WEST VIRGINIA CODE CHAPTER 11 ARTICLE 17

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§11-17-1. Short title.

This article shall be known, and may be cited, as the "Tobacco Products Excise Tax Act."

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§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 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,

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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.

(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

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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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§11-17-3. Levy of tax; ratio; dedication of proceeds.(a) Tax on cigarettes and tobacco products other than cigarettes. — For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes and tobacco products other than cigarettes.

(b) Tax rate on cigarettes. — Effective May 1, 2003, the excise tax rate levied and imposed on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof: Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of cigarettes is $1.20 on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(c) Tax on tobacco products other than cigarettes. — Effective January 1, 2002, the excise tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate equal to seven percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer: Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(d) Effective date of amendments. — Amendments to this section enacted in the year 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted in the year 2016 apply in determining tax imposed under this article effective on and after July 1, 2016.

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§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report; discount.

(a) Any cigarette tax stamps on hand or in inventory on the effective date of a rate change, whether affixed to the cigarette package, on hand but not affixed to the cigarette package or stamps purchased to be affixed by a meter, are considered to have been purchased or received on the effective date of the change in rate. Any tobacco products, on hand or in inventory other than cigarettes, on the effective date of any rate change are hereby considered to have been purchased or received on the effective date of the change in rate.

(b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco products or cigarette tax stamps, whether affixed to the cigarette package, on hand but not affixed to the cigarette package, or stamps purchased to be affixed by a meter, and upon which the tax has not been paid or upon which the tax or any portion of the tax has been previously paid, shall take a physical inventory and shall file a report of the inventory with the Tax Commissioner, in the format required by the Tax Commissioner, and shall file the inventory within sixty days after the effective date of the rate change and shall pay to the Tax Commissioner any additional tax due under an increased rate within sixty days after the effective date of the rate change.

A discount of four percent shall be allowed on all tax due for persons who pay additional tax under this section.

(c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a change in rate on the effective date of the tax.

(d) The changes set forth to this section and enacted in 2016 shall be effective on and after July 1, 2016.

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§11-17-4a. No tobacco products tax by municipalities or other governmental subdivisions.

No municipality or governmental subdivision shall levy any excise or other tax on any tobacco product, or require cigarettes or other tobacco products to be stamped, or require licenses for sale thereof, other than licenses which may be required in accordance with section four, article twelve of this chapter.

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§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.

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

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(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 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

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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-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

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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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§11-17-5. How tax paid; stamps; how affixed; violations.

(a) The tax imposed by this article on cigarettes shall be paid by the purchase of stamps as provided in this article.

(b) The tax imposed by this article on tobacco products other than cigarettes shall be paid using an invoice method prescribed by the Tax Commissioner.

(c) Payment for stamps purchased from the commissioner shall be made by cash, money order, bank draft, certified check or by noncertified check. However, in the event a noncertified check is returned unpaid by its bank, then it shall be considered that payment has not been made for the taxes due.

(d) A stamp, as required by this article, as described in the rules promulgated under this article by the Tax Commissioner in accordance with article three, chapter twenty-nine-a of this code, shall be affixed to or impressed upon each package of cigarettes of an aggregate value of not less than the amount of tax upon the contents of the package. The stamp or impression that is affixed is prima facie evidence of payment of the tax imposed by this article. Stamps or meter impressions shall be purchased from the commissioner or his or her deputy, by, and paid for by, wholesalers.

(e) Except as may be otherwise provided in the rules prescribed by the commissioner, under authority of this article and article ten of this chapter, and unless the stamps have been previously affixed, they shall be affixed by each wholesale dealer who must be authorized to do business in this state prior to the sale or delivery of any cigarettes to any retail dealer or subjobber in this state.

(f) Except as may be otherwise provided in the rules prescribed by the commissioner, each wholesale dealer of tobacco products shall be authorized to do business in this state prior to the sale or delivery of any tobacco products to any retail dealer or subjobber in this state. A wholesale dealer may sell tax-paid tobacco products only to another wholesaler or a retail dealer or subjobber in this state. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the Tax Commissioner.

(g) Whenever any cigarettes are found in the place of business of any retail dealer or subjobber without the stamps affixed, the prima facie presumption shall arise that the cigarettes are kept in the place of business in violation of the provisions of this article.

(h) Whenever any tobacco products other than cigarettes are found in the place of business of any retail dealer or subjobber and there is no evidence that the tax imposed by this article has been paid on the tobacco products other than cigarettes, it shall be presumed that the tobacco products other than cigarettes are kept on the premises in violation of this article.

(i) If the Tax Commissioner determines that it is practicable to stamp packages of cigarettes by impression by means of a metering device, then the commissioner shall provide that the

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metering device and its impression may be used in lieu of the stamps otherwise required by law. The Tax Commissioner may authorize any wholesaler purchasing tobacco products, who holds a valid business registration certificate, as required by article twelve of this chapter, to use any metering device approved by the commissioner after the device has been sealed by the commissioner or a deputy, or agent, authorized by the commissioner. A metering device shall be used only in accordance with the rules prescribed by the commissioner.

(j) A wholesaler may elect to pay the tax in advance when a metering device is used, in which event the wholesaler shall deliver the metering device to the commissioner, or his or her agent authorized for that purpose, who shall seal the meter in accordance with the prepayment that was made.

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§11-17-6. Sales of stamps by deputies; fees; reports of deputies.

The Tax Commissioner may appoint, subject to such conditions as he shall deem to be the best interest of the state, any bank or trust company authorized to do business in, and doing business in this state, as his deputy for the purpose of selling such stamps and may require bond, excepting that no such deputy shall be thereby authorized to sell the same at a discount or on credit, without prior written authority by the Tax Commissioner and excepting, further, that provisions hereof relating to sale of stamps shall not prevent any bank or trust company from acting as the commissioner's deputy for purposes of checking, setting, and sealing meters or selling stamps under other provisions of this article. The Tax Commissioner is hereby authorized to allow such deputy, authorized to sell stamps hereunder, a fee of one eighth of one percent of the face value of all stamps sold by such deputy. The State Tax Commissioner shall be responsible for the delivery of stamps to any deputy so appointed, and may prescribe such regulations and forms of receipts and reports as he may deem necessary and advisable for the transaction of the business of selling such stamps. Each such deputy shall remit by the fifteenth of the month, for the previous month, or oftener, as requested, to the Tax Commissioner all moneys arising from the sale of such stamps by him together with a report showing the names of the purchasers and the number of each denomination and the aggregate face value sold by each such deputy. The Tax Commissioner may sell stamps at his office.

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0§11-17-7. Form of stamps; custody; discounts; security for payments.

The commissioner shall design and procure stamps to be used as herein provided for, affixed and attached to containers, packages or receptacle of whatever kind that may be used for containing cigarettes. In the preparing of said stamp or stamps the same shall have printed or impressed thereon the words "State of West Virginia -- Cigarette Tax Stamp" and such other words and figures as the commissioner may deem proper. He shall also prescribe the form of impression to be placed upon any package or container of cigarettes by any metering device. The Tax Commissioner shall collect the taxes provided for by this article.

Such stamps shall be kept in the custody of the Tax Commissioner or such deputies as he may designate to sell the same. Such stamps shall be sold and accounted for at the tax value thereof except that the Tax Commissioner may authorize sale thereof, or sell to wholesalers in this state, or to wholesalers outside of this state such stamps at a discount of four percent of the tax value of such stamps, the same to be allowed as a commission for affixing the stamps and prepaying the cigarette tax; and excepting further that the Tax Commissioner may, by like regulation so certified, authorize the delivery of stamps, to wholesalers in this state, or to wholesalers outside of this state, on credit, allowing the same discount as when sold for cash, if and when the purchaser shall file with the Tax Commissioner a bond made payable to the State of West Virginia, in such form and amount as the commissioner shall prescribe, and with surety or sureties to the satisfaction of the commissioner, conditioned as he may require, to guarantee payment within thirty days for stamps so delivered within such period of time and by making of such reports and settlement as the commissioner may require. The commissioner may, by further regulations, provide for canceling, renewing or increasing such bond or for the substitution of the surety thereon.

For the purposes of this article "tax value" shall mean the tax value of each stamp or meter impression, as imposed by this article.

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§11-17-8.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-17-9. Discounts.

A discount of four percent will be allowed on all tax due for persons affixing stamps, collecting and paying of tax as required and prescribed by this article.

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§11-17-10. Refunds.

The commissioner shall redeem any unused or mutilated, but identifiable, stamps that any wholesaler or retail dealer may present for redemption, on written verified requests made by the purchaser, his administrators, executors, successors or assigns, and refund therefor, ninety-five percent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. The commissioner shall pay on a like basis for stamps destroyed by fire or flood upon presentation of proof of such loss satisfactory to him Such payments shall, for the purposes hereof, be deemed to be refunds of taxes improperly collected and shall be allowed and paid from funds collected. Stamps or meter impressions on cigarettes returned to the manufacturers will be subject to refund upon the filing of an affidavit in duplicate issued by the manufacturer evidencing the destruction of stamps or meter impressions. A claim for refund or credit shall be subject to the provisions of section fourteen, article ten of this chapter.

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§11-17-11. Surety bonds required; release of surety; new bond.

The Tax Commissioner may require wholesalers, subjobbers or retail dealers to file continuous surety bond in an amount to be fixed by the Tax Commissioner except that the amount shall not be less than $1,000. Upon completion of the filing of a surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. 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.

Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the Tax Commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek release as herein provided, it shall be the duty of the person to supply the Tax Commissioner with another bond.

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§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

(a) Due date. -- On or before the fifteenth day of each month, manufacturers, importers, common carriers, wholesalers, subjobbers, retail dealers and agents or vending machine operators shall, when required by this article, or the Tax Commissioner, file a report covering the business transacted in the previous month providing any information the 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 by the due date of the monthly report, determined without regard to any authorized extension of time for filing the report.

(b) Reports required. -- The reports prescribed in this article are required, although a tax might not be due or no business transacted, for the period covered by the report.

(c) Records. -- Each person required to file a report under this article shall make and keep the records necessary to substantiate the accuracy of the reports required by this article, 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, unless the Tax Commissioner gives written consent to their earlier destruction.

(d) Contents of delivery ticket or invoice. -- Unless otherwise permitted, in writing, by authority of the Tax Commissioner, each delivery ticket or invoice for each purchase or sale of tobacco products must be recorded upon a serially numbered invoice showing: (1) The name and address of the seller and the purchaser; (2) the point of delivery; (3) the date, quantity and price of each tobacco product delivered in this state; (4) the amount of tax imposed by this article, which must be set out separately or the invoice must indicate whether or not the West Virginia tobacco products excise tax is included in the total price; and (5) any other reasonable information required by the Tax Commissioner. However, these invoicing requirements do not apply to cash sales: Provided, That the person making the cash sales shall maintain the records reasonably necessary to substantiate the accuracy of his or her monthly report.

(e) Inspection of tobacco products inventory. -- In addition to the Tax Commissioner's powers set forth in section five, article ten of this chapter, the Tax Commissioner, or a deputy or agent authorized by the commissioner, may inspect or examine the stock of tobacco products kept in and upon the premises of any person where tobacco products are placed, stored or sold and shall inspect or examine the records, books, papers and any equipment or records of manufacturers, importers, cigarette stamping agents, wholesalers, subjobbers, retail dealers, common carriers or any other person for the purpose of determining the quantity and value of tobacco products acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the tax imposed by this article has been properly paid.

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(f) Examination of witnesses and records. -- In addition to the Tax Commissioner's powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a manufacturer, importer, common carrier, wholesaler, subjobber or retailer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner and any duly appointed agent may examine witnesses under oath; and if the witness fail or refuse at the request of the Tax Commissioner or any duly appointed agent to grant access to the books, records or papers, the Tax Commissioner or the agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and court shall thereupon issue summons to the party to appear before the Tax Commissioner or any duly appointed agent, 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 and give evidence and lay open for inspection any books and papers that may be required for the purpose of ascertaining the amount of tax and reports due, if any.

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§11-17-13. Preservation of rules.

All rules for the cigarette tax act previously promulgated by the commissioner, as provided in this article, article ten of this chapter and article three, chapter twenty-nine-a of this code, remain in effect until they are amended or repealed by the commissioner or superceded by operation of law.

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§11-17-14.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-17-15.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-17-16.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-17-17. Enforcement powers.

Any employee or agent of the Tax Commissioner, so designated by the Tax Commissioner, shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality in this state.

Such employee shall execute a bond with security in the sum of $3,500, payable to the State of West Virginia conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the Attorney General, and the same shall be filed with the Secretary of State and preserved in his office.

The state department of public safety or any county sheriff or his deputy is, upon request of the commissioner, hereby authorized and required to assist in the enforcement of the provisions of this article.

WV Legislature

§11-17-18.

Repealed.

Acts, 1981, 1st Ex. Sess., Ch. 8.

WV Legislature

§11-17-19. Penalty for failure to file report when no tax due.

In the case of any failure to make or file a report when no tax is due, as required by this article on the date prescribed for filing, unless it be shown that the failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of $25 for each month of the failure or fraction of a month.

WV Legislature

§11-17-19a. Criminal penalties.

(a) Misdemeanor penalties. -– If any person commits any act set forth in this subsection, the person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $25,000, or imprisoned in a county or regional jail for not more than one year, or both fined and imprisoned. Each act constitutes a separate misdemeanor:

(1) The person makes any false entry upon an invoice, package or container of tobacco products that is required to be made under the provisions of this article;

(2) The person with intent to evade the tax imposed by this article, presents any false entry upon an invoice, package or container of tobacco products for the inspection of the commissioner or the commissioner's authorized deputy, agent or employee;

(3) The person prevents or hinders the commissioner or the commissioner's authorized deputy, agent or employee from making a full inspection of any place where tobacco products subject to the tax imposed by this state are sold or stored;

(4) The person prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(5) The person sells cigarettes in this state without there having been first affixed to each individual package of cigarettes the stamp or meter impression required to be affixed to the package by this article;

(6) The person sells other tax-not-paid tobacco products in this state to a subjobber, retail dealer or consumer in this state;

(7) The person, being a retail dealer or subjobber in this state, has in his or her possession packages of cigarettes not bearing the stamps or meter impression required to be affixed to the package by this article;

(8) The person, being a retail dealer or subjobber in this state, has in his or her possession tax-not-paid packages of other tobacco products;

(9) The person fails to produce on demand by the commissioner, or the commissioner's authorized deputy, agent or employee, invoices of all tobacco products purchased or received by him or her within two years prior to the date of the demand, unless upon satisfactory proof it is shown that the nonproduction is due to providential or other causes beyond his or her control;

(10) The person being a wholesale dealer sells tobacco products to any person in this state other than to another wholesaler, or to a subjobber or retail dealer;

(11) A person who is not a wholesaler or subjobber in this state sells tobacco products to a retail dealer;

WV Legislature

(12) A person being a retail dealer purchases or acquires tobacco products from any person other than a person who is a wholesaler or subjobber in this state;

(13) The original wholesaler who purchases unstamped cigarettes or tax-not-paid other tobacco products from a manufacturer or other person fails to pay the excise tax imposed by this article and fails to affix the required stamps or meter impressions;

(14) A person who is not a wholesaler of tobacco products, as defined in this article, has in his or her possession within this state more than twenty packages of cigarettes, that do not bear cigarette tax paid indicia of this state, stamps or meter impressions, or other tax-not-paid tobacco products, if the retail value of the tobacco products is more than $30 for all tax-not-paid tobacco products. The possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due on the tobacco products;

(15) The person violates any of the provisions of this article or any lawful rule promulgated by the commissioner under authority of article ten of this code.

(b) Felony penalties. -– If any person commits any act set forth in this subsection, the person shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $25,000 nor more than $50,000, and imprisoned in a state correctional facility for a term of not less than one year nor more than five years. Each constitutes a separate felony:

(1) The person falsely or fraudulently makes, forges, alters or counterfeits any stamps or meter impressions prescribed, or defined, by the provisions of this article, or its related rules;

(2) The person knowingly and willfully makes, causes to be made, purchases, receives or has in his or her possession, any device for forging or counterfeiting any stamp or meter impression;

(3) The person has in his or her possession any stamps not properly issued by the commissioner, or the commissioner's authorized employee, agent or deputy;

(4) The person tampers with or alters any stamping device authorized by the commissioner; or

(5) The person uses more than once any stamp or meter impression provided for and required by this article for the purpose of evading the tax imposed by this article.

(c) Deposit of penalties. -– All penalties collected under the provisions of this section shall be paid into the General Revenue Fund.

WV Legislature

§11-17-19b. Certain tax-not-paid tobacco products declared contraband.

(a) Whenever the commissioner or any of the commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, discovers any tobacco products subject to tax, as provided by this article, and upon which the tax has not been paid, as required by this article, the tobacco products shall thereupon be considered to be contraband, and the commissioner, or the commissioner's authorized deputy, agent or employee, or any law-enforcement officer in this state, may immediately seize and take possession of the tobacco products without a warrant, and the tobacco products and related property shall be forfeited to the state as provided in article seven, chapter sixty-a of this code.

(b) Seizure of contraband shall not be considered to relieve any person from fine or imprisonment, as provided in section nineteen-a of this article, for any of the offenses set forth in said section.

WV Legislature

§11-17-19c. Magistrate courts have concurrent jurisdiction.

Magistrates have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

WV Legislature

§11-17-20. Transportation of unstamped cigarettes or tax-not-paid tobacco products; forfeitures and sales of cigarettes and equipment.

(a) In general. -– Every person who transports tax-not-paid tobacco products upon the public highways, waterways, airways, roads or streets of this state shall have in his or her actual possession invoices or delivery tickets for the tobacco products.

(b) Contents of delivery tickets. -– Delivery tickets shall show: (1) The true name and the complete and exact address of the consignor or seller; (2) the true name and complete and exact address of the consignee or purchaser; (3) the quantity and brands of the tobacco products transported; and (4) the true name and complete and exact address of the person who has or shall assume payment of the West Virginia taxes imposed by this article, or the tax, if any, of the state or foreign country at the point of ultimate destination: Provided, That any common carrier which has issued a bill of lading for a shipment of tobacco products and is without notice to itself or to any of its agents or employees that the cigarettes are not stamped as required by this article, or that the tax imposed by this article on tobacco products other than cigarettes has not been paid, shall be considered to have complied with this article and the vehicle or vessel in which the tax-not-paid tobacco products are being transported is not subject to confiscation under this section or article seven, chapter sixty-a of this code.

(c) In the absence of invoices, delivery tickets or bills of lading, as the case may be, that meet the requirements of subsections (a) and (b) of this section, the tobacco products, the vehicle or vessel in which the tobacco products are being transported and any paraphernalia or devices used in connection with the tax-not-paid tobacco products are declared to be contraband goods and may be seized by the commissioner, or the commissioner's authorized deputies, agents or employees, or by any law-enforcement officer of the state, without a warrant and shall be forfeited to the state as provided in article seven, chapter sixty-a of this code.

WV Legislature

§11-17-20a. Criminal penalty for unlawful transportation of tax-not-paid tobacco products.

Any person who transports tax-not-paid tobacco products in violation of section twenty of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 nor more than $5,000, or imprisoned in the regional or county jail not more than one year, or both fined and imprisoned.

WV Legislature

§11-17-20b. Vending machines; presence of tax-not-paid tobacco products.

(a) If tax-not-paid tobacco products are found in any vending machine, both the tax-not-paid tobacco products and the vending machine are contraband goods within the meaning of article seven, chapter sixty-a of this code, and may be seized by the commissioner, at the discretion of the commissioner, or the commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, without a warrant. The provision of article seven, chapter sixty-a of this code apply to the seizure and disposition of the contraband.

(b) Seizure and sale of the contraband shall not relieve the owner of the property from any action by the commissioner for violations of any other sections of this article.

WV Legislature

§11-17-21. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

§11-17-22. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article seventeen with like effect as if said act were applicable only to the tax imposed by this article seventeen and were set forth in extenso in this article seventeen.

WV Legislature

§11-17-23. Special study on impact of tax on tobacco products other than cigarettes.

(a) The Tax Commissioner and the commissioner of the Bureau of Employment Programs shall conduct a study to analyze the impact of the provisions of this article on the manufacturers and distributors of tobacco products other than cigarettes and their employees. This study shall include an analysis of the results of taxation of tobacco products other than cigarettes, as provided in this article, as they affect employment, costs of operation and the overall economic impact upon manufacturers and distributors and their employees.

(b) The commissioners shall report the results of the study to the Governor and the Joint Committee on Government and Finance no later than February 1, 2003, and shall submit recommendations on how to ameliorate any negative impact upon manufacturers, distributors or employees through proposed tax credits, job training programs, extension of unemployment or other benefits, incentives or other similar solutions.

WV Legislature