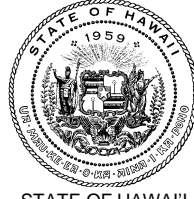


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TAX INFORMATION RELEASE NO. 2023-02

RE: Cigarette and Tobacco License and Permit Requirements Under Chapter 245, Hawaii Revised Statutes

This Tax Information Release (TIR) provides guidance on license and permit requirements under chapter 245, Hawaii Revised Statutes (HRS), relating to the Cigarette and Tobacco Tax, and discusses tax obligations under chapter 245, HRS, for wholesalers, dealers, and retailers.

Definitions of Cigarettes and Tobacco Products

Section 245-1, HRS, provides the following definitions for cigarettes and tobacco products:

A "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Tobacco products" means:

- (1) Tobacco in any form, other than cigarettes or little cigars, that is prepared or intended for consumption or for personal use by humans, including large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco; or
- (2) Electronic smoking devices; or
- (3) E-liquid.

Section 245-1, HRS, also provides the following definitions that expand on the various categories of "tobacco products":

"E-liquid" means any liquid or like substance, which may or may not contain nicotine, that is designed or intended to be used in an electronic smoking device, whether or not packaged in a cartridge or other container. "E-liquid" does not include prescription drugs, medical cannabis authorized for medical use by the State Department of Health, or medical devices used to aerosolize, inhale, or ingest prescription drugs.

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to a person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic pipe, vape pen, or electronic hookah. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, and subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.).

"Large cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco and weighs more than four pounds per thousand.

"Little cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco, other than natural leaf tobacco, and weighs not more than four pounds per thousand rolls.

Wholesalers and Dealers Must Have a Cigarette and Tobacco Tax License

Any person engaged in the business of a wholesaler or dealer of cigarettes or tobacco products must obtain a cigarette and tobacco tax license issued by the Department of Taxation ("Department") prior to commencing business in the State. The license is renewable annually on July 1.

A "wholesaler" is "a person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products that the person uses, possesses, or distributes only to retailers, or other wholesalers, or both."

A "dealer" is "any person coming into the possession of cigarettes or tobacco products which have not been acquired from an authorized permit holder or licensee under this chapter, or any person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products that have not been acquired from a licensee and who distributes or uses such cigarettes or tobacco products."

Retailers Must Have a Retail Tobacco Permit

Any person engaged in the retail sale of cigarettes and tobacco products upon which tax is required to be paid under chapter 245, HRS, must obtain a retail tobacco permit prior to commencing business in the State. A "retail sale" is a sale of cigarettes or tobacco products to a consumer, including a sale made through a vending machine. A person is engaged in the business of retail sales if they sell, possess, keep, acquire, distribute, or transport cigarettes or tobacco products for retail sale. The retail tobacco permit is renewable annually on December 1.

Definitions of Possession and Use

For purposes of chapter 245, HRS:

The term "possession" means "knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, either directly or through another entity;" and

The term "use" means "the exercise of any right or power incident to ownership or possession, other than the sale, or the keeping or retention for the purpose of sale."

Imposition of Cigarette and Tobacco Tax

Section 245-3, HRS, imposes the cigarette and tobacco tax on a wholesaler or dealer of cigarettes and tobacco products.¹

The cigarette and tobacco tax is only paid once with respect to the same cigarettes or tobacco product.

Example 1: Taxpayer A, who holds a cigarette and tobacco license, acquires tobacco products from an unlicensed seller. Taxpayer A pays the cigarette and tobacco tax for the tobacco products. Taxpayer A subsequently sells the tobacco products to Taxpayer B, who holds a cigarette and tobacco license. Because the cigarette and tobacco tax for the tobacco products was paid by Taxpayer A, no additional cigarette and tobacco tax is due from Taxpayer B for the tobacco products.

Because the cigarette and tobacco tax is only imposed on wholesalers and dealers, a retailer is not subject to the cigarette and tobacco tax. A retailer may, however, be required to obtain a cigarette and tobacco license if the retailer comes into possession of cigarettes or tobacco products that have not been acquired from an authorized permit holder or licensee. In this instance, the retailer, who acquires cigarettes or tobacco products from an unlicensed person, becomes the "dealer."

Example 2: Taxpayer C, who holds a retail tobacco permit, acquires large cigars from an unlicensed seller. The cigarette and tobacco tax has not been previously paid for the large cigars. Taxpayer C, as a person who comes into possession of tobacco products that were not acquired from an authorized permit holder or licensee, is now considered a dealer. As a retailer who also becomes a dealer, Taxpayer C must obtain a cigarette and tobacco tax license and pay the cigarette and tobacco tax on the tobacco products.

¹ Effective January 1, 2024, electronic smoking devices and e-liquids will be subject to the cigarette and tobacco tax under section 245-3(a)(14), HRS.

With the enactment of Act 62, Session Laws of Hawaii 2023, and imposition of the cigarette and tobacco tax on electronic smoking devices and e-liquid effective January 1, 2024, all businesses (wholesalers, dealers, and retailers who qualify as dealers) in possession of electronic smoking devices and e-liquid as of January 1, 2024 must obtain a cigarette and tobacco license and pay the cigarette and tobacco tax on the electronic smoking devices and e-liquid. Retailers must also obtain a retail tobacco permit by January 1, 2024.

Example 3: Taxpayer D sells electronic smoking devices and e-liquid directly to consumers, but does not sell any other type of tobacco product. As of December 1, 2023, Taxpayer D does not hold a cigarette and tobacco license or a retail tobacco permit. Taxpayer D must obtain a retail tobacco permit by January 1, 2024, as Taxpayer D is engaged in the retail sale of tobacco products. Taxpayer D must also obtain a cigarette and tobacco license by January 1, 2024, as Taxpayer D will be in possession of tobacco products that were not acquired from a licensee. Taxpayer D must also pay the cigarette and tobacco tax on the electronic smoking devices and e-liquid in its possession as of January 1, 2024.

Unlawful Shipment of Tobacco Products

Effective January 1, 2024, a person who commits the offense of unlawful shipment of tobacco products will be subject to criminal penalties under Act 62. A person or entity commits the offense of unlawful shipment of tobacco products if the person or entity:

- (1) Is engaged in the business of selling tobacco products; and
- (2) Knowingly ships or causes to be shipped any tobacco products to a person or entity in this State that is not a licensee under this chapter [245].

The offense does not apply "to the shipment of tobacco products if any of the following conditions are met:

- (1) The tobacco products are exempt from taxes as provided by section 245-3(b); or
- (2) All applicable state taxes on the tobacco products are paid in accordance with the requirements of this chapter."

Those wishing to verify the license status of a person or entity may utilize the "Search Tax Licenses" feature found in the "Business" tile on Hawai'i Tax Online at <http://hitax.hawaii.gov>.

Please note that the Department does not administer the criminal offense of unlawful shipment of tobacco products, and is therefore unable to provide guidance on its enforcement.

For more information, please contact the Rules Office at 808-587-1530 or by e-mail at Tax.Rules.Office@hawaii.gov.

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