



TOBACCO PRODUCTS TAX BULLETIN 2018-01

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Tax Treatment of Tobacco Products under the *Kingdom Vapor* Decision

The purpose of this Bulletin is to provide guidance regarding the decision of the Commonwealth Court in Kingdom Vapor & Smoke 4 Less, LLC, v. Pennsylvania Department of Revenue, 697 M.D. 2016 (2018) (“*Kingdom Vapor*”). This decision held that separately sold components are not subject to the tax imposed by Article XII-A of the Tax Reform Code, entitled Tobacco Products 72 P.S. §§ 8201-A et al. (“Tobacco Products Article”).

In this Bulletin, Section I sets forth the tax treatment of tobacco products under the *Kingdom Vapor* decision. Section II provides guidance for tax that has already been collected but not yet reported on a tax return. Section III sets forth the requirements to timely file a petition for refund of the floor tax that was paid on component inventory or tax that was paid on the sale of separately packaged components.

Section I: Tax Treatment of Electronic Cigarettes and Components

1. Taxable Items: The following items are subject to the tax imposed by the Tobacco Products Article:

- a. Electronic Cigarettes: An electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substance and the use or inhalation of which simulates smoking, notwithstanding whether the device is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar and e-pipe or under any other product, name or description. 72 P.S. § 8201-A(1), (2)(i)
- b. Any liquid or substance placed in or sold for use in the electronic cigarette, regardless of whether the liquid or substance contains nicotine. 72 P.S. § 8201-A(2)(ii)
- c. Any component sold in the same packaging as the electronic cigarettes.

2. Items Not Subject to Tax: Components, such as but not limited to coils, batteries, and reservoirs, if sold separately, are not subject to the tax imposed by the Tobacco Products Article.

Section II: Tobacco Products Tax Collected and Not Reported on a Tax Return

1. Current Collection: The Tobacco Products Tax should no longer be collected on separately packaged components as of June 22, 2018 and after.
2. Remittance of Tax: If a taxpayer has already collected the tax, the tax must be remitted to the Commonwealth of Pennsylvania with the next tax return due. A taxpayer who is a manufacturer or wholesaler is not to refund a taxpayer on its own.



Section III: Petitions for Refund for Tobacco Products Tax after *Kingdom Vapor* decision

1. General Rule: A taxpayer may file a petition for refund of the following taxes with the Board of Appeals (“Board”) under 61 Pa. Code § 7.14 within the period provided by Section 3003.1 of the Tax Reform Code, 72 P. S. § 10003.1:

- a. Floor tax paid on inventory of separately packaged components.
- b. Tobacco products tax paid on the sale of separately packaged components.
- c. A Petition (REV-65) can be submitted to the Board of Appeals electronically (fax or online) or by mail. Please see www.boardofappeals.state.pa.us for further instructions.

2. Contents of Petition: In addition to the general filing requirements, a petition filed pursuant to this Bulletin shall include:

- a. The amount and type of refund requested.
- b. An appeal schedule identifying the transactions for which a refund is being requested.

3. Burden of Proof: The petitioner must prove that the tobacco products floor tax on inventory of separately packaged components or the tobacco products tax on the sale of separately packaged components was paid.

4. Documentation: The petitioner may submit the following documentation to assist the Board in its review of the request for the refund:

- a. Copies of relevant invoices.
- b. Documentation showing that the tobacco products floor tax on inventory of separately packaged components or the tobacco products tax on the sale of separately packaged components was paid. Proof of payment may be shown by copies of cancelled checks or bank statements showing that the tax was paid.

In addition to the above, the Board may request any documentation that it deems necessary to assist in the review of the petition.

5. Decision & Order: The Board will review the petition and issue a decision and order in accordance with 61 Pa. Code § 7.15(8). If the Board denies relief, the decision and order will explain the appeal rights of the petitioner.