

## Immediate Attention Required – New Tobacco Products Definition Beginning January 1, 2024

*This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DOR and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.*

*This guidance document may change with updated information or added examples. DOR recommends you do not print this document. Instead, sign up for the [subscription service](#) at [revenue.nebraska.gov](https://revenue.nebraska.gov) to get updates on your topics of interest.*

[Legislative Bill 727 \(2023\)](#) expanded the definition of tobacco products under the Tobacco Products Tax Act to include electronic nicotine delivery systems (ENDS). The tax rate of ENDS containing three milliliters or less of consumable material is five cents per milliliter. The tax rate of ENDS containing greater than three milliliters of consumable material is ten percent of the purchase price paid by the first owner or the price at which the first owner who made, manufactured, or fabricated the ENDS sells the item to others.

### Definitions

“Consumable material” means any liquid solution or material containing nicotine that is depleted as an electronic delivery system is being used.

“ENDS” means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

“First owner” means any person who is: engaged in the business of selling tobacco products in this state who brings or causes tobacco products to be brought into this state for sale in this state; who makes, manufacturers, or fabricates and sells tobacco products in this state; who is an out-of-state supplier who ships or transports tobacco products to retailers in this state and obtains a license; or an out-of-state retailer who sells ENDS to consumers within Nebraska.

### Registrations Requirements

A tobacco products license must be obtained by the first owner of the tobacco products. To register for the tobacco products license, complete [Nebraska Cigarette and Tobacco Products License and Registration Application, Form 20CT](#). There is a \$25 license fee. The Form 20CT can be found at: <https://revenue.nebraska.gov/about/forms>.

### Reporting Requirements

A monthly [Nebraska Tobacco Products Tax Return for Products Other than Cigarettes, Form 56](#), and accompanying schedules (Form 56A, Schedule I, Schedule II, Schedule III, and Schedule IV) must be filed and the tobacco products tax paid by the 10th of the month following the report month by any person deemed to be the first owner. A return is required even if no tobacco products tax is due.

Electronic filing of the return is currently not available.

### PACT Act Reporting

PACT Act reporting for ENDS will be mandatory effective January 1, 2024. The PA-2 form developed by the Federation of Tax Administrators must be submitted in Excel format using DOR’s secure filing system. Additional information about PACT Act Reporting can be found at: <https://revenue.nebraska.gov/businesses/pact-act>.