to accept a certificate or other documentation substantiating an exemption or exclusion from tax; and
- the right to receive a refund as authorized by the Tax Law

The supplemental sales tax on vapor products must be reported and paid with the applicable sales tax return.

Use Tax

A 20% use tax is imposed (unless an exemption applies) when the supplemental sales tax has not been paid on:

- retail purchases of vapor products, including the use of vapor products purchased for resale but not subsequently resold, or

- vapor products used by the business that manufactured or processed those products.
Note: storage, retention or withdrawal from storage of vapor products by the manufacturer or processor is not a taxable use.

Use tax is due within 20 days of such use or, where applicable, on the due date of the sales tax return for the period in which the taxable use occurred.

Customer Receipts

Vapor products dealers must separately state on the purchaser’s receipt the 20% supplemental sales tax. In addition, vapor products dealers must only charge sales tax on the retail price of the vapor product. The 20% supplemental sales tax on vapor products is not included in the receipt subject to sales tax.

Example: *Customer A purchases a vapor product from XYZ Vaping Co., a registered vapor products dealer, for \$10. The sales tax and supplemental sales tax due on the vapor product are computed as follows:*

<i>Sales price of vapor product</i>	<i>\$10.00</i>
<i>Sales tax due at 8%</i>	<i>.80</i>
<i>Supplemental sales tax due at 20%</i>	<i><u>2.00</u></i>
<i>Total amount due for the vapor product</i>	<i><u><u>\$12.80</u></u></i>

Exemptions

The supplemental sales tax on the retail sale of vapor products does **not** apply to purchases made by:

- The State of New York and its agencies and instrumentalities;
- The United States of America and its agencies and instrumentalities;
- The United Nations; and
- Indian nations or tribes.

Note: Retail sales of vapor products to entities not listed above are subject to the supplemental sales tax on their purchases of vapor products even though such entities may be exempt from sales and use taxes imposed under Article 28 of the Tax Law.

Criminal penalties

Except as otherwise specified in the Tax Law, a vapor products dealer is subject to the same criminal penalties imposed on sales tax vendors. See Tax Bulletin [Sales and Use Tax Penalties \(TB-ST-805\)](#).

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.