

Hemp, CBD and Vape

Presented by:
Ernest Legier, ATC Commissioner
and
Brandeia Averett, Director, LDR Tax Policy and Planning

December 5, 2024



CONSUMABLE HEMP DEFINITION

Consumable hemp processor

means any individual, partnership, corporation, cooperative association, or other business entity permitted for manufacturing or processing of industrial hemp into a consumable hemp product.

Consumable hemp product

means any product derived from industrial hemp that contains any cannabinoid, including cannabidiol or THC, and is intended for consumption or topic use.

Package

means a group of individual servings offered together as a single unit.

**Effective:
January 1, 2024**



CONSUMABLE HEMP

CHANGES FROM 2024 LEGISLATIVE UPDATE (ACT 752)

1. EFFECTS TO CLASS A PERMIT HOLDERS
2. EFFECTS TO QUALIFICATION OF APPLICANTS
3. EFFECTS ON PROHIBITION OF LOCATION
4. EFFECTS ON HOW PRODUCTS ARE DISPLAYED
5. EFFECTS ON WHOLESALERS
6. EFFECTS ON APPLICABLE STATUTE



Class A permit holders



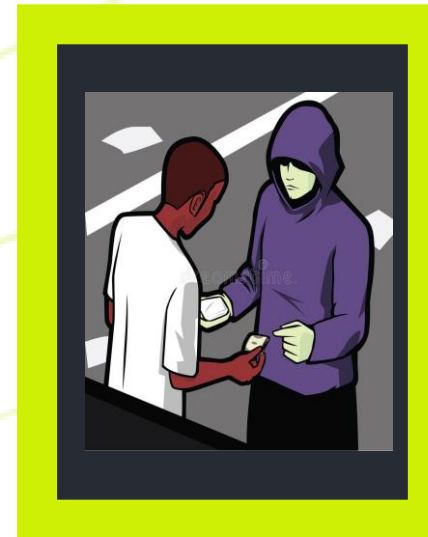
No retail permit shall be issued to any applicant that also holds a Class A permit. Any restaurant or bar that held both a Class A permit and a permit to sell consumable hemp products at retail prior to June 17, 2024, shall continue to be eligible to sell consumable hemp products at retail, and shall be eligible to renew the retail consumable hemp permit annually.

QUALIFICATION OF APPLICANT

Louisiana R.S. 3:1485



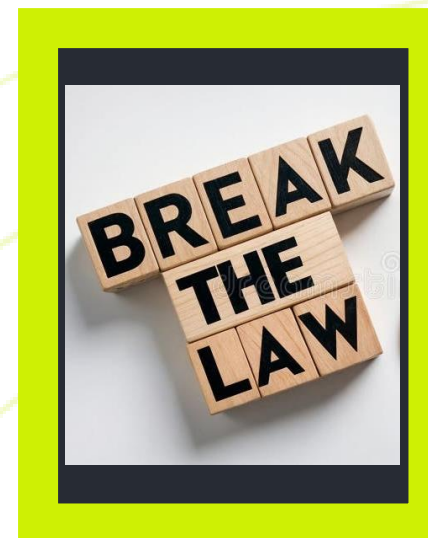
Be a person of good character and reputation and over the age of twenty-one.



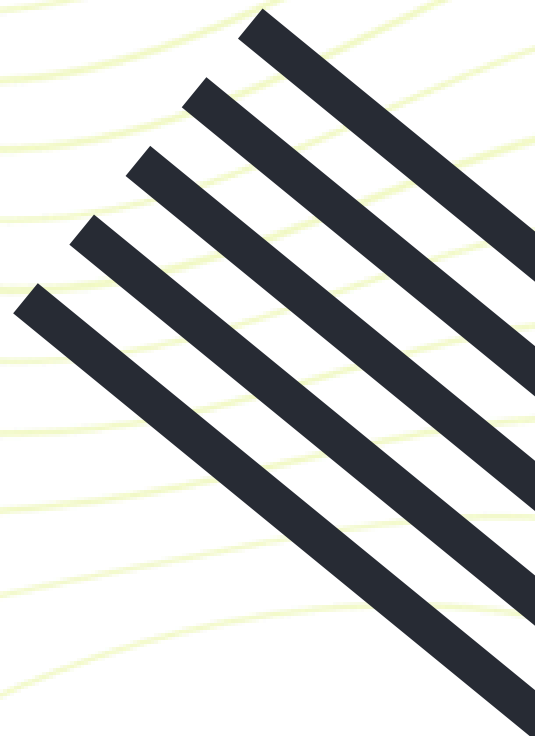
Has not been convicted of distributing or possessing with the intent to distribute any controlled dangerous substance classified in Schedule I of R.S. 40:964, on any premises permitted pursuant to this Part, where the applicant held or holds an interest in the permitted business.



Has not been convicted of a felony under the laws of the United States, the state of Louisiana, or any other state or country.



Has not been convicted in this or in any other state or by the United States of soliciting for prostitution, pandering, letting premises for prostitution, contributing to the delinquency of juveniles, keeping a disorderly place, letting a disorderly place, or illegally dealing in controlled dangerous substances



Consumable Hemp Prohibition of Locations

What other places are allowed or Prohibited from holding Hemp
Permits?



Gas Stations: La R.S. 3:1482A(3)



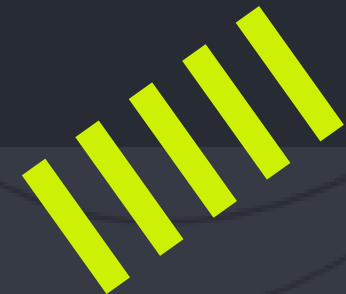
No person shall offer for sale any consumable hemp product at any retail location that is also authorized to sell gasoline or motor fuel to the ultimate consumer.



Exception: Qualified truck stops - 27:417

A facility covering at least five developed contiguous acres which sells fuel, lubricating oil, and other vehicular merchandise, such as batteries, tires, or vehicle parts for eighteen-wheel tractor trailers, and which also meets all of the following criteria:

- Located adjacent to a major state or interstate highway;
- Must have parking areas for at least 50 eighteen-wheel tractor trailer motor vehicles and other vehicles;
- Must have diesel and gasoline fuel facilities;
- Must have onsite repair service facilities for eighteen-wheel tractor trailers; and
- Must have an area separated for adult patronage only.



Exception cont.

Qualified truck stops - 27:417

Must have at least four of the following amenities:

1. A separate truckers' television lounge.
2. A full-service laundry facility located in a convenient area for truckers' use.
3. Private showers for men and women and not located in an area open to general public restroom facilities.
4. A travel store with items commonly referred to as truckers' supplies (items commonly used only by commercial motor vehicles).
5. Truck scales.
6. Separate truckers' telephones.
7. Permanent storage facilities for fuel.
8. A Class-A General retail permit operating as a sports wagering lounge which sells food or has an onsite restaurant.



Consumable hemp product access restriction R.S. 3:1482A(2)



A retailer shall maintain all consumable hemp products except for consumable hemp beverages in a location that is inaccessible to the public without the assistance of an employee of the retailer.

Consumable Hemp Prohibitions

R.S. 3:1482B



No person shall process, distribute, sell, or offer for sale:

1. Any alcoholic beverage containing any consumable hemp product.
2. Any consumable hemp product for inhalation.
3. Any floral hemp material for retail use.
4. Any product that has not received approval from the Louisiana Department of Health.

Consumable Hemp Prohibitions – Inhalable

R.S. 3:1482B(2)



Placement of "not for inhalation", "do not inhale", or similar language on the product label, packaging, or display area shall not prohibit a determination that the product is designed or intended for inhalation.

"Horn Creek Hemp flower may only be used for home extraction and teas in the state of California. Hemp Flower may not be used for inhalation in any form. . . "

LDH UPDATES ON HEMP

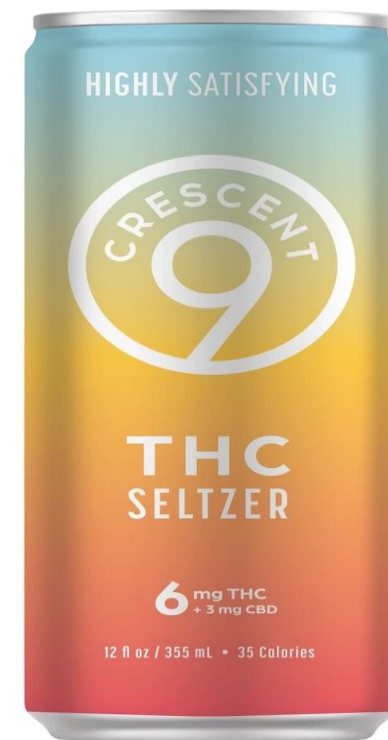
Serving sizes



For products other than beverages and tincture each serving shall not exceed five milligrams and shall be distinct and separate from other servings contained in the same package. A package shall not contain more than forty milligrams of total THC per package.

- Packages must be child resistant

Beverages



A single serving of a consumable hemp beverage shall not exceed five milligrams and shall not be less than twelve ounces.

- 1 can/ beverage = 1 serving
- No more than four servings per package

Tinctures



A package shall contain no more than one ounce of an oil-based consumable hemp liquid.

- A serving shall be one milliliter and shall contain no and shall not exceed one milligram of total THC per serving

Packaging



LDH shall not approve any consumable hemp product packaged in a manner that makes the product more appealing to children, including the name of the product or any logo or mascot of the product that appears similar to that of a non-hemp candy or beverage product.



Retailers

No retail permit to sell consumable hemp products shall be issued to an applicant whose primary business is marketed to or is to provide goods and services for minors as determined by the Commissioner.



Remote retailers 3:1484B(1)(b)(iii)

Must meet the same qualifications as retailers with a physical presence in this state and must be registered with Secretary of State.

Required to identify on its website the Louisiana permitted wholesaler from which the consumable hemp products offered for retail sale have been obtained.



Violations within 2 years

1st offense – Not more than \$300

⇒ 2024 Update - On a first conviction for a violation the commissioner may suspend or revoke the retailer's permit to sell consumable hemp products.

2nd offense – Not more than \$1,000 + suspension or revocation (if applicable)

3rd offense – No less than \$500 but not more than \$3,000

Any permittee found in violation for a 3rd offense within two years of the 1st offense shall have his permit revoked and shall be deemed ineligible to apply for a period of five years from the date of revocation.



Processor

- Permitted by LDH
- Manufactures or processes industrial hemp into consumable hemp products

Wholesale Dealer

- Permitted by ATC
- Can only purchase consumable hemp products from a licensed processor
- Can only sell consumable hemp products to a licensed retailer

Retailer

- Permitted by ATC
- Can only purchase consumable hemp products from a licensed wholesale dealer



Consumable Hemp Retail Citations



- 3:1482A(1) – Retailer operating without permit
- 3:1482A(2) – Sale to underage/hemp products accessible to public on licensed premises
- 3:1482A(3) – Sale of hemp at gas station
- 3:1482B(1) – Alcoholic beverage containing hemp
- 3:1482B(2) – Hemp product for inhalation
- 3:1482B(3) – Hemp floral material
- 3:1482B(4) – Unapproved hemp products

⇒ **ALWAYS** indicate whether or not evidence was seized at the time of inspection. If so, make sure a copy of the evidence logs are uploaded under inspection documents.

Consumable hemp wholesale citations



3:1484A(1) – Wholesaler operating without a permit

3:1484A(3) – Wholesaler obtaining products from unlicensed consumable hemp processor
OR selling products to unlicensed retailer

Consumable hemp wholesale citations



3:1484A(1) – Wholesaler operating without a permit

3:1484A(3) – Wholesaler obtaining products from unlicensed consumable hemp processor
OR selling products to unlicensed retailer



LOUISIANA
DEPARTMENT *of* REVENUE

Informal Advice

Information contained in this presentation constitutes informal advice from the Department of Revenue as contemplated by LAC 61:III.101 and is not binding on the Department of Revenue.



LOUISIANA
DEPARTMENT *of* REVENUE

Consumable Hemp Products Tax

Consumable Hemp Products Tax

La. R.S. 47:1692 et seq

- Originally enacted by Act 247 2019 RS
- Levied an excise tax on industrial hemp-derived CBD products beginning January 1, 2020
- Expanded by Act 336 2021 RS to include hemp products that do not contain CBD beginning August 1, 2021
- Now referred to as consumable hemp products

Consumable Hemp Products Tax cont.

- Excise tax
- Rate: 3% of the retail sales price
- Paid by the retailer on a monthly basis
- In addition to any other state and local sales tax due on the retail sale
- Collections are dedicated to the Early Childhood Education Fund
- Only 2 exemptions:
 - CBD products approved for marketing as prescription medication
 - CBD products recommended for therapeutic use per R.S. 40:1046

CBD/Consumable Hemp Products Tax Collections



Tax on Vapor Products

Sales of Vapor Products

Act 278 2014 RS

- Added definition of vapor product to ATC tobacco statutes
- Required retail dealer permit to sell vapor products

Act 424 2019 RS

- Added vapor products to definition of wholesale dealer
- Required retailers to purchase products from an authorized manufacturer or permitted wholesale dealer

Act 414 2023 RS

- Requires retailers to purchase from a wholesaler with stamping agent designation

Vapor Products

Vapor product" means any non combustible product containing nicotine or other substances that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or other substances. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any of the following:

- (a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).
- (b) Device pursuant to 21 U.S.C. 321(h).
- (c) Combination product described in 21 U.S.C. 353(g).

Excise Tax on Vapor Products

Act 94 2015 Regular Session imposed tax on vapor products and electronic cigarettes effective 8/1/2015

- \$0.05 per ml of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used

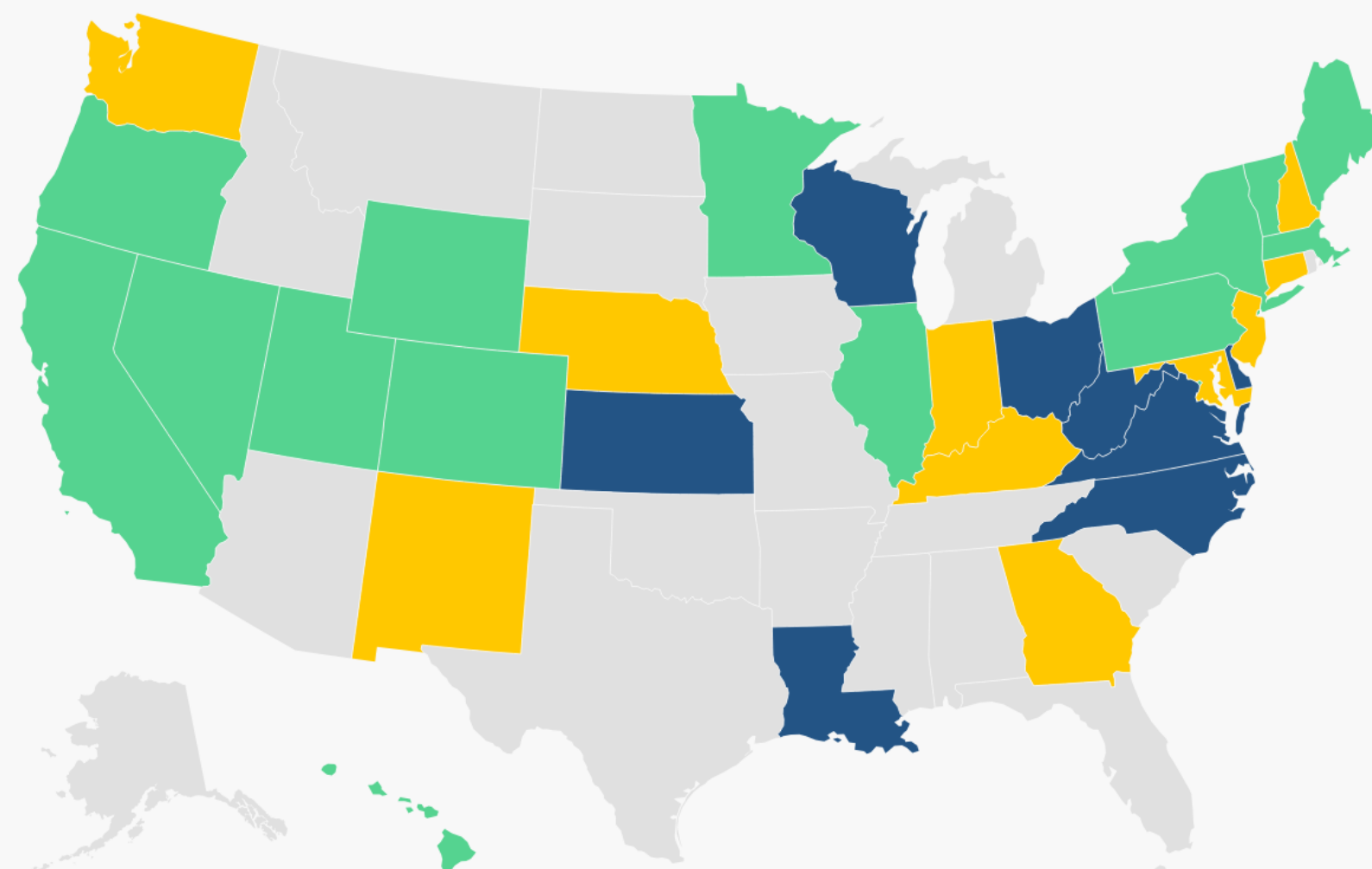
Act 414 2023 Regular Session increased the tax rate to \$0.15 per milliliter

State Vaping Tax Rates

How Do Vaping Taxes in Your State Compare?

State Vaping Tax Rates and Design, June 2024

■ Ad Valorem ■ Bifurcated ■ Specific per mL ■ No Tax



Source: State statutes; Bloomberg Tax.



\$0.05 per mL
\$0.066 per mL
\$0.075 per mL
\$0.10 per mL

\$0.15 per mL
\$0.30 per mL

15% wholesale
15% wholesale
20% retail
30% of wholesale
40% of wholesale
43% of wholesale
50% of mfr price
56% of wholesale
65% of wholesale
70% wholesale
75% of wholesale
79% of wholesale
92% of wholesale
95% of wholesale

56.32% of wholesale; 12.5% of retail
10% of wholesale (open); \$0.40 per mL (closed)
7% wholesale (open); \$0.05 per mL (closed)
15% retail (open); 15% wholesales (closed)
15% wholesale (open); \$1.50/cartridge (closed)
12% retail (open); 60% retail (closed)
\$0.05 per mL (≤ 3 mL); 10% retail (> 3 mL)
8% wholesale (open); \$0.30 per mL (closed)
\$0.10 per mL (open); 10% retail (closed)
12.5% wholesale (open); \$0.50 per cartridge
\$0.09 per mL (open); \$0.27 per mL (closed)

Delaware, Kansas, North Carolina, Wisconsin
Virginia
West Virginia
Ohio
Louisiana
New Hampshire

Illinois
Wyoming
New York
Nevada
Pennsylvania
Maine
Colorado
Utah
Oregon
Hawaii
Massachusetts
District of Columbia
Vermont
Minnesota

California
Connecticut
Georgia
Indiana
Kentucky
Maryland
Nebraska
New Hampshire
New Jersey
New Mexico
Washington

Excise Tax on Vapor Products

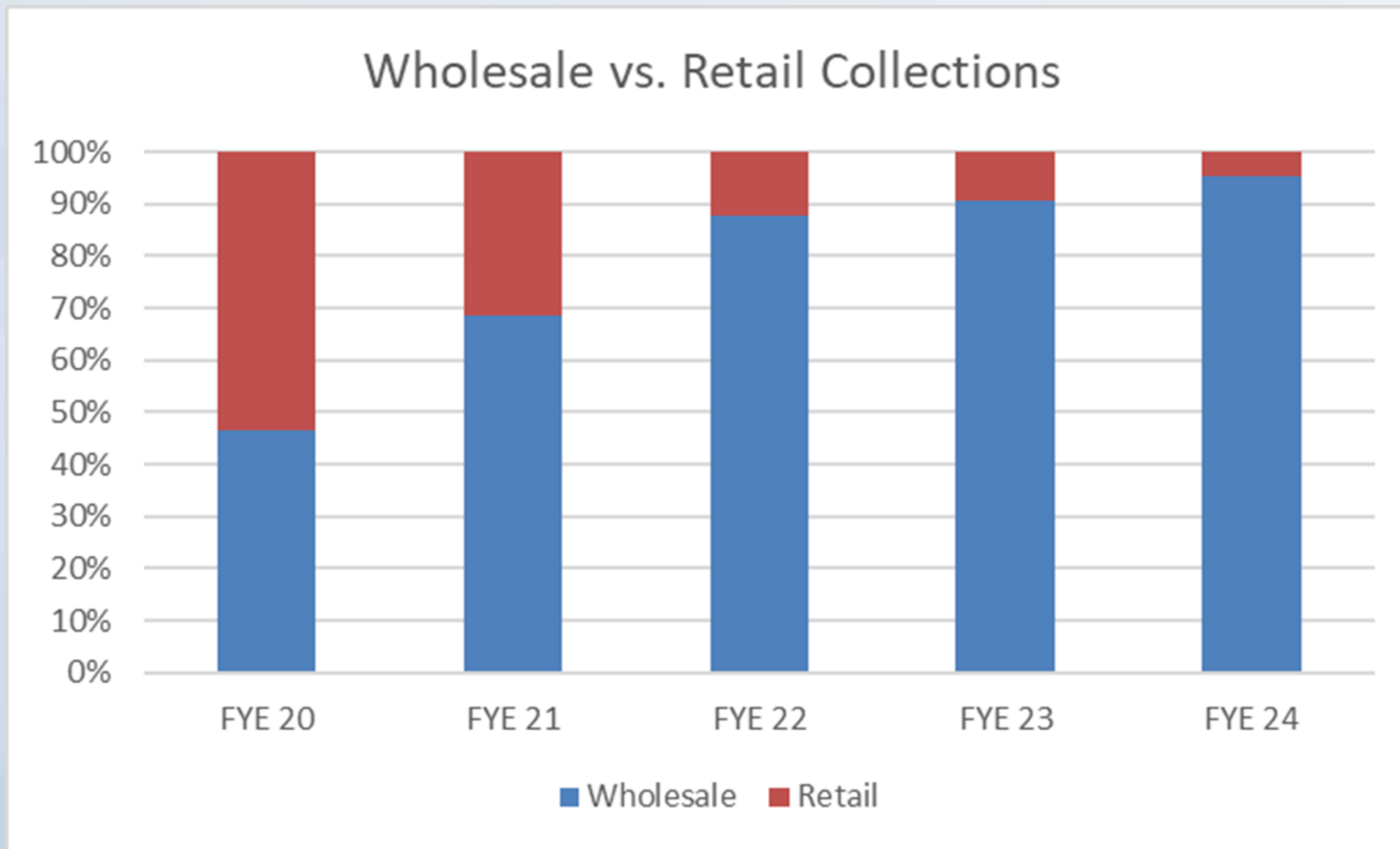
Tax due by dealer who first sells, uses, consumes, handles or distributes product in Louisiana

"Dealer" = every person who manufactures or purchases vapor for distribution, sale, use or consumption in LA and who imports from any state or foreign country for distribution, sale, or consumption in LA

Tax reported and paid monthly

Must be reported and paid electronically

Wholesale vs. Retail Collections



VAPE DIRECTORY UPDATE



Vapor & Alternative Nicotine Products

- "**Vapor product**" means any non combustible product containing nicotine or other substances that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or other substances.
- "**Vapor product**" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any of the following:
 - (a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).
 - (b) Device pursuant to 21 U.S.C. 321(h).
 - (c) Combination product described in 21 U.S.C. 353(g).
- "**Alternative nicotine product**" means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

"Alternative nicotine product" does not include any of the following:

 - (a) Tobacco product.
 - (b) Vapor product.
 - (c) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).
 - (d) Device pursuant to 21 U.S.C. 321(h).
 - (e) Combination product described in 21 U.S.C. 353(g).

VAPE DIRECTORY

- July 1, 2023 – Regular Legislative Session passed the Vape Directory requirement
- January 2024 – Lawsuit filed and appeals – preliminary injunction granted
- February 2024 – ATC/LDR appealed & injunction stayed
- March 2024 – ATC resumed enforcement
- June 2024 – Legislative Session amended and reenacted VAPE Directory requirements – essentially correcting issues raised in lawsuit.
- VAPE DIRECTORY LAWS REMAIN THE SAME AS THAT PASSED IN 2023



CHANGES TO TOBACCO LAWS RELATED TO VAPOR & ALTERNATIVE NICOTINE PRODUCTS

Effective October 1, 2023

ATC opened certification for VAPE manufacturers to register products for directory

Effective November 1, 2023

ATC VAPE Directory will be published to the public on website.



V.A.P.E. Directory & Information

Home > Resources > **V.A.P.E. Directory & Information**

+ V.A.P.E. Directory

+ V.A.P.E Information

+ V.A.P.E \ E-Cigarette Resources Downloads

Emergency Rule filed September 29, 2023 – [Click here](#) for copy (See attached file to link – Emergency Rule)


Pursuant to Act 414 of the 2023 Regular Legislative Session, beginning October 1, 2023, every manufacturer of vapor or alternative nicotine products and electronic cigarettes whose products are sold into Louisiana, whether directly or through a wholesale dealer, retail dealer, or similar intermediary or intermediaries, shall execute and deliver the certification form with applicable fees and documentation. The initial certification is available in paper and online form. All products properly certified will be posted on ATC's website beginning November 1, 2023 and updated on the 1st of each month thereafter. Periodic changes or updates may occur. The V.A.P.E. Directory will be established and maintained by ATC and will list all certified manufacturers and certified products. NO PRODUCTS may be offered for sale in the state of Louisiana unless listed on the directory and meets all other requirements for the products to be sold in Louisiana.

Products listed on the directory are based upon the manufacturer's certification with the ATC and data provided or obtained by the Food and Drug Administration (FDA) and are subject to change. For additional information, visit FDA's website at <https://www.fda.gov/tobacco-products>.

V.A.P.E Resources

 [Quit With Us Louisiana Tobacco Sign](#)

 [Louisiana Department of Health](#)

 [Federal Drug Administration](#)

 [Teen Smoke Free \(Call 1-800-QUIT-NOW or 1-877-44U-QUIT\)](#)

 [American Lung Association](#)

 [Tobacco Education Resource Library](#)

What is the process of certifying vapor and alternative nicotine products?

To certify a product, manufacturers must complete the certification form either in paper form or via online. A copy of the paper application is available online at <https://atc.louisiana.gov/resources/v-a-p-e-directory-information/>. To submit an online certification, applicants will be required to register an account at <https://laatcabg.atc.la.gov/laatcprod/pub/Login.aspx>. For each product by SKU number, a certification form is required be submitted with supporting documents along with \$100 fee each. To remain active of the VAPE Directory, manufacturers will be required to recertify each product annually before October 31st. Renewal period will open 60 days prior to expiration. Upon review of certifications submitted to ATC, if the products meets one of the following, the product will be listed on the directory. All other products will be rejected.



What types of products will be approved?

- **Under FDA Review** - The product was on the U.S. Market as of August 8, 2016, and application has been made for a premarket tobacco order (“PMTA”) pursuant to federal law and the PMTA remains under review by the FDA; or
- **Stay Order – Appeal of MDO** - The FDA has issued a no marketing order regarding the product that is under appeal and a Stay Order or injunction has been granted or an appeal has been filed but remains pending; or
- **Marketing Order Approved** - A Marketing Order has been granted in accordance with federal law.
- **FDA Exemption** - Applicant can provide sufficient proof an exemption has been granted and provides sufficient evidence products significantly complies with federal requirement.



LOUISIANA VAPE DIRECTORY

Pursuant to Act 414, this directory includes all VAPE manufacturers and certified products approved for sale in Louisiana. Unlisted products are prohibited for sale, possession, or transportation.

Product Name	Manufacturer Name	FDA Order Date	FDA Order Type	Date Added to Directory	Date Removed from Directory
JUULpods (Menthol 5%) / 0.7 mL	JUUL LABS INC.	06/24/22	Stay Order - Appeal of MDO	11/01/2023	
JUULpods (MENTHOL 3.0%) / 0.7ML	JUUL LABS INC.	06/24/22	Stay Order - Appeal of MDO	11/01/2023	
TWISTED E-LIQUIDS: GREEN NO. 1 3MG NICOTINE; 60ML	FUMIZER LLC	10/22/21	UNDER FDA REVIEW	11/01/2023	



QUESTIONS

