# WEST VIRGINIA CODE: §11-17-2

**§11-17-2. Definitions.**

(a) When used in this article, words, terms and phrases defined in subsection (b) of this section, and any variations thereof required by the context, have the meaning ascribed to them in this section, except where the context indicates a different meaning is intended.

(b) Definitions. --

(1) "Cigarette" means:

(A) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which is made of paper or any substance or material, except tobacco.

(B) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (A) of this subdivision.

(2) "Commissioner" means the State Tax Commissioner and, where the meaning of the context requires, all deputies or agents and employees duly authorized by him or her.

(3) "Consumer" means a person who receives or in any way comes into possession of tobacco products for the purpose of consuming or giving them away or disposing of them in any way other than by sale, barter or exchange.

(4) "Counterfeit stamp" means any stamp, label or print, indicium or character, that evidences, or purports to evidence, the payment of any tax levied under this article and that has not been printed, manufactured or made by authority of the commissioner, as provided in this article, and has not been issued, sold or circulated by the commissioner.

(5) "Manufacturer" means a person who manufactures or produces a tobacco product.

(6) "Other tobacco product" or "tobacco products other than cigarettes" means snuff and chewing tobacco and any other tobacco product that is intended by the seller to be consumed by means other than smoking and any cigar, pipe tobacco or other tobacco product other than cigarettes.

(7) "Package" means the individual package, box or other container in or from which retail sales of tobacco products are normally made or intended to be made.

(8) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, limited liability company, other

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legal entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by this article, means and includes officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(9) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train or vending machine.

(10) "Retail dealer" includes every person in this state, other than a wholesaler or subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for any purpose other than resale.

(11) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution or disposition of cigarettes or other tobacco products.

(12) "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any purpose other than resale.

(13) "Sale by wholesaler" means and includes any bona fide transfer of title to tobacco products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

(14) "Stamp" or "meter impression" means any cigarette stamp or any meter or ink impression or other indicia authorized by the Tax Commissioner to serve as a stamp and shall be of the design and color as prescribed by the Tax Commissioner.

(15) "Stamped cigarettes" means that the stamp or meter impression, as required by this article, has been affixed to the bottom of the package of cigarettes.

(16) "Subjobber" or "subjobber dealer" includes any person who purchases stamped cigarettes or tax-paid tobacco products from a wholesaler or from any other person who purchases from the manufacturer or importer and who purchases the tax-paid tobacco products solely for the purpose of bona fide resale to retail dealers.

(17) "Tax-not-paid tobacco product" means a tobacco product upon which the tax imposed by this article has not been paid.

(18) "Tax-paid tobacco products" means a tobacco product upon which the tax imposed by this article has been paid.

(19) "Tobacco product" includes cigarettes and any other tobacco product.

(20) "Transportation company" means a person operating or supplying to common carriers, cars, boats or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

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(21) "Transporter" means a person importing or transporting into this state a tobacco product obtained from a source located outside this state or transporting within this state tobacco products belonging to another person.

(22) "Unstamped cigarettes" means that the stamp or impression as required by this article has not been affixed to the bottom of the package of cigarettes.

(23) "Vending machine operator" means any person operating one or more vending machines for the sale of tobacco products. The sale of tobacco products through a vending machine will be construed as sales at retail and subjects the vending machine operator to this article and rules pertaining to retail dealers.

Whenever any tobacco products vending machine operator purchases tax-not-paid tobacco products directly from the manufacturer or any other person, the vending machine operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed by this article and the affixing of the required stamps.

(24) "Wholesale price" means the gross invoice price, including all federal excise taxes, at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated distributors, excluding all trade discounts and other reductions in the manufacturer's price. If the taxpayer buys from other than a manufacturer, "wholesale price" means the gross invoice price, including all federal excise taxes and excluding all trade discounts and other similar reductions in price.

(25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be approved by the Tax Commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports tax-not-paid tobacco products into this state, or that causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for affixing tax indicia in accordance with the requirements of this article. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the Tax Commissioner.

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