WEST VIRGINIA CODE: §60-9-5

§60-9-5. Administrative sanctions.

(a) The State Tax Commissioner may revoke or suspend the authorization to affix the tax stamp of any person for a violation of this article or any legislative rule related to this article that is promulgated by the commissioner pursuant to chapter twenty-nine-a of this code and, in conjunction, the Alcohol Beverage Control Commissioner may impose on the person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or $5,000, upon finding a violation by such person of this enactment, or the rules promulgated by the commissioner.

(b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into or sold or distributed in this state in violation of this article are considered contraband under article seventeen, chapter eleven of this code and are subject to seizure and forfeiture as provided therein. Such cigarettes are considered contraband whether the violation of this article is knowing or otherwise.

(c) The State Tax Commissioner may assess tax due, penalty, and interest on any product acquired, possessed, sold, or offered for sale in violation of this article.

(d) Any monetary penalty assessed and collected by the Alcohol Beverage Control Commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of "the alcohol beverage control enforcement fund," established pursuant to section thirteen, article seven, chapter sixty of this code. All moneys collected, received and deposited in the "alcohol beverage control enforcement fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of this article and rules pertaining to cigarettes and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state.

(e) Any person aggrieved by the imposition of a civil penalty pursuant to this article may request a hearing, within ten days of receipt of the notice imposing penalties, before the Alcohol Beverage Control Commissioner in the manner set forth herein. The commissioner may not hold a hearing or impose any civil penalties until after at least ten days' notice to the person of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such penalty, and which shall be served upon the person as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested; at which time and place, so designated in the notice, the person has the right to appear and produce evidence in his or her behalf, and to be represented by counsel.

The commissioner may summon witnesses in the hearing before him or her, and fees of witnesses summoned on behalf of the state in proceedings shall be treated as a part of the expenses of administration and enforcement. The fees shall be the same as those in similar

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hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a sum, not to exceed $200 per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund.

The action of the commissioner imposing a civil penalty is subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code. Petition for such review must be filed with the circuit court within a period of thirty days from and after the date final imposition of the civil penalty following hearing, if any, and any person obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the Supreme Court of Appeals of West Virginia for a writ of error from any final order of the circuit court in any matter shall be made within thirty days from and after the entry of the final order. All hearings before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in the notice, or agreed upon between the person and the commissioner; and when the hearing is held elsewhere than in the commissioner's office, the person may be required to make deposits of the estimated costs of such hearing.

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