



Comptroller of Maryland • Field Enforcement Bureau

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[www.marylandtaxes.gov](http://www.marylandtaxes.gov)**TT-78**

February 24, 2021

**TO: All Cigarette and Other Tobacco Products (OTP) Wholesalers, Retailers, and Tobacconists; and Electronic Smoking Devices (ESD) Manufacturers, Wholesaler Distributors, Wholesaler Importers, Retailers, and Vape Shop Vendors**

**SUBJECT: Cigarette and OTP Tax Increase and Floor Tax; and Electronic Smoking Devices (ESD) Sales Tax**

The 2021 Session of the Maryland General Assembly (MGA) voted to override Governor Hogan's veto of House Bill 732 from the 2020 session of the MGA which established a definition for ESD, broadened the definition of OTP, created a sales and use tax on ESD, and changed the excise tax rate on cigarettes and on the wholesale price of OTP as follows:

	<u>From</u>	<u>To</u>
Cigarettes	\$2.00 per pack	\$3.75 per pack
OTP (with exceptions)	30% of wholesale cost	53% of wholesale cost
ESD	6% sales tax	12% sales tax
ESD Liquid ≤ 5ml	6% sales tax	60% sales tax

- **OTP exceptions - Excise tax rates remain unchanged for cigars currently at 70% of wholesale cost, pipe tobacco at 30% of wholesale cost, and premium cigars at 15% of the wholesale cost.**
- The new tax rate applies to all cigarette and OTP floor stock in Maryland as of 12:01 a.m. on March 14, 2021.
- In order to report and remit the additional tax due on your cigarette, cigarette stamps, and OTP inventory, you will need to complete the 2021 Cigarette and Other Tobacco Products Floor Tax Returns which will be available in coming days on [www.marylandtaxes.gov](http://www.marylandtaxes.gov).
- Please read the forms carefully and complete them, or collect the necessary data for completion, before moving or selling any OTP on March 14, 2021.

- A physical inventory is required of all OTP held in your possession at 12:01 a.m. on March 14, 2021 and must be entered in the proper space on the tax return.
- The 2021 Cigarette and Other Tobacco Products Floor Tax Returns can be filed any time after March 14, 2021 but must be remitted no later than June 13, 2021.
- Any cigarettes or OTP not accounted for in accordance with the above would be considered contraband and subject to confiscation.

**Important Dates to Consider**

February 12, 2021 – MGA override of Governor Hogan’s veto of 2020 House Bill 732

March 14, 2021 – Effective date of House Bill 732

June 13, 2021 – Final remittance date of the floor tax return and additional tax

For your benefit, please find enclosed a list of Frequently Asked Questions (FAQs). These FAQs also contain useful information on the proper filing of the cigarette and OTP floor tax. The floor tax returns, FAQs, and other information related to cigarette and OTP will be available on the Comptroller of Maryland’s Website at [www.marylandtaxes.gov](http://www.marylandtaxes.gov). Questions related to the cigarette and OTP floor tax can be directed to Taxpayer Services at 410-260-7980, 1-800-638-2937, or [taxhelp@marylandtaxes.gov](mailto:taxhelp@marylandtaxes.gov).

Jeffrey A. Kelly  
Director, Field Enforcement Bureau

**Frequently Asked Questions  
Regarding the  
Cigarette and OTP Floor Tax, and EDS**

**1. When are the cigarette and OTP tax increases effective?**

The tax increases are effective 3/14/21.

**2. Are there floor tax requirements?**

Yes, there is a floor tax due on the inventory of cigarette packs and OTP.

**3. When do we have to count the inventory?**

As the tax increases are effective March 14, 2021, the inventory should be counted at the close of business March 13, 2021. If your business is open 24 hours, inventory should be counted at 12:01 a.m. on March 14, 2021.

**4. When are the floor tax returns due to be submitted and how do I get the forms?**

The floor tax returns must be submitted after March 13, and no later than June 13, 2021. Regardless of the date you submit the return(s), it must be based on the cigarette packs, cigarette stamps, and OTP in stock on March 14, 2021.

The tax forms, the bulletin, and the FAQs can be obtained online at:

<http://www.marylandtaxes.gov>.

**5. How can I obtain a copy of the Cigarette and OTP Floor Tax Return(s)?**

You can obtain a copy of the floor tax form online at:

[www.marylandtaxes.gov](http://www.marylandtaxes.gov). The forms and instruction are under development now and will be available online shortly.

**6. How much is the floor tax and is there a discount?**

Cigarettes

The floor tax for cigarettes is \$1.75 per pack. The discount rate does not apply to the floor tax, because there is no purchase of tax stamps. Under the Tax General Article, Section 12-303(b), the Comptroller can only allow a licensed

wholesaler a discount of 0.82% for the purchase price of tax stamps. The floor tax is not a purchase of stamps and a discount has already been applied.

### OTP

The OTP tax rates and floor taxes, where applicable, are described below:

Premium Cigars - 15% of wholesale cost; no rate change/no floor tax  
Cigars - 70% of wholesale cost; no rate change/no floor tax  
Pipe Tobacco - 30% of wholesale cost; no rate change/no floor tax  
All other OTP - 53% of wholesale cost; a floor tax is required

## **7. What products are OTP?**

**NOTE:** The category of OTP as defined in the 2020 session of the MGA is significantly broader than the previous definition of OTP. Products that were not previously taxed as OTP are now subject to the excise tax; see some examples in paragraph three.

Other Tobacco Products (OTP) are ones that are intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other manner, and that is made of or derived from, or that contains tobacco, or nicotine, or a component or part used in a consumable product described above.

Though taxed at different rates, a non-exhaustive list of examples of OTP includes cigars, premium cigars, pipe tobacco, chewing tobacco, snuff, snus, filters, rolling paper, pipes of all types, hookahs, cigar wraps, and other types of paraphernalia that could be used for consumption.

## **8. What products are not OTP?**

OTP does not include cigarettes, electronic smoking devices (ESD), or drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act.

## **9. How is a premium cigar defined?**

Section 16.5-101 of the Business Regulation Article of the Annotated Code of Maryland, defines premium cigars as follows:

(p) "Premium cigars" means cigars that:

- (1) have hand-rolled wrappers made from whole tobacco leaves where the filler, binder, and wrapper are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor; or
- (2) are designated as premium cigars by the Comptroller by regulation.

COMAR 03.02.02.09 further defines premium cigars as those that are made from 100 percent whole tobacco leaves where the filler, binder, and wrapper, are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor and includes no tips, filters or nontobacco mouthpieces.

**10. My wholesaler pays the tax on my OTP and stamps my cigarettes. Do I need to complete the floor tax return?**

Yes. The floor tax return is required to pay the difference in the tax rate your wholesaler paid and the new tax rates effective March 14, 2021 on your existing inventory of OTP and cigarettes.

**11. I don't sell cigarettes or OTP anymore or I haven't been in business for a while, what do I need to do?**

Indicate on the tax return, in writing, that you no longer sell cigarettes or OTP, or that you are out of business and send it in.

**12. What is the new minimum price that can be charged for cigarettes?**

Retailers

Actual minimum prices are not available due to the differences in wholesaler markups. The retailer to consumer minimum selling price is marked up 8% from the retailer's purchase price from their wholesaler. The 6% sales tax rate is then applied to the selling price.

Wholesalers

Commercial Law Article, Section 11-503 requires a minimum markup of 5% of wholesale price unless an adjustment to the markup is applied for and approved each year. The COVID-19 outbreak interfered with any adjusted markups for 2020 therefore wholesalers may continue to use the previously approved minimum markup of 0.39% until further notice.

Wholesalers may use the minimum price calculator at:

<https://marylandtaxes.gov/business/tobacco/minimum-price.php>

**13. If I have more than one store, can I combine them and send in one payment for all stores?**

Yes, but you must submit the floor tax returns for each store and identify the Central Registration Numbers #s on the combined check.

**14. Can I pay the floor tax by direct debit?**

Yes, contact Taxpayer Services at 410-260-7980 or 1-800-638-2937 for details if you are not already set up to make direct debit payments.

**15. Do I need to raise my cigarette price up \$1.75?**

Your cigarettes now cost you \$1.75 more per pack of 20. It is an economic/business decision whether or not you should raise your price by \$1.75. However, you are responsible for ensuring that your final sales price to consumers is in accordance with state law regarding minimum pricing for cigarettes.

**16. Is there an ESD excise tax?**

No, there is no ESD excise tax. There is, however, an enhanced sales and use tax (SUT) for ESD and containers of vaping liquid. The SUT for ESD is 12% of the retail sales price and the SUT for vaping liquid is 60% of the retail sales price for containers of 5 ml or less.

**17. What is an Electronic Smoking Device?**

An Electronic Smoking Device, or ESD, includes items such as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid; and, with few exceptions, any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device.

**18. What is not an ESD?**

ESD does not include a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act; or a battery or battery charger when sold separately.

**19. Where can I get additional information?**

For additional information, you can visit [www.marylandtaxes.gov](http://www.marylandtaxes.gov) or contact Taxpayer Services at 410-260-7980, 1-800-638-2937, or by email at [taxhelp@marylandtaxes.gov](mailto:taxhelp@marylandtaxes.gov)