

## General Information

The Utah State Tax Commission administers the cigarette, tobacco, nicotine product and e-cigarette product tax laws in Utah and ensures all products are sold by licensed sellers.

The Tax Commission also works with the State Fire Marshal to ensure that cigarettes and tobacco products sold in Utah are fire-safe. Fire Safe Cigarettes (FSC) are designed to stop burning when left unattended.

## Definitions

**Cigarette:** Any roll of tobacco made to be ~~smoked~~heated or burned, no matter the size or shape, whether the tobacco is flavored, adulterated or mixed with any other ingredient, and that is wrapped in a cover made of anything except tobacco (such as paper).

**Electronic cigarette (E-cigarette):** A device containing a heating element, battery or electronic circuit that simulates smoking by inhalation of an aerosol or vapor of nicotine or another substance. Also an e-pipe, e-cigar or a component of such a device, or an accessory sold in the same package.

**E-cigarette substance:** Any substance, including liquid containing nicotine, made for use in an e-cigarette.

**E-cigarette product:** An e-cigarette, a prefilled e-cigarette or an e-cigarette substance.

**Little cigar:** A roll for smoking made wholly or in part of tobacco with a cellulose acetate or similar filter and wrapped in a substance containing tobacco, but not exclusively natural leaf tobacco.

**Manufacturer's sales price:** The amount a manufacturer charges after subtracting a discount, including the original Utah destination freight charge.

**Moist snuff:** Tobacco that:

- is finely cut, ground or powdered,
- has at least 45 percent moisture content, and
- is not meant to be smoked or placed in the nasal cavity.

**Nicotine product:** A non-prescription product containing nicotine that is not a cigarette, e-cigarette, tobacco product or FDA-approved nicotine replacement therapy. A nicotine product is either a non-therapeutic nicotine product or an alternative nicotine product.

- Nontherapeutic nicotine products include nicotine inhalers and nasal sprays.
- Alternative nicotine products include pure nicotine, snortable nicotine, dissolvable nicotine products, and nicotine-laced food/beverages.

Nicotine products do not include fruits, vegetables or teas containing naturally-occurring nicotine.

**NPM cigarettes:** Cigarettes made by a manufacturer that is not a party to the Master Settlement Agreement (MSA) between the State of Utah and the leading U.S. tobacco product manufacturers.

To identify NPM products, see the Utah Cigarette Directory at [tax.utah.gov/cigarette/cig-directory.pdf](https://tax.utah.gov/cigarette/cig-directory.pdf).

**Other tobacco products:** Products containing tobacco that do not meet the definitions of "cigarette," "moist snuff" or "little cigars." Examples: cigars, roll your own (RYO) tobacco, pipe tobacco and cigarettes produced from a rolling machine (this list is not all-inclusive).

**Prefilled e-cigarette:** An e-cigarette prefilled with an electronic cigarette substance.

**Tobacco product:** Any product made of or containing tobacco, not including cigarettes.

## License to Sell Products

You must be licensed by the Tax Commission to legally sell cigarettes, tobacco products, nicotine products and e-cigarette products in Utah. We will only issue a license to the person owning or operating a place that sells those products. A person who does not operate a business cannot be licensed. See Utah Code §59-14-202(1).

Licenses are valid for three years. You cannot renew an expired license – you must apply for a new one.

The Tax Commission audits for cigarette tax compliance. To keep your license to sell in good standing:

- Check packs before stocking to ensure all cigarettes on your shelves have the proper tax stamp visible.
- Keep invoices for three years from date of purchase.
- Renew your license prior to expiration.

## What is Legal to Sell in Utah

Cigarettes and RYO tobacco sold in Utah must be listed in the Utah Cigarette Directory ([tax.utah.gov/cigarette/cig-directory.pdf](http://tax.utah.gov/cigarette/cig-directory.pdf)).

Cigarettes must also be fire-safe (see *Figure 1*). The Fire Marshal maintains a list of fire-safe brands online at [firemarshal.utah.gov/cigarette-fire-safety-program/](http://firemarshal.utah.gov/cigarette-fire-safety-program/).

Cigarettes, tobacco products, nicotine products and e-cigarette products must meet state and federal labeling requirements.

## Mail, Phone and Internet Purchases

Only licensed persons may buy cigarettes, tobacco products, nicotine products and e-cigarette products via the internet, phone or mail-order.

Any person who makes such sales to an unlicensed person in Utah is subject to a fine of up to \$5,000 for each sale.

See Utah Code §§59-14-509, 59-14-808 and 76-10-105.1.

## Utah Taxes

See Utah Code §§59-14-204, 59-14-302 and 59-14-804.

### Cigarettes

Each pack of cigarettes must be stamped before sale in Utah (see *Figure 1*). Stamps must be affixed within 72 hours of receipt by wholesalers, distributors or retailers in Utah. Stampers buy stamps from the Tax Commission at the current tax rate.

See Utah Code §59-14-205(3).

<u>Rate per cigarette</u>	<u>Rate per 20 pack</u>	<u>Rate per 25 pack</u>
8.5 cents	\$1.70	\$2.125

Consumers do not pay cigarette tax at the time of purchase. Consumers can only buy stamped cigarettes from licensed retailers.

### NPM Cigarettes

NPM cigarettes are subject to an additional equity assessment of 35 cents per pack of 20 (\$2.05 total tax per pack), and 43.75 cents per pack of 25 (\$2.5625 total tax per pack).

### E-cigarettes

Anyone importing e-cigarette substances or prefilled electronic cigarettes must pay tax on those products upon first receipt in Utah. The tax rate is 56 percent of the manufacturer's sales price and must be paid electronically (see *E-filing*, below).

See Utah Code §59-14-805(1).

### Moist Snuff

The tax rate for moist snuff is \$1.83 per ounce.

### Nicotine Products

Anyone importing nicotine products must pay tax on those products upon first receipt in Utah.

- The tax on prefilled non-therapeutic nicotine devices and non-therapeutic nicotine device substances is 56 percent of the manufacturer's sales price.
- The tax on alternative nicotine products is \$1.83 per ounce, based on the net weight listed by the manufacturer.

### **Little cigars**

The tax rate for little cigars is 8.5 cents per little cigar.

### **Rolling Machine Cigarettes**

Cigarettes produced by a rolling machine are taxed at the same rate as cigarettes.

### **All Other Tobacco Products**

All other tobacco products are taxed at 86 percent of manufacturer's sales price.

## **Modified Risk Products**

Modified risk products approved by the FDA and the Tax Commission may be sold in Utah at a reduced tax rate. See [tax.utah.gov/tobacco](http://tax.utah.gov/tobacco) for a list of currently-approved modified risk products.

See Utah Code §59-14-104.

## **Registration and Account Requirements**

**Register for tax accounts and apply for licenses on form TC-69, Utah State Business and Tax Registration, with Schedule TC-69TOB.**

You must have an active Sales and Use Tax License in good standing to register as a retailer, stamper or distributor.

You must post any required bonds when you register. We may increase bond amounts if you are not in compliance with tax requirements.

### **Retailers**

Retailers buy products tax-paid and sell those products directly to consumers. All cigarettes a retailer buys must have the Utah stamp affixed.

Retailers who purchase untaxed e-cigarette products, tobacco products or nicotine products, or who export products from Utah, must also register as a distributor.

#### **License**

Retailers must be licensed. A license to sell cigarettes, tobacco products, nicotine products and/or e-cigarette products is owner and location specific. A business must get a new license if its location or ownership changes.

If you have multiple sales locations you must have a separate license for each one. We will set the same renewal date for all of your locations.

**Vending machines:** Each cigarette vending machine is a separate place of business and must be separately licensed.

**Exception:** When more than one machine operates at a single location, only one of those machines must be licensed. See Rule R865-20T-3(A).

A sales location may have either a *Cigarette/Tobacco License* or an *Electronic Cigarette or Nicotine Products License*:

#### **1. Cigarette/Tobacco License**

- The location may sell cigarettes, tobacco products, nicotine products and e-cigarette products.

## **2. Electronic Cigarette or Nicotine Products License**

- The location may only sell e-cigarette products and/or nicotine products.
- The location may not sell cigarettes and tobacco products without a Cigarette/Tobacco License.

### **Bond**

Retailers who purchase only stamped cigarettes for sale do not need to post a bond IF they file form TC-722, *Retail Sales of Stamped Cigarettes Affidavit*.

Retailers who purchase untaxed e-cigarette substances, untaxed prefilled e-cigarettes or untaxed nicotine products for sale must post a bond of at least \$500, which is in addition to the cigarette stamper bond and distributor bond (if applicable).

## **Cigarette Stampers**

Cigarette stampers buy unstamped cigarettes and affix the Utah stamp before selling to a licensed distributor, wholesaler or retailer. Order Utah stamps from the Tax Commission using form TC-79, *Cigarette Revenue Stamp Order Form*.

### **License and Fee**

Stampers must be licensed. The license fee is \$30.

### **Bond**

Stampers must post a bond of at least \$500, which is in addition to the distributor bond (if applicable). See Utah Code §59-14-201(3).

Cigarette stampers with accounts in good standing may buy stamps on credit, up to 90 percent of their bond value. These accounts must be paid in full within 60 days after the delivery date of cigarette stamps. Stampers may voluntarily increase their bond to buy additional stamps on credit.

### **Report**

Report sales of cigarettes and RYO on form TC-553 on a quarterly basis.

## **Distributors**

Distributors, including wholesalers and jobbers, buy products before the tax has been paid.

### **License and Fee**

Distributors of tobacco products, nicotine products and e-cigarette products must be licensed.

Tobacco product distributors must pay a \$30 license fee. Distributors that only handle nicotine products and e-cigarette products do not pay the fee.

### **Bond**

Distributors of tobacco products, e-cigarette substances, pre-filled e-cigarettes and nicotine products must post a bond of at least \$500, or an amount equal to the tax obligation of one three-month filing period. This bond is in addition to the cigarette stamper bond (if applicable).

You may need to post a higher bond if you have not faithfully met all obligations to the state or if you have an account that is not in good standing. See Utah Code §59-14-201(3).

### **Filing**

File form TC-553 and pay taxes due on a quarterly basis.

## **Manufacturers**

A manufacturer is anyone, except rolling machine operators, who makes or is involved in the making of cigarettes, tobacco products, nicotine products or e-cigarette products.

Manufacturers that import or distribute tobacco products, nicotine products, e-cigarette substances or prefilled e-cigarettes must register as a distributor.

### **License and Fee**

Manufacturers that distribute or import tobacco products, nicotine products or e-cigarette products into Utah must be licensed.

Tobacco product manufacturers must pay a \$30 license fee. Manufacturers that only make nicotine products and e-cigarette products do not pay the fee.

### **Product Certification**

The products of cigarette and RYO manufacturers must be certified and listed in the Utah Cigarette Directory before they may be sold in Utah. You must renew certifications each year and whenever you intend to sell new brands in Utah. See form TC-752, *Certificate of Compliance of a Tobacco Manufacturer*.

Manufacturers of tobacco products with an FDA modified risk order must submit a copy of the order to the Taxpayer Services Division at **TOBmodifiedrisk@utah.gov** to qualify the products for a reduced tax rate.

The reduced tax rate for the product begins on the first day of the calendar quarter following 90 days from the date the manufacturer submits the copy of the order to the Tax Commission (see Utah Code §59-14-104).

Products the Tax Commission approves for the reduced tax rate are listed at **tax.utah.gov/tobacco**.

### **Report**

Cigarette and RYO manufacturers who are not party to the Master Settlement Agreement must report on form TC-553 on a quarterly basis.

## **Rolling Machine Operators**

### **License**

Rolling machine operators must be licensed.

### **Certification**

You must certify with the Tax Commission before bringing rolling machines into Utah and renew the certification each year by December 31. See form TC-550, *Cigarette Rolling Machine Operation Certification*.

### **Filing**

File form TC-553 and pay taxes due on a quarterly basis.

## **E-filing**

Use our online service, Taxpayer Access Point (TAP), to file taxes and reports, renew licenses and make payments. TAP:

- Is fast
- Is accurate
- Calculates for you
- Is available 24/7

You will need the following information to set up online access to your accounts:

- Federal Employer Identification Number (FEIN) or Social Security Number (SSN),
- Utah 14-digit account number
- Your PIN

## **Table 1: Cigarette, Tobacco, Nicotine and E-Cigarette Products Violation Penalties**

**Failure to properly affix and cancel stamps**

**§59-14-205**

**§59-14-213**

- \$25 for each offense (article, package or container).
- Cigarettes seized without a warrant by the Tax Commission, its employees or any peace officer.
- Confiscated products destroyed.

Each article, package or container is a separate offense.

**Counterfeit cigarettes or stamps**

**§59-14-209**

**§59-14-211**

**§59-14-213**

- Seizure of counterfeit cigarettes and any personal property used in direct connection with sale or possession for sale of counterfeit cigarettes. Forfeiture of the seized assets.
- Counterfeit goods seized without a warrant by the Tax Commission, its employees or any peace officer.
- Seizure without a warrant of all cigarettes stamped with counterfeit, reused, washed or restored stamps.
- Confiscated products destroyed.
- Various penalties imposed by a court for counterfeit cigarettes.
- 3rd degree felony.
- For each affixed stamp.
- Reuse or cause stamps to be reused; buy, sell, offer washed or restored stamps; use or possess washed or restored stamps; buy, sell, offer for sale or use counterfeit stamp.

**Prohibited sales of cigarettes**

**§59-14-210**

**§59-14-211**

- License suspended or revoked.
- Fine of the greater of 500% of retail value of cigarettes or \$5,000.
- Class B misdemeanor.
- Possible imprisonment.
- Each affixed stamp is a separate violation.
- Prohibited sales include products not intended for sale or use in the US, products that do not comply with labeling laws, and products imported unlawfully.
- Does not include duty-free cigarettes.

**Failure to report imported cigarettes or provides false or misleading information**

**§59-14-212**

- License suspended or revoked.
- Fine of the greater of 500% of retail value of cigarettes or \$5,000.
- Class B misdemeanor.

**MAY be subject to civil penalty.**

**Selling contraband goods: no license, no stamp, counterfeit, prohibited, non-reported imported cigarettes, non-reported NPM cigarettes, cigarettes not listed in the *Utah Cigarette Directory*.**

**§59-14-213**

- Contraband seized without a warrant by the Tax Commission, its employees or any peace officer.
- Confiscated products destroyed.

**Internet or mail order sales of cigarettes, tobacco products, nicotine products or e-cigarette products to an unlicensed person**

**§59-14-509**

**§59-14-808**

- Fine of up to \$5,000 per violation.
- Injunction to restrain.
- Recovery of additional costs and fees.
- Profits, gain, gross receipts, or other benefit may be disgorged and paid to the state treasurer.

**Failure to affix NPM Equity Assessment stamp**

**§59-14-205**

**§59-14-214**

- Cigarettes seized without a warrant by the Tax Commission, its employees or any peace officer.
- Confiscated products destroyed.

**Each article, package or container is a separate offense.**

**Selling smokeless tobacco without a warning label**

**§59-14-501**

**§59-14-505**

**§59-14-506**

- Products seized without a warrant by the Tax Commission, its employees or any peace officer.
- Confiscated products destroyed.

**Bringing goods not listed in the *Utah Cigarette Directory* into Utah for use, possession for sale, stamping or selling**

**§59-14-213**

**§59-14-604**

**§59-14-608**

- Stamping agent's license suspended or revoked.
- Fine of the greater of 500% of retail value or \$5,000.
- Each affixed stamp is a separate violation.
- Class B misdemeanor.
- Civil penalties and Tax Commission action (see §59-14-608).
- These are contraband cigarettes.

**Failure to place funds in escrow**

**§59-22-203**

If a court finds violation of annual deposit, it may impose a penalty of 5 percent of amount not put into escrow per day of violation, up to 100 percent of amount improperly withheld. If it is a knowing violation, the court may impose 15 to 300 percent. A two-year injunction is added for a second knowing violation.

Each failure to make an annual deposit is a separate violation.

Selling or offering for sale cigarettes that are not marked Fire Safe (FSC)

§53-7-406

- Penalty of \$10,000-\$100,000 against manufacturer.
- Penalty of \$500-\$25,000 against retailer.
- Penalty of \$75,000-\$250,000 for false certification.
- Forfeiture and destruction of cigarettes.

Each violation is a separate offense.

Failure to supply a report of internet sales as required by Jenkins Act

§375 of US Code Title 15

Chapter 10A

\$1,000 or imprisonment of up to six months.

Selling cigarettes without a license

§59-14-203

§59-14-213

- Seizure, forfeiture and destruction of products.
- Class B misdemeanor.

Failure to file quarterly return and supporting schedules

§59-14-407

§59-14-606

§59-14-214

- Class B misdemeanor.
- Subject to revocation or suspension of license.
- Penalty, not to exceed the greater of 500% of retail value of cigarettes or \$5,000.

Selling e-cigarette products or nicotine products without a license

§59-14-803

- Class B misdemeanor.

## **Return Filing Requirements**

**Return**

**Retailer**

**Stamper**

(cigarette only)



**Distributor**

**Manufacturer**

(cigarette or RYO)

**Rolling Machine Operator**

**TC-69 (and TC-69TOB)**

**Utah State Business and Tax Registration**

X

X

X

X

X

**TC-79**

**Cigarette Revenue Stamp Order Form**

X

**TC-553**

**Tobacco Product Tax Return (quarterly)**

X

X

X

**TC-752**

**Utah Certificate of Compliance by Tobacco Products Manufacturers (annual)**

X

**TC-38B**

**License Renewal for Cigarettes/Tobacco Products and Electronic Cigarette Products (every three years)**

X

X

X

X

X

TC-550

Cigarette Rolling Machine Operation Certificate

X