

Vape Store Owners – Did You Get Your Tax Refund?

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Tax season for most individuals has drawn to a close, and you may or may not have been entitled to a refund from the IRS, but if you are an e-cigarette wholesaler or retailer you are almost certainly entitled to a tax refund from the Pennsylvania Department of Revenue (“DOR”). In 2016, the Pennsylvania General Assembly passed the Other Tobacco Products Act, which placed a 40% tax on electronic cigarettes and e-liquid, the substance used in the device to vape. Wholesalers were charged with collecting the 40% tax and remitting it to the DOR. In addition, the Act required retailers to pay a 40% floor tax on inventory in the possession of the retailer. With respect to e-cigarette businesses, the statute specifically defined as taxable “[a]n 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.” 72 P.S. § 8201-A. It also taxed any “liquid or substance placed in or sold for use in an electronic cigarette.”

Despite the plain language of the statute, the DOR claimed that any component part of an electronic cigarette device was taxable at the 40% rate, including rechargeable batteries, battery chargers, heating coils, mods, mouth pieces, tanks, and other items. However, in 2018, the Commonwealth Court, in a unanimous published decision, *East Coast Vapor, LLC v. Pa Dept. of Revenue, et al.*, 189 A.3d 504 (Pa. Cmwlth. 2018) (*en banc*), rejected the DOR’s position.[1] The Court ruled that only e-liquid and a complete device were taxable. As a result, wholesalers and retailers that had collected or paid taxes on other items had overpaid and are entitled to a refund. A wholesaler or retailer has three years from when payment was made to seek their refund. [If you are an e-cigarette business and are in need of assistance in seeking your refund, please contact Andrew Salemme

[1] The author represented East Coast Vapor and two other entities, Kingdom Vapor and Smoke 4 Less, LLC, in their successful lawsuits against the DOR.