

Department of Revenue

Revenue Notice # 12-10: Tobacco Products Tax – Taxability – E-Cigarettes

Introduction

An electronic cigarette, or e-cigarette, is an electrical device that simulates the act of cigarette tobacco smoking by producing an inhaled vapor bearing the physical sensation, appearance, and often the flavor, of inhaled tobacco smoke. The e-cigarettes do not meet the definition of a cigarette set forth in *Minnesota Statutes*, section 297F.01, subdivision 3, but they do meet the definition of a tobacco product set forth in *Minnesota Statutes*, section 297F.01, subdivision 19, which provides in part as follows:

““Tobacco products” means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product...”

The key phrases in the statute that establish the taxability of an e-cigarette are (1) “any product containing, made, or derived from tobacco...” (2) “...whether ... smoked, ...or inhaled...” and (3) “...any component, ...or accessory of a tobacco product....”

Department Position

The department’s position is that the e-cigarettes are subject to the tobacco products tax. The cartridge containing nicotine is a component of the e-cigarette. The cartridge contains nicotine which is ordinarily derived from tobacco and is used by a person by smoking them or inhaling. The department assumes that all nicotine is derived from tobacco and the taxpayer will bear the burden of proving otherwise. If it can be documented that the nicotine has been derived from sources other than tobacco, it would not be taxable as a tobacco product.

Further, the department’s position is that if a wholesaler sells the cartridge separately and can isolate the cost of the product, the tax will be imposed only on the nicotine based cartridges or liquid nicotine in a bottle. Otherwise, the sales price of a whole kit or content of an e-cigarette package will be taxed. The tax is due and is determined on whatever format the product is brought into the state.

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