WEST VIRGINIA CODE CHAPTER 11 ARTICLE 19

WV Legislature

§11-19-1. Definitions.

As used in this article:

(1) "Bottled soft drinks" shall include any and all nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper, root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, or any other type of container, envelope, package or bottle, whether manufactured with or without the use of any syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been added, or natural undiluted fruit juice or vegetable juice.

(2) "Natural undiluted fruit juice" shall mean the liquid resulting from the pressing of fruit with or without sweetener being added, or the liquid resulting from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice with or without sweetener being added.

(3) "Natural undiluted vegetable juice" shall mean the liquid resulting from the pressing of vegetables with or without sweetener being added or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice with or without sweetener being added.

(4) "Sweetener" shall mean sugar only, artificial or natural, which singularly flavors the taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

(5) "Soft drink syrups and powders" shall include the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink, among such syrups being such products as coca cola syrup, chero cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool aid, oh boy drink, tip top, miracle aid and all other similar products.

(6) "Simple syrup" shall mean the making, mixing, compounding or manufacturing, by dissolving sugar and water or any other mixtures that will create simple syrup to which may or may not be added concentrates or extracts.

(7) "Person" shall mean and include an individual, firm, partnership, association or corporation.

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(8) "Wholesale dealer" includes only those persons who sell any bottled soft drink or soft drink syrup to retail dealers for the purpose of resale.

(9) "Retail dealer" includes every person other than a wholesale dealer mixing, making, compounding or manufacturing any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

(10) "Distributor" shall mean any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

(11) "Commissioner" means the State Tax Commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him

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§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

(a) An excise tax is levied and imposed on and after midnight of June 30, 1951, upon the sale, use, handling or distribution of all bottled soft drinks and all soft drink syrups, whether manufactured within or without this state, as follows:

(1) On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.

(2) On each gallon of soft drink syrup, a tax of 80 cents, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of 84 cents, and in like ratio on each part four liters thereof.

(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks, a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of 1 cent.

(b) Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax hereby imposed. The excise tax imposed shall not be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used or distributed in this state.

(c) The changes made to this section during the regular session of the Legislature, 2022, shall be effective July 1, 2022.

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§11-19-3.

Repealed.

Acts, 1979 Reg. Sess., Ch. 110.

WV Legislature

§11-19-4. Affixing of tax stamps or tax crowns.

The payment of the taxes herein provided shall be evidenced by the affixing of soft drink tax stamps or tax crowns to the original containers or bottles in which any bottled soft drink or syrup is placed, received, stored or handled. Such stamps or crowns, of the appropriate denomination, shall be affixed to each container of syrup and to each bottled soft drink by the person who under the provisions of this article is first required to pay the tax thereon, within twenty-four hours after such person has such bottled soft drink or syrup in his possession for the first time. The provisions of this paragraph shall not apply to syrup used by bottlers in the manufacture of bottled soft drinks, or to bottled soft drinks or syrups which are transported through this state and which are not sold, delivered, used or stored herein, if transported in accordance with such rules and regulations as may be promulgated by the commissioner, or to any bottled drink or syrup which is manufactured in this state and sold to a purchaser outside this state.

Except as otherwise provided in this section, it shall be unlawful for any person to sell, use, handle or distribute any bottled soft drink or soft drink syrup to which the tax stamps or tax crowns required by this section are not affixed, and any person who shall violate this provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than six months, or by both such fine and imprisonment.

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§11-19-4a. Cancellation and removal of stamps.

Any person subject to the tax imposed by this article who affixes a soft drink stamp to a container shall be required to immediately cancel the stamp by writing or marking initials thereon and the date upon which the stamp was affixed. When any container to which a stamp has been affixed is emptied, the person emptying the same or on whose behalf the same has been emptied shall be required to immediately remove or deface the tax stamp thereon.

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§11-19-4b. Disposition of unused crowns; penalty for violation.

Unused tax crowns upon which the tax imposed by this article has not been paid and which the original purchaser has not used and does not intend to use, and which are fit for use, shall be disposed of in the following manner only:

(1) By returning same to the manufacturer thereof and receiving from such manufacturer a certificate which shall indicate the name of the person returning the crowns, the date of return and the number and denominations of crowns returned; or

(2) By transferring such crowns to any person and receiving in exchange therefor a certificate issued by the commissioner authorizing the transferee to acquire such crowns.

Upon receipt of either such certificate the commissioner shall credit the account of the original purchaser in the amount indicated by the certificate.

In the event of the disposition of such crowns in a manner not authorized by this section, the original purchaser thereof or his estate, and/or any person (whether acting in an official capacity or otherwise) who shall make such unauthorized disposition shall be liable for the amount of tax which the crowns represent; and, in addition, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of $5,000 and imprisonment in the county jail for not less than sixty days nor more than one year, in the discretion of the court.

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§11-19-5. Purchase of tax stamps or tax crowns; discounts and commissions; refunds and statute of limitations; effective date.

The commissioner is hereby authorized to promulgate rules and regulations governing the design, purchase, sale and distribution of tax stamps and tax crowns required by this article. Manufacturers or distributors of crowns may be required to furnish bond to ensure faithful compliance with such regulations. Any person desiring to purchase such crowns shall obtain from the commissioner an authorization to do so, which shall specify the number of crowns to be purchased, and upon shipment thereof the manufacturer shall transmit to the commissioner a copy of the invoice of such shipment. The commissioner shall not authorize the purchase of crowns by any person who is in default in the payment of any tax required by this article.

The commissioner shall sell the stamps required by this article, or may authorize any sheriff, or any bank or trust company in this state, to sell such stamps as his deputy, and may allow as a commission a fee of one half of one percent of the face value of all stamps sold by such deputy. In the sale of such stamps the commissioner shall allow the following discounts: On a sale of less than $25, no discount; on a sale of $25 or over and less than $50, a discount of five percent; and on a sale of $50 or more, a discount of ten percent.

In the case of stamps, the tax imposed by this article shall be paid in advance at the time the stamps are purchased. In the case of tax crowns, the tax shall be paid in advance at the time the Tax Commissioner authorizes the purchase of such tax crowns, unless the purchaser applies for and obtains credit as provided in the following paragraph.

Whenever any person applies for an authorization to purchase tax crowns, he may apply for an extension of credit on the tax due with respect to such crowns, and if he files a bond in the form prescribed by the commissioner, with satisfactory corporate surety, in an amount not less than twenty-five percent more than the tax due with respect to the tax crowns to be purchased, the commissioner shall issue the necessary authorization. Any person who obtains such credit shall, on or before the fifteenth day of each month, file with the commissioner on forms prescribed by him a return stating the number of tax crowns used by such person during the preceding month, and he shall at the same time pay to the commissioner the tax due on the crowns so used.

The commissioner shall allow to each purchaser of tax crowns, whether for cash or credit, a discount of twelve and one half percent of the tax value of such crowns. Such discount, and the discount allowed on the sale of tax stamps, shall be in lieu of the allowance of any claim for refund by reason of the breakage or destruction of containers stamped or crowned as provided in this article, the spoilation of the soft drinks or syrups, or the loss or destruction of tax stamps or tax crowns: Provided, That when the tax stamps or crowns or soft drinks, soft drink powders or soft drink syrups upon which tax has been paid are destroyed by fire, lightning or flood and when soft drinks, syrups or powders upon which tax has been paid are exported from this state or are required to be destroyed pursuant to federal or state order, the taxpayer may file a claim for refund for an amount equal to the amount of tax actually

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paid for such stamps or crowns. The commissioner shall cause a refund to be made under this section only when a claim for refund is filed within one hundred and eighty days from the date the tax stamps or crowns were destroyed or the soft drink product upon which tax was paid were destroyed or exported from this state. Any claim for refund not timely filed shall not be construed to be or to constitute a moral obligation of this state for payment. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter. At the election of the taxpayer, the amount of any refund may be established as a credit. The amount refunded or credited under this section shall not be subject to the interest provisions of subsection (d), section seventeen, article ten of this chapter.

Effective date. -- The provisions of this section as hereby amended shall apply to soft drinks tax stamps or crowns destroyed on or after July 1, 1980, and to soft drinks, powders and syrups exported or destroyed on or after the first day of said July. The provisions of this section in effect prior to the said day of July 1 shall apply to tax stamps, crowns and soft drinks, powders and syrups destroyed or exported prior to said date.

WV Legislature

§11-19-5a. Due date of reports; additional reports; extension of time.

Every person subject to the tax imposed by this article shall on or before the fifteenth day of each month make and file with the commissioner a report of such person's operations for the preceding month to verify liability for tax under this article. This report shall be in a form prescribed by the Tax Commissioner.

The commissioner may by fifteen days' written notice require the filing of such additional reports as he deems necessary to verify a person's liability under this article.

Upon written application setting forth good cause, the commissioner may extend the time for filing such reports or additional reports on such terms and conditions as he may require.

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§11-19-5b. Additional penalty for late filing or payment.

In addition to the additions to tax, penalties and interest authorized in article ten of this chapter, if any taxpayer fails to file a return or pay the proper amount of tax within the time specified herein, the commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer: Provided, That if the failure to pay was due to reasonable cause, the commissioner may waive this penalty. The taxpayer may request a hearing within sixty days after service of notice of the refusal of the commissioner to authorize the purchase of the tax stamps or crowns. Upon receipt of a written request for a hearing filed within the time prescribed the provision for hearing and appeal, sections nine and ten, article ten of this chapter shall be applicable.

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§11-19-5c.

Repealed.

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

WV Legislature

§11-19-6.

Repealed.

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

WV Legislature

§11-19-7.

Repealed.

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

WV Legislature

§11-19-7a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.

Whenever the commissioner or any of his duly authorized agents shall discover any soft drink syrups, subject to tax as provided by this article and upon which the tax has not been paid as herein required, the commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such soft drink syrups, which shall thereupon be deemed to be forfeited to the state, and the commissioner shall within a reasonable time thereafter sell such forfeited soft drink syrups; and from the proceeds of such sale shall collect the tax and interest due thereon, together with a penalty of fifty percent of the tax due and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such soft drink syrups were found: Provided, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale shall be made in the county where most convenient and economical. Notice of such sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All moneys collected under the provisions of this section shall be paid into the State Treasury and treated as other taxes collected under this article.

WV Legislature

§11-19-8.

Repealed.

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

WV Legislature

§11-19-9. Altering, counterfeiting or reusing tax stamps or tax crowns; penalty.

Any person who falsely or fraudulently makes, forges, alters, or counterfeits any tax stamp or tax crown prescribed by the commissioner under the provisions of this article, or who knowingly or willfully utters, passes or tenders as true any such false, altered, forged or counterfeited stamp or crown, or who uses more than once any stamp or crown for the purpose of evading the tax imposed by this article, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years.

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§11-19-10. Penalties; crimes.

Any person who violates any of the provisions of this article or any lawful rule or regulation promulgated by the Tax Commissioner for this article under the authority of article ten of this chapter, for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100.

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§11-19-11. Separability.

The provisions of the several sections of this article shall be deemed to be separable insofar as they or their meaning is not inseparably connected, and if any provisions of this article shall be held unconstitutional, such holding shall not affect any of the other provisions thereof.

WV Legislature

§11-19-12. 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 nineteen with like effect as if said act were applicable only to the tax imposed by this article nineteen and were set forth in extenso in this article nineteen.

WV Legislature

§11-19-13. Effective date of repeal of article.

Effective July 1, 2024, the provisions of this article shall become ineffective, and the entire article shall be repealed. The soft drink tax authorized for collection shall no longer be imposed or collected after that date.

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