WEST VIRGINIA CODE: §11-17-4b

§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment; authority of the Tax Commissioner to inspect and examine witnesses; presumption; bond.

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

(1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that is composed of a heating element, battery or electrical or electronic circuit, or a combination of heating element, battery and electrical or electronic circuit, which works in combination with e-liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity of smoking”, in the context of this definition, means replicating, mimicking or reproducing an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used in a similar fashion.

(2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, nicotine from any source or flavorings.

(b) Levy of tax; rate. —

(1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer. For purposes of this article, any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette liquids into this state, or that causes e-cigarette liquids to be imported or transported into this state, is hereby deemed to be a wholesaler for purposes of this section and is liable for the tax imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in milliliters, that can be produced by or from the kit or components thereof, as determined by the Tax Commissioner.

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(2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due under this section.

(c) How tax paid; invoice required; reports required; due date; records to be kept. —

(1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice method prescribed by the Tax Commissioner.

(2) The tax will be paid on any and all e-cigarette liquid coming into the state for the purpose of sale or use in this state on and after July 1, 2016.

(3) Contents of delivery ticket or invoice. — Unless otherwise permitted in writing by the Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid must be recorded upon a serially numbered invoice showing:

(A) The name and address of the seller and the purchaser;

(B) The point of delivery;

(C) The date;

(D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii) the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and the wholesale price of the e-cigarette liquid;

(E) The invoice must either set out the amount of tax imposed by this article separately on the invoice or the invoice may instead indicate that the tax imposed under this article is included in the total price; and

(F) Any other information required by the Tax Commissioner.

(4) Reports and payments due date. — On or before the fifteenth day of each month, manufacturers, importers, every place of business as defined in this article, retail dealers, subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report covering the business transacted in the previous month providing any information the Tax Commissioner determines necessary for the ascertainment or assessment of the taxes imposed by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be remitted on or before the due date of the monthly report. The first report due for e-liquid sales is August 15, 2016, for the sales completed in July 2016.

(5) Reports required. — The reports prescribed in this article are required, although a tax may not be due or no business transacted, for the period covered by the report. In the case

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of any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown that the failure was due to reasonable cause, there is hereby imposed a penalty of $25 for each month or fraction of a month that such report is delinquent, until the report is filed, in addition to any penalties imposed under section nineteen-a of this article.

(6) Records. — Each person required to file a report shall make and keep the records necessary to substantiate the accuracy of the reports required by this section including, but not limited to, records of inventories, receipts, disbursements and sales. Records shall be retained for a period of time not less than three years from the time the report is due or the time when the report is filed, whichever is later.

(d) Inspection of records and stocks; examination of witnesses; registration of e-cigarette sellers; presumption of nontax paid. —

(1) The Tax Commissioner has the authority to inspect or examine the records, books and papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept in or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify the truth and accuracy of any statement, return, form or report and to ascertain whether the tax imposed by this article has been properly paid.

(2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order to ascertain the amount of taxes and reports due under this article. If a witness or person fails or refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports due under this article, the Tax Commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and the court shall issue a summons to the party to appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on a day fixed, to be continued as the occasion may require for good cause shown, to testify and give evidence and to produce for inspection any books, records and papers that may be required and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

(3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller not approved by the Tax Commissioner.

(4) Whenever e-cigarette liquid is found in the place of business of any retail dealer, without evidence that the tax imposed by this section has been paid, it shall be presumed that the e-

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cigarette liquid is kept on the premises in violation of this article.

(e) Bond. — The Tax Commissioner may require wholesalers, subjobbers or retail dealers to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less than $1,000. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all taxes prescribed by this article.

(f) Administration and enforcement. — The provisions of this article and articles nine and ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid in the same manner and to the same extent as they apply to administration and enforcement of the excise tax on tobacco products, as imposed under this article.

(g) Criminal sanctions. — The criminal sanctions imposed in section nineteen-a of this article are hereby imposed with equal force and application with relation to actions, transactions and responsibilities prescribed under this section and under this article. For the purpose of applying and interpreting the provisions of section nineteen-a of this article, the words "container of tobacco products" shall be interpreted to mean and include the words "container of tobacco products or e-cigarette liquid".

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