WEST VIRGINIA CODE: §19-12F-7

§19-12F-7. Taxation; disposition of funds.

(a) For the privilege of engaging or continuing within this state in the business of the retail sale of kratom or kratom products, there is hereby levied upon and collected from every person exercising the privilege a privilege tax equal to 11 percent of the retail sales price of kratom or kratom products sold during the reporting period. Such tax is imposed in addition to all other applicable taxes.

(b) The tax imposed by this article shall not be added by the retailer as a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid by a customer.

(c) The tax is due and payable on a quarterly basis as follows: On the 20th day of January, April, July, and October for the preceding calendar quarter. When the payment of tax is due, the person shall file a tax return in a form prescribed by the Tax Commissioner. The Tax Commissioner may require such forms, schedules, and returns and impose such filing and remittance requirements necessary or convenient for the efficient administration of taxes imposed by this subsection.

(d)(1) The taxes imposed by this subsection shall be paid to the Tax Commissioner by electronic funds transfer unless electronic payment is prohibited by state or federal law. Tax returns required by this subsection shall be filed electronically with the Tax Commissioner.

(2) The West Virginia use tax shall be collected from sellers, marketplace facilitators, and referrers engaged in making sales, facilitating sales, marketing, or referring sellers or purchasers for the purpose of making or furthering retail sales of kratom and kratom products into this state. The sellers, marketplace facilitators, and referrers are subject to the taxation and other requirements of §11-15A-1 *et seq*. of this code, including §11-15A-6a and §11-15A-6b of this code. Application of §11-15A-6a and §11-15A-6b of this code shall not be limited to the thresholds specified in subsection §11-15A-6ba(e) of this code, but in the interest of protecting the safety, welfare, and well-being of West Virginia citizens and residents, West Virginia nexus and jurisdiction shall attach with relation to any such activity for the purpose of making or furthering retail sales of kratom and kratom products into this state.

(e) If any retailer does not renew its permit, relinquishes its permit, has its permit suspended or revoked, or otherwise ceases selling kratom and kratom products, then any tax, additions to tax, penalties, and interest imposed by this section and by §11-10-1 *et seq*. of this code shall become due and the retailer shall make a final return or returns and pay any tax which is due within 90 days of not renewing its permit, relinquishing its permit, having its permit suspended or revoked, or otherwise ceasing business. The unpaid amount of any tax is to be considered a lien.

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(f) All money received from the privilege tax imposed under this section, including any interest and additions to tax paid under §11-10-1 *et seq*. of this code, less the amount of any refunds, and less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code, shall be deposited into the Agricultural Fees Fund created by §19-1-4c of this code.

(g) Persons or entities subject to the tax imposed by this subsection shall provide to the Tax Commissioner any information required by the Tax Commissioner to administer, collect, and enforce the tax imposed by this subsection.

(h) Notwithstanding any provision of §11-10-1 *et seq*. of this code or of this article to the contrary, the Tax Commissioner, the Alcohol Beverage Control Administration Commissioner, and the commissioner may enter into written agreements pursuant to which the Tax Commissioner may disclose to designated employees of the Alcohol Beverage Control Administration Commissioner or commissioner, or both, whether a particular retailer or permittee, or applicant for a permit, is in good standing with the Tax Commissioner, and the commissioner may disclose to designated employees of the Tax Commissioner or the Alcohol Beverage Control Administration Commissioner, or both, information a retailer or permittee, or applicant for a permit, provides to the commissioner pursuant to this code and the Alcohol Beverage Control Administration Commissioner may disclose to designated employees of the Tax Commissioner, or the commissioner, or both, information a retailer or permittee, or applicant for a permit, provides to the Alcohol Beverage Control Administration Commissioner pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 *et seq*. of this code. To the extent feasible, this information should be shared or exchanged electronically to ensure safe destruction, or as necessary, proper file retention practices.

(i) The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 *et seq*. of this code, any necessary legislative rules the Tax Commissioner determines necessary to the efficient administration of taxes imposed by this subsection.

(1) Funds from the tax imposed by the provisions of this article, less the fee retained by the Tax Commissioner pursuant to §11-10-27 of this code, and deposited into the Agricultural Fees Fund shall be divided and deposited as follows:

(2) Sixty-five percent shall remain in the Agriculture Fees Fund for the use of the commissioner in administering and enforcing the provisions of this article;

(3) Five percent shall be transferred to the Fight Substance Abuse Fund created by §60A-9-8 of this code; and

(4) Thirty percent shall be deposited in the Alcohol Beverage Control Enforcement Fund established by the provisions of §60-7-13 of this code.

(j) Notwithstanding any provision in §11-9-1 *et seq*. of this code to the contrary, and as

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relevant to the tax imposed by this article, the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 *et seq*. of this code shall apply with like effect as if the said West Virginia Tax Crimes and Penalties Act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

(k) Notwithstanding any provision of §11-10-1 *et seq*. of this code, or any other provision of this code to the contrary, the West Virginia Tax Procedure and Administration Act, as set forth in §11-10-1 *et seq*. of this code, applies to the tax imposed by this article with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

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