

March 29, 2021

Vaping Sales Compliance and the Prevent All Cigarette Trafficking (PACT) Act

In December 2020, Congress passed a huge spending bill that included, among other things, coronavirus relief, tax extenders and the Preventing Online Sales of E-Cigarettes to Children Act. The latter does two things: (1) instructs the U.S. Postal Service to issue regulations prohibiting the shipment of vaping products to residential addresses through U.S. Mail; and (2) inserts vaping products into the PACT Act. The second of these actions has compliance implications for distributors of vaping products, effective March 27, 2021.

The 2020 law covers not only nicotine vaping devices and e-liquids but also any other product that can be used to vape any liquid or oil based substance as well as those substances. The PACT Act prohibits delivery via USPS of cigarettes and smokeless tobacco and requires online sellers of such products to register with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and state taxing authorities (the same registration form that goes to the ATF also goes to the state unless a different method is prescribed). The PACT Act requires online sellers to collect and remit state and local excise taxes and imposes rules relating to state tax collection, payment and reporting as well as labeling, delivery and recordkeeping.

Under the 2020 amendments, in addition to registering with federal and state authorities and collecting tax, online retailers of vaping products will be required to affix tax stamps as necessary to products sold and send a list of transactions to state taxing authorities; the transaction list must include the name and address of each customer, quantities and type of product sold, name, address and phone number of the person delivering the shipment to the recipient.

In addition to collecting state and local excise taxes, sellers of vaping products may also have to collect sales tax. This includes with respect to online sales in many states where economic nexus laws apply to require sales tax to be collected once a retailer’s sales reach a certain threshold.

A full guide to the PACT Act can be found at: <https://www.atf.gov/alcohol-tobacco/docs/guide/prevent-all-cigarette-trafficking-pact-act-information-guide/download>