

ENROLLED ACT NO. 32, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to taxation; imposing taxes on nicotine products as specified; providing for collection and distribution of the taxes imposed; requiring a license to sell nicotine products; requiring reporting of nicotine products sold; providing penalties; providing for state preemption of the taxation of nicotine products as specified; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 14-3-301(a)(v), 39-15-107(a)(i), 39-16-107(a)(i), 39-18-101(a)(iv), (v)(A), (B) and by creating new paragraphs (ix) through (xi), 39-18-102(b), 39-18-103(a) by creating new paragraphs (v) and (vi), (b) and (c) by creating new paragraphs (v) and (vi), 39-18-104 by creating a new subsections (g) and (h), 39-18-106(a), 39-18-107(a)(i), (ii), (c)(i)(intro), (D), 39-18-108(c)(ii)(A), (vi), (vii) and (ix) and 39-18-111(b) are amended to read:

14-3-301. Definitions.

(a) As used in this article:

(v) "Electronic cigarette" means ~~a product that employs any mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to deliver doses of nicotine vapor by means of heating a liquid nicotine solution contained in a cartridge or other delivery system.~~ any device that can be used to deliver aerosolized or vaporized nicotine or synthetic nicotine to the person using the device and includes any component, part and accessory of the device and any vapor

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material intended to be aerosolized or vaporized during the use of the device. "Electronic cigarette" includes, without limitation, any electronic cigar, electronic cigarillo, electronic pipe, electronic hooka, vapor pen and any similar product or device. "Electronic cigarette" does not include a battery or battery charger if sold separately from the electronic cigarette and does not include any product regulated as a drug or device by the United States food and drug administration under subchapter V of the Food, Drug and Cosmetic Act.

39-15-107. Compliance; collection procedures.

(a) Returns, reports and preservation of records. The following shall apply:

(i) Each vendor shall on or before the last day of each month file a true return showing the preceding month's gross sales and remit all taxes to the department. The returns shall contain such information and be made in the manner as the department by regulation prescribes. The department may allow extensions for filing returns and paying the taxes by regulation, but no extension may be for more than ninety (90) days. If the total tax to be remitted by a vendor during any month is less than one hundred fifty dollars (\$150.00), a quarterly or annual return as authorized by the department, and remittance in lieu of the monthly return may be made on or before the last day of the month following the end of the quarter or year for which the tax is collected. If the accounting methods regularly used by any vendor are such that reports of sales made during a calendar month would impose unnecessary hardships, the department after receiving a formal request filed by the vendor may accept reports at intervals as would be more convenient to the taxpayer. Any vendor shall report whether

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the vendor sells ~~cigarettes, cigars, snuff or other tobacco~~ nicotine products, as defined by W.S. 39-18-101(a)(xi), in this state to the department in the form and manner required by the department. The department may reject any report required under this paragraph of any vendor who does not comply with the ~~tobacco~~ nicotine sales reporting requirements. Every person purchasing goods or services taxable by this article who does not pay the tax owed to a vendor shall, on or before the last day of each month, file a return showing the gross purchases made during the preceding month and remit all taxes due to the department. The return shall contain such information and be made in the manner as the department shall prescribe by rule and regulation. The department, by rule and regulation, may allow an extension for filing a return and paying any tax due, but no extension shall be granted for more than ninety (90) days;

39-16-107. Compliance; collection procedures.

(a) Returns, reports and preservation of records.
The following shall apply:

(i) Every vendor shall collect the tax imposed by this article and is liable for the entire amount of taxes imposed. The taxes are due and payable on the last day of the month following the month in which they were collected or as required by the department and each vendor shall on or before the last day of each month file a return showing the total sales of tangible personal property subject to the tax imposed by this article sold during the preceding month and remit all taxes due to the department. The returns shall contain such information required by the department. Any vendor shall report whether the vendor sells ~~cigarettes, cigars, snuff or other tobacco~~ nicotine

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products, as defined by W.S. 39-18-101(a)(xiii), in this state to the department in the form and manner required by the department. The department may reject any report required under this paragraph of any vendor who does not comply with the ~~tobacco~~nicotine sales reporting requirements. If the total tax to be remitted by a vendor is less than one hundred fifty dollars (\$150.00) a quarterly or annual return as authorized by the department, and remittance in lieu of the monthly return may be made on or before the last day of the month following the end of the quarter or year for which the tax is collected. Returns shall be signed by the vendor or his agent;

39-18-101. Definitions.

(a) As used in this article:

(iv) "Wholesale purchase price" means the established price for which a manufacturer sells the ~~tobacco~~nicotine product to a wholesaler exclusive of any discount or other reduction;

(v) "Wholesaler" means any person who:

(A) Whether located within or without Wyoming, imports, sells or distributes ~~cigarettes, cigars, snuff or other tobacco~~nicotine products into this state for sale or resale;

(B) Purchases ~~cigarettes, cigars, snuff or other tobacco~~nicotine products in this state for sale or resale;

(ix) "Electronic cigarette" means any device that can be used to deliver aerosolized or vaporized

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nicotine or synthetic nicotine to the person using the device and includes any component, part and accessory of the device and any vapor material intended to be aerosolized or vaporized during the use of the device. "Electronic cigarette" includes, without limitation, any electronic cigar, electronic cigarillo, electronic pipe, electronic hooka, vapor pen and any similar product or device. "Electronic cigarette" does not include a battery or battery charger if sold separately from the electronic cigarette and does not include any product regulated as a drug or device by the United States food and drug administration under subchapter V of the Food, Drug and Cosmetic Act;

(x) "Vapor material" means any liquid solution or other material containing nicotine or synthetic nicotine that is depleted as an electronic cigarette is used. "Vapor material" includes liquid solution or other material containing nicotine or synthetic nicotine that is sold with or inside an electronic cigarette;

(xi) "Nicotine product" means tobacco products as defined by W.S. 14-3-301(a)(i), electronic cigarettes and vapor material.

39-18-102. Administration; confidentiality.

(b) The ~~tax~~taxes imposed by W.S. 39-18-103(a)(iii) and (v) shall be paid by the wholesaler. The wholesaler shall be entitled to retain four percent (4%) of any tax collected under W.S. 39-18-103(a)(iii) and (v).

39-18-103. Imposition.

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(a) Taxable event. The following event shall constitute a taxable event under this article:

(v) In addition to the other taxes imposed by this subsection, there is levied and assessed upon electronic cigarettes and vapor material purchased or imported into this state by wholesalers for resale an excise tax at the rate imposed by W.S. 39-18-104(g);

(vi) The tax imposed by paragraph (v) of this subsection shall also be imposed upon the use or storage by consumers of electronic cigarettes and vapor material in this state, and upon those consumers, at the rate imposed by W.S. 39-18-104(g). This tax shall not apply if the tax imposed by paragraph (v) of this subsection has been paid.

(b) Basis of tax. The state preempts the field of imposing taxes on ~~eigarettes~~nicotine products and no city, town or county shall impose, levy or collect taxes upon the sale, occupation or privilege of selling ~~eigarettes~~nicotine products. This subsection shall not be construed to prevent a city, town or county from regulating the public use of nicotine products.

(c) Taxpayer. The following taxpayers are liable for the tax imposed by this article:

(v) In addition to the other taxes imposed by this subsection, there is levied and assessed upon electronic cigarettes and vapor material purchased or imported into this state by wholesalers for resale an excise tax at the rate imposed by W.S. 39-18-104(g);

(vi) The tax imposed by paragraph (v) of this subsection shall also be imposed upon the use or storage by

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consumers of electronic cigarettes and vapor material in this state, and upon those consumers, at the rate imposed by W.S. 39-18-104(g). This tax shall not apply if the tax imposed by paragraph (v) of this subsection has been paid.

39-18-104. Taxation rate.

(g) In addition to the other taxes imposed by this section, there is levied and assessed upon electronic cigarettes and vapor material purchased or imported into this state by wholesalers for resale, an excise tax at the rate of fifteen percent (15%) of the wholesale purchase price at which the electronic cigarettes and vapor material are purchased by wholesalers from manufacturers.

(h) The tax imposed by subsection (g) of this section shall also be imposed upon the use or storage by consumers of electronic cigarettes and vapor material in this state, and upon those consumers, at the rate of seven and one-half percent (7.5%) of the retail price of the electronic cigarettes and vapor material. This tax shall not apply if the tax imposed by subsection (g) of this section has been paid.

39-18-106. Licensing; permits.

(a) Every wholesaler, cigarette importer and cigarette manufacturer who sells or offers to sell ~~cigarettes, cigars, snuff or other tobacco~~ nicotine products in this state must have a license to do so issued by the department. No license or renewal of a license shall be granted under this section unless the wholesaler states in writing, under penalty for false swearing, that he shall comply fully with W.S. 9-4-1201 through 9-4-1209. The license fee is ten dollars (\$10.00) per year or fraction

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thereof and is valid through June 30 in each year. The license will be granted only to wholesalers who own or operate the place from which sales are made and additional licenses must be obtained for each separate location. The licenses are transferable pursuant to rules and regulations promulgated by the department.

39-18-107. Compliance; collection procedures.

(a) Returns and reports. The following shall apply:

(i) Each wholesaler shall keep complete and accurate records of all ~~eigarettes, cigars, snuff or other tobacco~~ nicotine products purchased and sold for three (3) years. The records shall be in the form prescribed by the department and will be available for inspection by the department at any reasonable time. The department may investigate and examine the stock of cigarettes upon any premises where they are stored or sold;

(ii) On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of ~~eigars, snuff or other tobacco~~ nicotine products for use or storage in this state, upon which products the tax imposed by W.S. 39-18-103(a)(iii) and (v) has not been paid, shall file a return with the department showing the quantity of such products so acquired. The return shall be made upon a form furnished and prescribed by the department and shall contain such other information as the department may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

(c) Timelines. The following shall apply:

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(i) No later than the twentieth day of the month following the sale of cigarettes, or the month following the end of the calendar quarter for ~~eigars, snuff or other tobacco~~ nicotine products other than cigarettes, each wholesaler shall return to the department the following information on forms furnished by the department:

(D) The amount paid by the wholesaler to the manufacturer for ~~eigars, snuff or other tobacco~~ nicotine products other than moist snuff. For sales of moist snuff, the return shall include the net weight as listed by the manufacturer. The department shall compile the information provided under this subparagraph with respect to moist snuff tobacco sales on an annual basis and shall report the information to the legislature every five (5) years beginning on July 1, 2014.

39-18-108. Enforcement.

(c) Penalties. The following shall apply:

(ii) The following acts are misdemeanors punishable by a fine of not more than one hundred dollars (\$100.00) or imprisonment in the county jail for not more than six (6) months or both:

(A) Selling or distributing ~~cigarettes, eigars, snuff or other tobacco~~ nicotine products as a wholesaler without a license;

(vi) Any person who purchases any ~~tobacco~~ nicotine product for resale in this state from other than a licensed wholesaler is liable for the tax and any penalties and interest imposed under this paragraph as if he were a wholesaler under this act and shall pay an additional

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penalty of twenty-five percent (25%) of any tax due. Any wholesaler or other person who fails to file any return or to pay any tax within the time required or permitted by this subsection shall be subject to a penalty of five percent (5%) of the amount of the tax due, plus one percent (1%) of the tax for each month of delinquency or fraction thereof. The department may waive all or any part of this penalty for good cause shown;

(vii) Any person who does any act prohibited by this article, or omits, neglects or refuses to comply with any duty imposed upon him by this article, or causes not to be done any of the things required by this article, or does any act prohibited by this article, may, in addition to any other penalty provided by this article, be liable for a penalty of not to exceed one thousand dollars (\$1,000.00) or five (5) times the retail value of the ~~tobacco~~-nicotine product at issue, whichever is lesser, to be recovered in a civil action;

(ix) Any fixture, equipment or other personal property used by a ~~tobacco~~-nicotine product wholesaler or retailer to commit any of the following acts shall be subject to forfeiture to the state, if the retail value of the cigarettes involved or any tax involved in the act exceeds five hundred dollars (\$500.00):

39-18-111. Distribution.

(b) The revenue received from the ~~tax~~-taxes imposed by W.S. 39-18-104(c), ~~and~~-(d), (g) and (h) shall be deposited in the general fund.

ORIGINAL HOUSE
BILL NO. HB0073

ENGROSSED

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Section 2. This act is effective July 1, 2020.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk