WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

HOUSE BILL No. 563

(By Mr. Seibert)

PASSED February 6, 1970

In Effect July 1, 1970

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-12-70
AN ACT to amend and reenact article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cigarette taxes.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. EXCISE TAX ON SALE OF CIGARETTES.

§11-17-1. Short title.

1 This article shall be known, and may be cited, as the “Cigarette Tax Act.”

§11-17-2. Definitions.

1 When used in this article the following words, terms and phrases and any variations thereof required by the
context, shall be the meaning ascribed to them in this article, except where the context indicates a different meaning:

(1) "Cigarette" means:

(a) Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such 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).

(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.

(3) "Consumer" means a person who receives or in any way comes into possession of cigarettes for the purpose of consuming or giving them away or disposing of
them in any way other than by sale, barter or exchange.

(4) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution or disposition of.

(5) "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any purpose other than resale.

(6) "Sale by wholesaler" shall mean and include any bona fide transfer of title to cigarettes by a wholesaler for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

(7) "Stamp" or "meter impression" shall mean any cigarette stamp or any meter or ink impression authorized by the tax commissioner to serve as such stamp, and shall be of the design and color as prescribed by the tax commissioner.

(8) "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.

(9) "Subjobber" or "subjobber dealer" shall include any person who purchases stamped cigarettes from any
other person who purchases from the manufacturer when such other person is located in any state which levies an excise tax on cigarettes and who purchases such cigarettes solely for the purpose of bona fide resale to retail dealers.

(10) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(11) "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, 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, shall mean and include officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(12) "Retail dealer" includes every person in this state, other than a wholesaler or subjobber, engaged in the selling of cigarettes at retail to a consumer or to any person for any purpose other than resale.
(13) "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.

(14) "Vending machine operator" is any person operating one or more cigarette vending machines. The sale of cigarettes through a vending machine will be construed as sales at retail and will subject the vending machine operator to the cigarette tax law and rules and regulations pertaining to retail dealers.

Whenever any cigarette vending machine operator purchases cigarettes directly from the manufacturer such person or operator shall be deemed to be a wholesaler and shall be liable for the excise tax and the affixing of the required stamps.

(15) "Wholesaler" or "wholesale dealer" shall include any person who purchases unstamped cigarettes directly from the manufacturer.

§11-17-3. Levy of tax; ratio.

For the purpose of providing revenues for the general revenue fund of the state an excise tax is hereby levied and imposed on sales of cigarettes at the rate of four
4 cents on each ten cigarettes or fractional part thereof.
5 Only one sale of the same article shall be used in computing the amount of tax due hereunder.

§11-17-4. Additional cigarette tax for support of schools.
1 For the purpose of providing additional revenue for
2 the support of free schools, there is hereby levied and
3 imposed, in addition to the tax imposed hereinbefore in
4 this article, an additional excise tax of two cents on each
5 ten cigarettes, or fractional part thereof, sold within this
6 state. Except as otherwise provided in this section, all
7 provisions of this article relating to the levy, imposition
8 and collection of the regular excise tax on the sale of
9 cigarettes shall be applicable to the levy, imposition and
10 collection of such additional tax. Notwithstanding other
11 provisions of this article to the contrary, all moneys
12 received from the additional tax imposed by this section,
13 less deductions allowed by this article for refunds and
14 for costs of administration and operation, shall be paid
15 by the tax commissioner into the general school fund,
16 to be used solely for the support of free schools.
§11-17-4a. No cigarette tax by municipalities or other governmental subdivisions.

1 No municipality or governmental subdivision shall levy any excise or other tax requiring cigarettes to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in article twelve of this chapter.

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

1 The tax hereby imposed shall be paid by the purchase of stamps as provided in this article. Payment for stamps purchased from the commissioner shall be made by cash, money order, bank draft, certified check or by non-certified 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.

9 A stamp as required by this article, as described in the cigarette tax rules and regulations, 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 thereof. The stamp or impression, so affixed, shall be prima facie evidence of payment of the tax
imposed by this article. Stamps or meter impressions shall be purchased from the commissioner or his deputy, by, and paid for, by wholesalers.

Except as may be otherwise provided in the rules and regulations prescribed by the commissioner, under authority of this article, and unless such stamps have been previously affixed, they shall be so 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.

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

The tax commissioner, if he shall determine that it is practicable to stamp packages of cigarettes by impression by means of a metering device, shall provide that such metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax commissioner may authorize any wholesaler purchas-
ing unstamped cigarettes, and holding the business registration certificate or license as required by chapter eleven, article twelve of this code, to use any metering device approved by the commissioner, such devices to be sealed by the commissioner or a deputy, or agent, authorized by the commissioner, before being used, which device shall be used only in accordance with the regulations prescribed by the commissioner.

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

§11-17-6. Sales 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.
§11-17-7. Form of stamps; custody; discounts; security for payments.

1. 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.

2. 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.

1 Whenever any person ceases by reason of the discontinuance, sale or transfer of his business at any location, he shall notify the tax commissioner in writing at the time the discontinuance, sale or transfer takes effect. The notice shall give the date of discontinuance, and in the event of a sale or transfer of the business, the date of such sale or transfer and the name and address of the seller or transferor and the purchaser or transferee. All taxes, penalties not yet due and payable under this article shall, notwithstanding such provision(s), become due and payable concurrently with the discontinuance, sale or transfer and said person shall make the report prescribed by this article and pay all taxes and penalties imposed by this article.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the tax, interest, additions to tax and penalties which may be due until the former owner shall produce a receipt from the tax commissioner evidencing the payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and such tax, interest, additions to tax and
penalties remain unpaid after expiration of the thirty-
day period allowed for payment thereof, the seller or
purchaser shall be jointly and personally liable for the
payment of all such tax, interest, additions to tax and
penalties, and the same shall be recoverable by the tax
commissioner by whatever appropriate legal action to
prosecute said person as provided in this article.


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.

§11-17-10. Refunds.

The commissioner shall redeem any unused or mutil-
ated, but identifiable, stamps, that any wholesaler or
retail dealer may present for redemption, on written
verified requests made by the purchaser, his adminis-
trators, 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, the tax commissioner may by regulation prescribe procedures for refund.

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

The tax commissioner may require wholesalers, sub-jobbers 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 one thousand dollars. 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
13 released and discharged from all liability accruing on
14 such bond after the expiration of sixty days from the
15 date the surety shall have lodged, by certified mail, with
16 the tax commissioner a written request to be discharged.
17 This shall not relieve, release or discharge the surety
18 from liability already accrued, or which shall accrue be-
19 fore the expiration of the sixty day period. Whenever
20 any surety shall seek release as herein provided, it shall
21 be the duty of the person to supply the tax commissioner
22 with another bond.

§11-17-12. Reports due date; reports required; records;
inspection of records; summons.

1 On or before the fifteenth day of each month common
2 carriers, wholesalers, subjobbers, retail dealers, and
3 agents, or vending machine operators shall, when re-
4 quired by this article, or the tax commissioner, file a
5 report covering the business transacted in the previous
6 month covering such information as the commissioner
7 may deem necessary for the ascertainment or assessment
8 of the tax imposed by this article; and shall be signed
9 under penalty of perjury on such forms as the tax com-
10 missioner may prescribe and shall at this time remit
11 any taxes owed or due, if any.
The reports imposed by this section shall be deemed as having been timely filed for the purpose of avoiding penalties only if the postmark date thereon is clearly within the said due date of the calendar month, or is received within such period. If the due date falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday.

The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the tax commissioner that are necessary to substantiate the returns required by this article including but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than five years.

Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded
upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date, quantity, price of product, and the tax must be set out separate or the invoice must indicate whether or not the West Virginia cigarette excise tax is included in the total price and such other reasonable information as the tax commissioner may require. However, these invoicing requirements do not apply to cash sales, and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

The tax commissioner or his deputy or agent authorized by him may inspect or examine the records, books, papers, and any equipment or records of any manufacturer, wholesaler, subjobber, retail dealer, common carrier, or any other person pertaining to the quantity of cigarettes acquired or disbursed to verify the truth and accuracy of any statement or report to ascertain whether the tax imposed by this article has been properly paid.

As a further means of obtaining the records, books and papers of a manufacturer, 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 his duly appointed agent, shall
have the power to examine witnesses under oath; and if
the witness shall fail or refuse at the request of the tax
commissioner or his duly appointed agent to grant access
to the books, records, or papers, the tax commissioner
or such agent shall certify the facts and names to the
circuit court of the county having jurisdiction of the
party and such court shall thereupon issue summons to
such party to appear before the tax commissioner or his
agent, at a place designated within the jurisdiction of
such court, on a day fixed, to be continued as the occasion
may require for good cause shown and give such evi-
dence and lay open for inspection such books and papers
as may be required for the purpose of ascertaining the
amount of tax and reports due, if any.

§11-17-13. Secrecy of returns and reciprocal exchange of
information.

(1) Except when required in an official investigation,
administrative tax hearing or proceedings in court in-
volving taxes payable under this article, and except as
provided in subsections (2) and (3) of this section, it shall be unlawful for any officer or employee of the state to divulge or make known in any manner the amount of tax on cigarettes or any particulars set forth or disclosed in any report, return, or statement required to be filed with the tax commissioner by this article or any regulation of the tax commissioner issued hereunder and any person who shall divulge such other information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars for each offense, or, shall forfeit his office or appointment held or both.

(2) The tax commissioner, or his representative, may upon request permit the proper officer of the United States or any state, territory or political subdivision of the United States, to inspect reports, returns or statements filed with the tax commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the tax commissioner of this state. Subsection (1) of this section shall not be construed to
prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items therein.

(3) Any taxpayer under this article may, in writing, waive the secrecy rules provided in subsection (1) of this section for such purpose and such period as he shall therein state, and the tax commissioner, if he so determines may thereupon release to designated recipient said taxpayer's tax, quantity of cigarettes or other particulars filed under this article.

§11-17-14. Assessment of tax; assessments as evidence; petition for reassessment; jeopardy assessment; distraint.

Whenever any person pursuant to the requirements of this article shall neglect or refuse to make or file any report or pay the taxes or penalties in the time required by this article or related regulations or shall file an incorrect or fraudulent report, the tax commissioner may estimate, from any information obtainable, the number of cigarettes manufactured, purchased, received, sold or used with respect to which the person has incurred liability under this article, the tax commissioner may give a notice of assessment in person or by certified mail,
and, in any action or proceeding for the collection of the tax or any penalties imposed by this article, an assessment by the tax commissioner shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the person assessed to show that the assessment was incorrect and contrary to law.

If a taxpayer against whom an assessment has been made desires to object to the assessment and obtain a hearing as provided by section sixteen of this article he shall file within thirty days from the date of service of the assessment with the commissioner, either personally or by certified mail a petition for reassessment.

A petition for reassessment filed by certified mail will be deemed to have complied with the foregoing requirements if the postmark date thereon is clearly within said thirty days, or is received within such period. If the thirtieth day falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday.

The petition for reassessment shall be in writing with
an original and one copy. It shall be complete in itself so as to fully state the issues. The tax commissioner may by regulations adopt procedures and forms relating to petitions. No telegrams, telephone calls or similar communication will be recognized as a petition.

Failure to file a petition for reassessment within thirty days after receipt of the assessment shall result in the assessment becoming due and payable and not subject to judicial review.

In the case of jeopardy assessments, wherein the tax commissioner believes that the collection of the tax will be jeopardized by delay the amount assessed shall be immediately due and payable and a bond with corporate surety thereon in an amount to be fixed by the tax commissioner, conditioned upon the payment of all taxes, penalties and cost legally due, shall accompany the petition for reassessment.

The commissioner may abate in whole or in part any assessment issued under this article.

If the statement of tax or notice of assessment mentioned hereinbefore in this section is not paid and no
petition for reassessment is filed as hereinbefore pre-
scribed in this section then it shall be lawful for:

(1) The tax commissioner, or his duly appointed
agent to collect such tax and penalty by distraint and
sale of goods, chattels or effect, including stocks, securities
and evidence of debt, of the taxpayer liable for the pay-
ment of such tax and penalty.

(2) If goods, chattels or effects sufficient to pay such
tax and penalty due from such person are not found by
the tax commissioner, or his duly appointed agent, the
tax commissioner is authorized to collect such tax and
penalty stated hereinbefore by seizure and sale of real
estate. Further, the tax commissioner shall cause appro-
priate action for the recovery of such tax and/or penalty,
or to enforce the lien of the state of West Virginia for
tax upon any real estate, to be brought in the name of the
state, and it shall be the duty of the attorney general
of this state or the prosecuting attorney of any county
to take whatever appropriate legal action to prosecute
said person, at the request of the tax commissioner, and
judgment shall be rendered for the amount found to be
due, together with cost, and the amount collected shall be paid into the state treasury, as provided by this article.

§11-17-15. Injunction.

1 If any taxpayer or person fails to comply with any of the provisions of this article for a period more than thirty days the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer or person from doing business in this state until said person fully complies with the provisions of this article.

§11-17-16. Hearing; appeals.

1 Any person against whom an order or decision of the tax commissioner, or his representative has been adversely affected relating to the filing of returns, assessment of taxes, granting of refunds, any other matter wherein the findings are in the discretion of the tax commissioner, may appeal from such determination by requesting a hearing before the tax commissioner, or his examiner, if such request is made within thirty days from receipt of such order or decision.
The tax commissioner may designate an examiner to conduct a hearing, and when the term "commissioner" is used in this section relating to the conduct of the hearing it shall likewise mean "examiner."

The tax commissioner may by regulation prescribe the procedure for hearings.

The commissioner shall notify the petitioner, his counsel or representative, by certified mail, of the time and place of the hearing but not less than twenty days prior to the hearing. The hearing shall be held in Charleston, West Virginia unless the commissioner determines otherwise, and such hearing shall be informal unless otherwise stipulated in writing by either party.

The tax commissioner shall issue a ruling by certified mail within a reasonable time from the date of the hearing.

An appeal may be taken by the taxpayer if the appeal is filed with the circuit court of the county in which the activity taxed was engaged, or in the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his
determination as provided in this section.

The appeal shall be taken by written notice to the tax commissioner and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the tax commissioner as defendant.

The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such an appeal a certified copy of the tax commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then if necessary, correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.
§11-17-17. Forms, rules and regulations; enforcement powers.

1 The tax commissioner is hereby invested with full
2 power and authority and it is hereby made his duty
3 to prescribe the necessary forms and to promulgate
4 necessary and needful rules and regulations to ascer-
5 tain, assess and collect the taxes imposed by this article
6 and to enforce the provisions thereof.

7 Any employee or agent of the tax commissioner, so
8 designated by the tax commissioner, shall have all the
9 lawful powers delegated to members of the department
10 of public safety to enforce the provisions of this article,
11 in any county, or municipality in this state.

12 The state department of public safety is hereby author-
13 ized and may be requested to assist in the enforcement
14 of the provisions of this article as directed by the tax
15 commissioner, or his agents.

16 Such employee shall execute a bond with security
17 in the sum of thirty-five hundred dollars, payable to
18 the state of West Virginia conditioned for the faithful
19 performance of his duties, as such, and such bond shall
20 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.

§11-17-18. Amounts allowed for administration.

1 The state tax commissioner, in the administration and
2 enforcement of this article, shall be allowed to expend
3 out of the taxes collected thereunder, or proceeds of
4 sales of stamps, a sum of not to exceed one and one-half
5 percent of the tax collected or stamps sold.

§11-17-19. Penalties; crimes.

1 (1) If any person:

2 (a) Fails to pay the taxes imposed by this article
3 when due, said taxes shall bear interest at the legal rate
4 of interest per annum for each month or fraction
5 thereof from the due date of the tax or return, each
6 assessment made by the tax commissioner shall bear in-
7 terest for failure to timely pay the taxes imposed by
8 this article, or

9 (b) Fails to make or file a return or whenever the
10 full amount of the tax on any portion or deficiency
11 thereof has not been paid in the time required by this
12 article, unless it be shown that such failure was due
to reasonable cause and not due to wilful neglect, there may be added to the tax a penalty of five percent per month if a failure is not for more than one month, with an additional five percent for each additional month or fraction thereof during which failure shall continue, not to exceed twenty-five percent in the aggregate. If no tax is due, the penalty will be twenty-five dollars per month or fraction thereof for failure to file a tax return: Provided, That in all cases of delinquency in the payment of taxes due, interest shall be assessed.

(2) If any person:

(a) Files a false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a wilful failure to file a return with intent to evade the tax, or file a false claim for credit or refund there shall be added to the tax due an amount equal to one hundred percent of the tax due. The burden of proving fraud, wilfulness, or intent to evade tax shall be upon the tax commissioner.

(3) If any person:
(a) Makes any false entry upon an invoice, package or container of cigarettes required to be made under the provisions of this article, or with intent to evade the tax imposed by this article, presents any such false entry for the inspection of the commissioner, or

(b) Prevents or hinders the commissioner or his deputy from making a full inspection of any place where cigarettes subject to the tax imposed by this state are sold or stored, or prevents or hinders the full inspection of invoices, books, records, or papers required to be kept under the provisions of this article, or

(c) Sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or stamps required to be affixed thereto by this article, or

(d) Being a retail dealer in this state, has in his possession packages of cigarettes not bearing the stamps herein required to be affixed thereto or, whoever fails to produce on demand by the commissioner invoices of all cigarettes purchased or received by him within two years prior to such demand, unless upon satisfactory
proof it is shown that such nonproduction is due to providential or other causes beyond his control, or

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

(f) If any wholesale dealer shall sell cigarettes to any person in this state other than to another wholesaler, subjobber, or retail dealer and no person in this state other than a wholesaler, or subjobber, shall sell cigarettes to a retail dealer. It shall be unlawful and a violation of this article for any retail cigarette dealer to purchase or acquire cigarettes from any person other than a wholesaler or subjobber. The original wholesaler who purchases unstamped cigarettes from the manufacturer is liable for the excise tax and the affixing of the required stamps, or

(g) If a person, firm or corporation, who is not a wholesaler, subjobber or retail dealer in tobacco products, as provided by this article, shall have in his possession
within the state more than ten packages of cigarettes not bearing cigarette tax paid indicia of this state, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon, or

(h) Whoever violates any of the provisions of section nineteen, subsection (2) (a) through section nineteen, subsection (3) (g) or any lawful rule or regulation promulgated by the commissioner under authority of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail for not more than one year, or both, in the discretion of the court.

(4) Whoever falsely or fraudulently makes, forges, alters or counterfeits any stamp prescribed, or defined, by the provisions of this article, or its related rules and regulations, and any person who knowingly and wilfully makes, causes to be made, purchases, receives or has in his possession, any device for forging or counterfeiting any stamp or has in his possession, any stamps not properly issued by the commissioner or his agent
or deputy, or uses more than once any stamp provided for and required by this article for the purpose of evading the tax hereby imposed, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary for a term of not less than one year nor more than five years.

(5) Whenever the commissioner or any of his deputies or employees authorized by him for the purpose shall discover any cigarettes subject to tax as provided by this section of this article and upon which the tax has not been paid as herein required, the commissioner, or such deputy or employee is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, without a warrant, which shall thereupon be deemed to be contraband, forfeited to the state and the commissioner shall within a reasonable time thereafter sell such forfeited cigarettes: Provided, however, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment as pro-
vided herein for violation of any provisions of this article. Such sale may be made in any county the tax commissioner deems most convenient and economical. Notice of such sale shall be published as 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 taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

(6) Justices of the peace shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

§11-17-20. Transportation of unstamped cigarettes; unstamped cigarettes in vending machines; forfeitures and sales of cigarettes and equipment.

Every person who shall transport cigarettes not stamped as required by this article upon the public highways, waterways, roads or streets of this state shall have in
his actual possession invoices or delivery tickets for such

cigarettes which shall show the true name and complete

and exact address of the consignor or seller, the true

name and complete and exact address of the consignee,

or purchaser, the quantity and brands of the cigarettes

transported and the true name and complete and exact

address of the person who has or shall assume payment

of the West Virginia state tax, or the tax, if any, of the

state or foreign country at the point of ultimate destina-
tion: Provided, That any common carrier which has issued

a bill of lading for a shipment of cigarettes and is with-

out notice to itself or to any of its agents or employees

that said cigarettes are not stamped as required by this

article shall be deemed to have complied with this article

and the vehicle or vessel in which said cigarettes are being

transported shall not be subject to confiscation hereunder.

In the absence of such invoices, delivery tickets or bills

of lading, as the case may be, the cigarettes so transported,

the vehicle or vessel in which the cigarettes are being

transported and any paraphernalia or devices used in

connection with the unstamped cigarettes, are declared
to be contraband goods and may be seized by the com-
missioner, his agents or employees or by any peace
officer of the state when directed by the commissioner,
his agents or employees so to do without a warrant.

If unstamped cigarettes are found in any vending
machine, both the cigarettes and the vending machine
shall be contraband goods and may be seized by the com-
missioner, at the discretion of the commissioner, his
agents or employees, without a warrant.

Cigarettes and vending machines seized under this
section shall be forthwith sold in the manner provided
hereinafter in this section and such sale shall not relieve
the owner of the sold personal property of any action
by the commissioner for violations of any other sections
of this article.

The commissioner shall immediately, after any seizure
made pursuant to this section, institute a proceeding for
the confiscation thereof in the circuit court of the county
in which the seizure is made. The court may proceed
in a summary manner and may direct confiscation to the
commissioner: Provided, however, That anything to the
contrary notwithstanding that any person claiming to
be the holder of security interest in any vehicle or vessel,
or vending machine, the disposition of which is provided
for above, may present his petition so alleging and be
heard, and in the event it appears to the court that
the property was unlawfully used by a person other than
such claimant, and if the said claimant acquired his
security interest in good faith and without knowledge
that the vehicle or vessel or vending machine, was
going to be so used, the court shall either waive for-
feiture in favor of such claimant and order the vehicle
or vessel or vending machine returned or delivered to
such claimant or if it is found that the value thereof
exceeds the amount of the claim, the court shall order
payment of the amount of the claim out of the proceeds
of the sale.


1 If any provision of this article or the application thereof
shall for any reason be adjudged by any court of com-
petent 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 11th day of February, 1970.

Governor
PRESENTED TO THE
GOVERNOR

Date 2/11/70
Time 10:30 A.M.