



*This publication provides general information and is not meant to be a substitute for tax laws or regulations.*

### Electronic Smoking

As of July 1, 2016, West Virginia has an excise tax on electronic smoking device liquids. These devices are composed of a heating element, battery or electrical circuit, or any combination of liquid or liquids mixed to produce an inhalable product. Selling devices under other names besides the most common "e-cigarette" does not exclude them from the type of product being targeted by this excise tax.

Any liquid or liquid mixture used in an e-cigarettes where the liquid is vaporized or otherwise converted to an inhalable product is subject to the tax. The taxability of the liquid product used in an electronic smoking device is not dependent on certain commonly used ingredients. **Absence of an ingredient does not change taxability, but is based on if the product can be marketed or sold for use in an electronic smoking device.**

Mixing kits containing all components necessary for an e-cigarette liquid or components sold separately that can be used to produce an e-cigarette liquid are taxable. The tax is based on the entire volume of the mixing kit or the volume of the individually sold components.

The wholesaler or retail dealer who first acquires or otherwise handles the product within West Virginia is responsible for the product's excise tax. **If you receive e-cigarette liquid from someone other than a West Virginia registered Tobacco Wholesaler located outside of West Virginia, you may be responsible for the tax.**

#### Tax must be paid before the product is displayed.

Whenever e-cigarette smoking product is found in the place of any retail dealer available for sale without evidence of the tax being paid on the invoice, it shall be presumed that the e-cigarette liquid is kept on the premise in violation of law and shall be considered contraband and subject to confiscation in addition to applicable criminal penalties.

The excise tax on e-cigarette liquids is at the rate of 7.5 cents per milliliter of e-cigarette liquid **based on the quantity of product purchased** to be sold in West Virginia. The tax should be on each retail selling unit and rounded up to the whole milliliter. (Ex. 0.3mL rounds up to 1mL). All invoices for e-cigarette liquids from manufacturers sold to West Virginia customers must include the total quantity in milliliters of e-cigarette liquid as well as the amount of tax imposed separately if it is not indicated how much was included in the total price.

Registered wholesale dealers, including manufacturers that sell directly to retailers, must complete [Form TPT-709 West Virginia Tobacco Products Tax Report and corresponding Schedule ECL](#) on a monthly basis. Retail dealers purchasing e-cigarette liquids that have not been subjected to tax are also required to complete TPT-709 and Schedule ECL on a monthly basis. **Filings are due on the 15th day after the end of the month covered by the report.**

**Businesses with multiple registered locations can file a consolidated return under the same Federal Employee Identification Number (FEIN).**

A wholesaler or retail dealer who is primarily liable for the e-cigarette liquids tax and has sold products out of state upon which tax has been paid may deduct the quantity sold out of state on their tax report. To receive the deduction, the report must include invoices detailing the sales out of state that meet invoice detail requirements. The tax report should also account for any products that were unsalable or returned and include an affidavit from the manufacturer in order to claim a credit for the taxes paid on those products. Filings can be mailed to Tax Account Administration or submitted electronically through [MyTaxes](#).

All wholesalers or retail dealers, including manufacturers who directly sell e-cigarette liquids, must have a business registration certificate before selling e-cigarette liquids in West Virginia. **This is required whether the wholesaler or retail dealer is handling a product where the tax has already been paid or not.** If the product is non-tax paid when received, the wholesaler or retail dealer will have to register to remit the e-cigarette liquid tax. **Any wholesale or retail dealer who is also selling CBD products will also need a retail hemp license from the Department of Agriculture.**

A business that already has a business registration certificate but who has not yet been licensed as a tobacco retailer should fill out [Form BUS-RBL](#) and submit it by mail to:

West Virginia Tax Division  
Tax Account Administration  
PO Box 2666  
Charleston, WV 25330-2666

## Drug Paraphernalia

Drug paraphernalia is equipment or material designed for use in manufacturing, processing, injecting, ingesting or inhaling a controlled substance. Controlled substances are drugs that are controlled by the government because they have potential for addiction or abuse. Controlled substances include drugs with accepted medical uses, which are available only by prescription from a licensed medical professional, as well as drugs that have no accepted medical use and are illegal in the United States.

### Examples of Drug Paraphernalia:

- Pipes, bowls, chillums, bongos and other smoking devices
- Needles and syringes
- Scales
- Capsules, balloons, envelopes, and other containers for packaging controlled substances
- Miniature cocaine spoons and vials
- Equipment for growing plants which are a controlled substance

A more complete list of Drug Paraphernalia items defined can be found in W. Va. Code § 47-19-3 or [online at tax.wv.gov](http://tax.wv.gov).

Before selling any items or accessories designed or marketed for use with controlled substances a business must obtain a license to sell Drug Paraphernalia items in addition to any other licenses already held.

New businesses must submit a [BUS-APP](#) with 'Drug Paraphernalia' marked as a business activity, while already active and compliant businesses are required to submit [BUS-RBL](#) to reissue their current business certificate with Drug Paraphernalia added as a special license. A \$30 fee is required to process either application.

Three things are required to be submitted with the application for a Drug Paraphernalia license: (1) a notarized [DRUG-1](#), (2) [DRUG-2 affidavits](#) and (3) an additional \$150 fee. All application materials can be submitted to:

West Virginia Tax Division  
Tax Account Administration  
PO Box 2666  
Charleston, WV 25330-2666

Please note that **the applicant and each and every employee authorized to sell drug paraphernalia items must submit a DRUG-2 affidavit stating they have never been convicted of a drug related offense. Additional affidavits must be submitted when new staff are hired to sell paraphernalia.** Copies of the affidavits must be kept in each store and are subject to inspection upon request by any law enforcement officer.

### Drug Paraphernalia cannot be sold at any:

- Fair, festival, musical or theatrical production;
- Event performed or conducted outdoors; or
- Temporary roadside booth or table along any municipal street or highway.

Once the license is approved, the business must keep a record of every item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances that is sold. This record can be inspected by an investigator at any time during the hours of business and must contain the following information:

- Name and address of purchaser;
- Name and quantity of product;
- Date and time of sale; and
- The business licensee or agent of the licensee's signature.

#### For more information, you can:

- **Call** a Taxpayer Services Representative at (304)558-3333 or toll-free at (800) 982-8297
- **Email** [taxhelp@wv.gov](mailto:taxhelp@wv.gov)
- **Go Online** to [tax.wv.gov](http://tax.wv.gov)

#### Penalties

The sale of drug paraphernalia to minors under the age of 18 is prohibited and considered a felony.

Any person who violates the Drug Paraphernalia statute by not properly obtaining a Drug Paraphernalia license, stating false information on the DRUG-1 or DRUG-2 form, failing to submit information for an inspection to law enforcement and/or failing to keep a detailed log of all paraphernalia sales, shall be guilty of a misdemeanor. If convicted, the person shall be fined not less than \$10 or more than \$500 for the first offense and succeeding offenses. Each day the violation continues is considered a separate and distinct offense.