



## PACT ACT Compliance for the Vaping Industry

Federal legislation passed in late December 2020 presents unprecedented compliance challenges for the vaping industry by prohibiting the U.S. Postal Service (“USPS”) from carrying vapor products in business-to-consumer (“B2C”) shipments, requiring preclearance from USPS for business-to-business (“B2B”) shipments, and extending the requirements of the federal Prevent All Cigarette Trafficking Act (“PACT Act”) to shipments of vapor products. Combined with the voluntary withdrawal of Fed Ex and UPS from the carriage of vaping products effective March 1, 2021, and April 5, 2021, respectively, the legislation presents companies in the industry with both logistical challenges to ensure that their products can reach their customers and a set of state licensing and tax requirements that, for many companies, are far more extensive than those that they confronted previously and which must be met by the legislation’s effective date of March 27, 2021.

Among other requirements, the extension of the PACT Act to vaping products requires all shippers of vaping products, regardless of whether their shipments are B2B only, B2C only, or both, to qualify as a foreign business and appoint a registered agent in each state into which they ship vapor products and to provide monthly reports on their shipments of vapor products to state tax authorities. All shippers of vapor products must also register with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). The PACT Act also requires those online retailers that engage in B2C shipments (so-called “delivery sales”) to apply for and secure tobacco or vapor product retailer licenses in each state that taxes vapor products into which they ship to consumers and to remit the taxes on a monthly basis. Finally, any company that may want to ship vapor products B2B will need to apply for preclearance from USPS after USPS finalizes a rule prohibiting the mailing of vapor products entirely without such preclearance.

Since it litigated the first e-cigarette case against FDA in 2009, Thompson Hine has been assisting clients of all sizes involved in the manufacturing, distribution, and retail sale of vapor products. Today, the firm is heavily engaged in assisting clients with their PACT Act compliance efforts. Thompson Hine’s PACT Act compliance services include:

- a dedicated, knowledgeable team of attorneys and paralegals to assist with timely preparing and submitting foreign qualification applications and applications for tobacco / vapor product wholesale and retail licenses;
- assistance with mandatory registration with ATF;
- assistance with preclearance applications to USPS for B2B shipments of vapor products;
- detailed, practical legal advice regarding the taxation of certain categories of products in all applicable states, including open-system hardware, disposables, and zero nicotine products; and
- ongoing monitoring of legislative developments regarding the taxation of vapor products at both the state and local levels to ensure future compliance for a fixed annual fee.

### For assistance with PACT Act compliance, please contact:



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