

2025 ALCOHOL TOBACCO AND CANNABIS COMMISSION

Retailer Adherence to Maryland Tax Requirements Report



Hon. Wes Moore
GOVERNOR

Hon. Aruna K. Miller
LT. GOVERNOR

Jeffrey A. Kelly
EXECUTIVE DIRECTOR

ATCC
ALCOHOL TOBACCO AND CANNABIS COMMISSION

Introduction

On May 3, 2023, the Alcohol and Tobacco Commission (ATC) was reconstituted as the Alcohol, Tobacco, and Cannabis Commission (ATCC) following the enactment of the Cannabis Reform Act (CH 254). The ATCC through the Office of the Executive Director (OED), is responsible for regulatory oversight, licensing, and trade practice enforcement of Maryland’s alcohol and tobacco industries, while supporting the Maryland Cannabis Administration by combating the illicit cannabis market. The agency is divided into four divisions: Administration, Finance, and Accountability Division, Legal and Legislative Division, Licensing, Research, and Trade Practices Division, and the Field Enforcement Division. Each division is represented by a Division Director who reports directly to the Executive Director.

The Field Enforcement Division (FED) is composed of sworn law enforcement agents who conduct inspections, investigations, and other enforcement activities to ensure the safe sale of alcohol, tobacco, and cannabis products. These agents are assigned to squads in one of six regions throughout the State.

This report includes information and statistics related to an investigation the ATCC conducted on

the retail sale of electronic smoking devices (ESD) and the incorrect application of ESD sales tax. Through its investigation, the ATCC discovered that a majority of surveyed businesses did not charge the correct amount of sales tax on ESD products. As a result, the ATCC can posit that the State is incurring a sizable loss of tax revenue due to certain retailers that are engaged in unfair trade practices. Retailers that disregard tax regulation enable a broader culture of non-compliance, which makes enforcement more difficult and creates challenges for fair competition among retailers.

Electronic Smoking Devices

Laws regarding tobacco products, including ESDs, are included in the Maryland Code, Business Regulation Titles 16, 16.5, 16.7, and 16.9. According to §16.7-101, “electronic smoking device” means a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. This includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a

vape pen, and vaping liquid. Vaping liquid is a liquid that consists of propylene glycol, vegetable glycerin, or other similar substance; may or may not contain natural or artificial flavors; may or may not contain nicotine; and converts to vapor intended for inhalation when heated in an electronic device.

To become authorized to sell ESD products, retailers in Maryland are required to apply for a business license issued by their local county Clerk of the Circuit Court. These business licenses include various endorsements which allow a retailer to sell a number of products, including cigarettes, OTP, and ESD. These retailers are also required to establish a sales and use tax account with the Comptroller of Maryland, which enables the Comptroller to collect on this tax.

Business Regulations Title 16.7¹ was added to the Maryland Annotated Code in 2017 in order to create a licensing system for the sale of ESDs. Within this system, those holding a business license under Title 16, Title 16.5, or Title 16.7 of the Business Regulation Article are authorized to sell ESDs. At the time Title 16.7 was codified, there was no specialized tax rate set for ESDs. Thus, the standard Maryland sales and use tax rate of 6% was the only tax applied to these products. Unlike ESDs, cigarettes and other tobacco products (OTP) have a separate tobacco excise tax.

House Bill 732² was passed in 2021, which, in part, increased the sales tax rate for ESD products to 12%, and increased the sales tax rate for vaping liquid in a container of 5ml or less to 60%. A little over 3 years later with the passage of Senate Bill 362,³ which became effective July 1, 2024, the base sales tax rate for ESD products increased again to 20%.⁴

1. Maryland, Chapter 814 (House Bill 523), Acts of 2017, "Electronic Nicotine Delivery Systems and Vaping Liquid – Licensing," § 16.7-101 et seq. (2017), https://mgaleg.maryland.gov/2017RS/Chapters_noln/CH_814_hb0523e.pdf
2. Maryland, Chapter 37 (House Bill 732), Acts of 2021, "Taxation - Tobacco Tax, Sales and Use Tax, and Digital Advertising Gross Revenues Tax," § 16.5-101 et seq. (2021), https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_37_hb0732E.pdf
3. Maryland, Chapter 717 (Senate Bill 362), Acts of 2024, "Budget Reconciliation and Financing Act of 2024," § 14-4101 et seq. (2024), https://mgaleg.maryland.gov/2024RS/chapters_noln/Ch_717_sb0362E.pdf
4. Maryland, Tax-General Article, § 11-104(j)(2)–(3), Annotated Code of Maryland, <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=gtg§ion=11-104&enactments=false>

“An electronic smoking device is any product that delivers aerosol or vapor for inhalation — such as e-cigs, vape pens, or hookah pens.”



Background

Beginning in December 2024, the ATCC's Field Enforcement Division (FED) received numerous complaints across multiple jurisdictions about retailers failing to charge customers the correct amount of sales tax on ESD products. Failure to apply the correct 20% tax rate constitutes non-compliance with State law and undermines the enforcement efforts of the ATCC. This compromises the integrity of the State's tax system and weakens the overall culture of compliance within the industry.

Economically, when non-compliant retailers under-collect tax, they effectively lower their final sale price relative to compliant retailers, thereby gaining an artificial price advantage. In retail markets, where price is a primary driver of consumer behavior, even marginal price differences can shift demand. Artificially lower prices may also make these products more affordable and attractive to underage consumers. This destabilizes pricing expectations and creates unfair competition that adversely affects law-abiding businesses. These issues also undermine the State's public health policies and the effective regulation of ESD products.

While the ATCC strives to inform all retailers of new laws that might affect their business, it is ultimately the responsibility of retailers to stay up to date and informed of sales tax changes. Retailers have access to sales tax information and alerts through the Comptroller of Maryland's website ⁵ and also receive compliance information from FED agents during routine inspections.

In response to the tips and complaints received in December 2024, FED agents were assigned to investigate approximately 50 retailers located in 11 counties. The agents conducted unannounced inspections, in plain clothes, to purchase an ESD and obtain a receipt that showed the sales tax that was charged. Many of these stores charged an incorrect

sales tax rate of 6% or 12%, or failed to charge tax altogether. Through this initial investigation, the ATCC was able to bring criminal summons against 19 individuals on charges related to misrepresentation of sales tax or failure to remit sales tax (Tax-General Article §§ 13-1017 and 13-1006).

Recognizing a trend of non-compliant activity, the ATCC initiated a formal survey of retail stores throughout the State to assess and report on the extent of the problem.

Survey Process

In any population study, the researcher must determine what fraction of that population can be measured which will produce a result representative of the whole. That sample size can be determined mathematically using a variety of different methods depending on the nature and goal of the study. In this case, the ATCC used a formula based on Cochran's formula (1977), consistent with industry standards and with methodology from State of Maryland agencies. The method was modified for finite populations, to arrive at the following formula:

$$\text{Sample Size Formula} \\ n_0 = \frac{z^2 \cdot p \cdot (1-p)}{e^2} \quad \Rightarrow \quad n = \frac{n_0}{1 + \frac{n_0 - 1}{N}}$$

$$\text{Sample Size Calculation} \\ 363 = \frac{1.96 \cdot .5 \cdot (1-.5)}{.05} \quad \Rightarrow \quad 363 = \frac{363}{1 + \frac{363 - 1}{6,456}}$$

- e:** Desired level of precision
- p:** Fraction of the population with the desired attribute
- z:** The z-value extracted from a z-table
- n₀:** Ideal sample size from Cochran's original formula
- N:** Size of the known population
- n:** Resulting sample size

5. Office of the Comptroller of Maryland, Tax Alerts, https://services.marylandcomptroller.gov/taxes/en/tax-alerts?sys_kb_id=ae158f3a1b5f1a506cba8593604bcb6e&id=kb_article_view&sysparm_rank=1&sysparm_tsqueryId=fbf55ac41bdc72d0168d6424604bcbe4

At the time of this survey, there were 6,456 retailers eligible to sell ESD products in Maryland. Using the modified Cochran's formula, it was determined that a minimum sample size of 363 retailers would provide a statistically significant result. ATCC agents assessed these retailers' compliance with the 20% sales tax rate beginning in February 2025 and finishing in July 2025.

Agents were assigned to survey the retailers that were located within their squad's regions; however, agents occasionally assisted with this process at retailers in neighboring regions. Similar to the initial investigation, agents entered the retail stores unannounced in plain

clothes. During all compliance checks agents focused on an ESD product of a similar brand and size (≈ 16ml) to maintain consistency. An agent requested the item and allowed the clerk to enter the transaction into their point of sale system so that a final sale price would be reported; at this time, the agent identified themselves and canceled the sale. The agent then logged the applied tax rate.

If the correct tax rate of 20% was applied, no further corrective action was required. If an incorrect tax rate was applied, the agent educated the retailer about the July 2024 tax rate change. In either case, the survey data was recorded for analysis.

Survey Results

Completing the survey on July 17, 2025, the ATCC conducted a total of 371 inspections, or 102% of the minimum representative sample size. The statewide results of those inspections are as follows:

Inspection Completed	Number of Retailers in Compliance	Number of Retailers in Violation
371	135	236

This is an approximate violation rate of 64%.

The retailers in violation were charging a variety of incorrect sales tax amounts, as shown below. This includes 37 retailers that were charging 60% tax on all ESD products, regardless of size, despite the 60% rate applying only to vaping liquid in containers of 5ml or less.

Charging No Tax	Charging 6% Tax	Charging 12% Tax	Charging 60% Tax
30	139	30	37

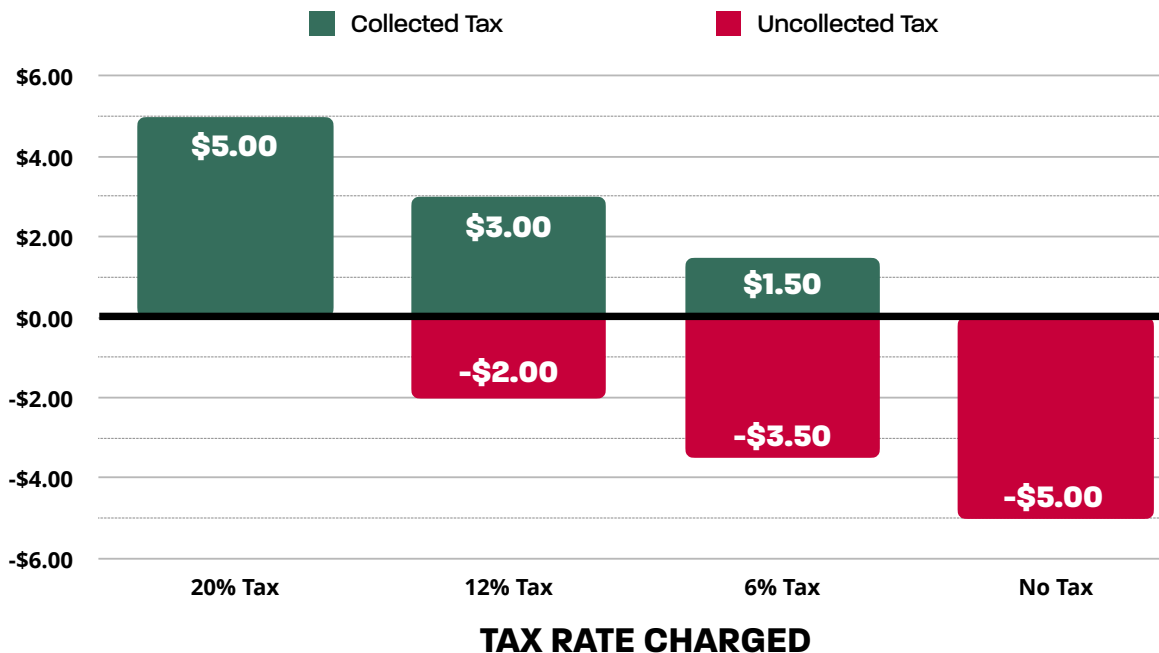
The table on the next page shows the survey results by county. Retailers that were in violation are further broken down by the incorrect tax rate being charged by those retailers.

Continue →

Survey Results by County

County	Retailers In Compliance	Retailers In Violation				TOTAL
		Charging No Tax	Charging 6% Tax	Charging 12% Tax	Charging 60% Tax	
Allegany	2	0	1	1	1	3
Anne Arundel	6	2	6	1	16	25
Baltimore County	26	3	18	2	1	24
Baltimore City	14	19	40	0	0	59
Calvert	0	0	1	3	0	4
Caroline	3	0	0	0	0	0
Carroll	5	0	3	0	0	3
Cecil	5	0	2	0	0	2
Charles	4	0	3	0	2	5
Dorchester	0	0	2	0	1	3
Frederick	7	0	3	5	0	8
Garrett	0	0	3	0	0	3
Harford	9	0	4	0	0	4
Howard	8	0	3	1	1	5
Kent	2	0	0	0	0	0
Montgomery	16	0	9	10	3	22
Prince George's	7	6	28	6	5	45
Queen Anne's	4	0	0	0	2	2
Somerset	0	0	1	0	0	1
St. Mary's	3	0	3	0	0	3
Talbot	2	0	1	0	0	1
Washington	6	0	2	0	2	4
Wicomico	4	0	2	0	1	3
Worcester	2	0	4	1	2	7
TOTAL	135 IN COMPLIANCE	30 CHARGING NO TAX	139 CHARGING 6% TAX	30 CHARGING 12% TAX	37 CHARGING 60% TAX	236 IN VIOLATION

Illustration of Tax Loss per ESD at MSRP \$25



Impact on Tax Revenue

These violations are predicted to create a gap between the tax revenue expected and the actual tax revenue received by the State. Maryland's alcohol, tobacco, and cannabis industries generate over \$7 billion annually for the State's economy. Inaccurate tax collection results in a considerable loss of revenue to state funds that would otherwise support public programs, infrastructure, and community services.

Given the volume of ESD sales, even small discrepancies can translate into significant financial impact at the state level, thereby affecting economic welfare at a broader scale. The ATCC will forward the results of this survey to the Comptroller of Maryland, which has the authority to conduct sales and use tax audits and further investigate potential overcollection or misapplication of tax.

For one individual ESD product with a common price of \$25.00, the tax collected compared to the tax lost is shown in the chart above.

Conclusion

This investigation and survey undertaken by FED agents revealed that 64% of retailers have been collecting the incorrect amount of sales tax on ESD purchases. These results show significant potential sales tax revenue loss to the State and underscore the need for continued oversight, improved education, and stronger enforcement mechanisms. The ATCC stand ready to partner with the Comptroller of Maryland for future sales and use tax investigations.

Based on the results of this survey, The ATCC has incorporated sales tax compliance checks into its routine inspection checklist to help ensure accurate tax application remains a consistent enforcement priority. The agency is also exploring the development of a structured education program for tobacco and ESD retailers that is aimed at improving compliance and supporting a stronger culture of accountability across the industry. Options under consideration include distributing an informational flyer during inspections and publishing accessible training videos. The ATCC is committed to fairness in the marketplace, transparency for the consumer, and the responsible sale of regulated products. ■

ATCC

ALCOHOL TOBACCO AND CANNABIS COMMISSION



1215 EAST FORT AVENUE

Suite 300
Baltimore, MD 21230

PHONE
(443) 300-6990

EMAIL
atcc.info@maryland.gov

 /atccmd

 /@atccmaryland

 /atccmd

 /company/atccmd

atcc.maryland.gov