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U.S. DEPARTMENT OF JUSTICE

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1970**

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**ENROLLED**

**HOUSE BILL No. 563**

(By Mr. Seibert )

—●—

PASSED Feb. 6, 1970

In Effect July 1, 1970 Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 2-12-70

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**House Bill No. 563**

(By MR. SEIBERT)

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[Passed February 6, 1970; in effect July 1, 1970.]

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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  
2     “Cigarette Tax Act.”

**§11-17-2. Definitions.**

1     When used in this article the following words, terms  
2     and phrases and any variations thereof required by the

3 context, shall be the meaning ascribed to them in this  
4 article, except where the context indicates a different  
5 meaning:

6 (1) "Cigarette" means:

7 (a) Any roll for smoking made wholly or in part  
8 of tobacco, irrespective of size or shape and whether or  
9 not such tobacco is flavored, adulterated or mixed with  
10 any ingredient, the wrapping or cover of which is made  
11 of paper or any substance or material, except tobacco.

12 (b) Any roll of tobacco wrapped in any substance  
13 containing tobacco which, because of its appearance, the  
14 type of tobacco used in the filler, or its packing and  
15 labeling, is likely to be offered to, or purchased by, con-  
16 sumers as a cigarette described in paragraph (a).

17 (2) "Commissioner" means the state tax commissioner  
18 and where the meaning of the context requires, all  
19 deputies or agents and employees duly authorized by  
20 him.

21 (3) "Consumer" means a person who receives or in  
22 any way comes into possession of cigarettes for the pur-  
23 pose of consuming or giving them away or disposing of

24 them in any way other than by sale, barter or exchange.

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

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

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

35 (7) "Stamp" or "meter impression" shall mean any  
36 cigarette stamp or any meter or ink impression auth-  
37 orized by the tax commissioner to serve as such stamp,  
38 and shall be of the design and color as prescribed by the  
39 tax commissioner.

40 (8) "Stamped cigarettes" means that the stamp or  
41 meter impression as required by this article has been  
42 affixed to the bottom of the package of cigarettes.

43 (9) "Subjobber" or "subjobber dealer" shall include  
44 any person who purchases stamped cigarettes from any

45 other person who purchases from the manufacturer when  
46 such other person is located in any state which levies  
47 an excise tax on cigarettes and who purchases such cig-  
48 arettes solely for the purpose of bona fide resale to retail  
49 dealers.

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

53 (11) "Person" shall mean and include any individual,  
54 firm, association, company, partnership, corporation, joint  
55 stock company, club, agency, syndicate, municipal cor-  
56 poration or other political subdivision of this state, trust,  
57 receiver, trustee, fiduciary or conservator, and when used  
58 in connection with any penalties imposed by this article,  
59 shall mean and include officers, directors, trustees or  
60 members of any firm, copartnership, association, corpora-  
61 tion, trust or any other unit acting as a group.

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

66 (13) "Unstamped cigarettes" means that the stamp or  
67 impression as required by this article has not been  
68 affixed to the bottom of the package of cigarettes.

69 (14) "Vending machine operator" is any person oper-  
70 ating one or more cigarette vending machines. The sale  
71 of cigarettes through a vending machine will be con-  
72 strued as sales at retail and will subject the vending  
73 machine operator to the cigarette tax law and rules and  
74 regulations pertaining to retail dealers.

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

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

**§11-17-3. Levy of tax; ratio.**

1 For the purpose of providing revenues for the general  
2 revenue fund of the state an excise tax is hereby levied  
3 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 com-  
6 puting 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  
2 any excise or other tax requiring cigarettes to be stamped,  
3 or requiring licenses for sale thereof, other than licenses  
4 which may be imposed as a result of licenses provided for  
5 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  
2 of stamps as provided in this article. Payment for stamps  
3 purchased from the commissioner shall be made by cash,  
4 money order, bank draft, certified check or by non-  
5 certified check. However, in the event a noncertified  
6 check is returned unpaid by its bank, then it shall be  
7 considered that payment has not been made for the  
8 taxes due.

9 A stamp as required by this article, as described in  
10 the cigarette tax rules and regulations, shall be affixed to,  
11 or impressed upon each package of cigarettes of an aggregate  
12 value of not less than the amount of tax upon the  
13 contents thereof. The stamp or impression, so affixed,  
; 14 shall be prima facie evidence of payment of the tax



15 imposed by this article. Stamps or meter impressions shall  
16 be purchased from the commissioner or his deputy, by,  
17 and paid for, by wholesalers.

18 Except as may be otherwise provided in the rules and  
19 regulations prescribed by the commissioner, under au-  
20 thority of this article, and unless such stamps have been  
21 previously affixed, they shall be so affixed by each whole-  
22 sale dealer who must be authorized to do business in this  
23 state prior to the sale or delivery of any cigarettes to  
24 any retail dealer or subjobber in this state.

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

30 The tax commissioner, if he shall determine that it is  
31 practicable to stamp packages of cigarettes by impres-  
32 sion by means of a metering device, shall provide that  
33 such metering device and its impression may be used  
34 in lieu of the stamps otherwise required by law. The  
35 tax commissioner may authorize any wholesaler purchas-

36 ing unstamped cigarettes, and holding the business regis-  
37 tration certificate or license as required by chapter eleven,  
38 article twelve of this code, to use any metering device  
39 approved by the commissioner, such devices to be sealed  
40 by the commissioner or a deputy, or agent, authorized  
41 by the commissioner, before being used, which device  
42 shall be used only in accordance with the regulations  
43 prescribed by the commissioner.

44 A wholesaler may elect to pay the tax in advance  
45 where a metering device is used, in which event such  
46 wholesaler shall deliver the metering device to the com-  
47 missioner, or his agent authorized for that purpose, who  
48 shall seal the meter in accordance with the prepayment  
49 so made.

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

1 The tax commissioner may appoint, subject to such  
2 conditions as he shall deem to be the best interest of  
3 the state, any bank or trust company authorized to do  
4 business in, and doing business in this state, as his deputy  
5 for the purpose of selling such stamps and may require  
6 bond, excepting that no such deputy shall be thereby  
7 authorized to sell the same at a discount or on credit,

8 without prior written authority by the tax commissioner  
9 and excepting, further, that provisions hereof relating  
10 to sale of stamps shall not prevent any bank or trust  
11 company from acting as the commissioner's deputy for  
12 purposes of checking, setting, and sealing meters or sell-  
13 ing stamps under other provisions of this article. The  
14 tax commissioner is hereby authorized to allow such  
15 deputy, authorized to sell stamps hereunder, a fee of one  
16 eighth of one percent of the face value of all stamps sold  
17 by such deputy. The state tax commissioner shall be  
18 responsible for the delivery of stamps to any deputy  
19 so appointed, and may prescribe such regulations and  
20 forms of receipts and reports as he may deem necessary  
21 and advisable for the transaction of the business of sell-  
22 ing such stamps. Each such deputy shall remit by the  
23 fifteenth of the month, for the previous month, or oftener,  
24 as requested, to the tax commissioner all moneys arising  
25 from the sale of such stamps by him, together with a  
26 report showing the names of the purchasers and the  
27 number of each denomination and the aggregate face  
28 value sold by each such deputy. The tax commissioner  
29 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  
2 be used as herein provided for, affixed and attached to  
3 containers, packages or receptacle of whatever kind that  
4 may be used for containing cigarettes. In the preparing  
5 of said stamp or stamps the same shall have printed  
6 or impressed thereon the words "State of West Virginia-  
7 Cigarette Tax Stamp" and such other words and figures  
8 as the commissioner may deem proper. He shall also  
9 prescribe the form of impression to be placed upon any  
10 package or container of cigarettes by any metering de-  
11 vice. The tax commissioner shall collect the taxes pro-  
12 vided for by this article.

13 Such stamps shall be kept in the custody of the tax  
14 commissioner or such deputies as he may designate to  
15 sell the same. Such stamps shall be sold and accounted  
16 for at the tax value thereof except that the tax commis-  
17 sioner may authorize sale thereof, or sell to wholesalers  
18 in this state, or to wholesalers outside of this state such  
19 stamps at a discount of four percent of the tax value  
20 of such stamps, the same to be allowed as a commission

21 for affixing the stamps and prepaying the cigarette tax;  
22 and excepting further that the tax commissioner may,  
23 by like regulation so certified, authorize the delivery  
24 of stamps, to wholesalers in this state, or to wholesalers  
25 outside of this state, on credit, allowing the same discount  
26 as when sold for cash, if and when the purchaser shall  
27 file with the tax commissioner a bond made payable to  
28 the State of West Virginia, in such form and amount as  
29 the commissioner shall prescribe, and with surety or  
30 sureties to the satisfaction of the commissioner, conditioned  
31 as he may require, to guarantee payment within thirty  
32 days for stamps so delivered within such period of time  
33 and by making of such reports and settlement as the  
34 commissioner may require. The commissioner may, by  
35 further regulations, provide for canceling, renewing or  
36 increasing such bond or for the substitution of the surety  
37 thereon.

38 For the purposes of this article "tax value" shall mean  
39 the tax value of each stamp or meter impression, as im-  
40 posed by this article.

**§11-17-8. Discontinuance of business.**

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

15 The successor in business of any such person shall  
16 withhold so much of the purchase money as will satisfy  
17 the tax, interest, additions to tax and penalties which  
18 may be due until the former owner shall produce a  
19 receipt from the tax commissioner evidencing the pay-  
20 ment thereof. If the purchaser of a business or stock  
21 of goods shall fail to withhold purchase money as above  
22 provided, and such tax, interest, additions to tax and

23 penalties remain unpaid after expiration of the thirty-  
24 day period allowed for payment thereof, the seller or  
25 purchaser shall be jointly and personally liable for the  
26 payment of all such tax, interest, additions to tax and  
27 penalties, and the same shall be recoverable by the tax  
28 commissioner by whatever appropriate legal action to  
29 prosecute said person as provided in this article.

**§11-17-9. Discounts.**

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

**§11-17-10. Refunds.**

1 The commissioner shall redeem any unused or muti-  
2 lated, but identifiable, stamps, that any wholesaler or  
3 retail dealer may present for redemption, on written  
4 verified requests made by the purchaser, his adminis-  
5 trators, executors, successors, or assigns, and refund  
6 therefor, ninety-five percent of the face value of said  
7 stamps, less any discounts allowed on the purchase of  
8 said stamps. The commissioner shall pay on a like basis  
9 for stamps destroyed by fire or flood upon presentation  
10 of proof of such loss satisfactory to him. Such payments

11 shall for the purposes hereof be deemed to be refunds of  
12 taxes improperly collected and shall be allowed and paid  
13 from funds collected. Stamps or meter impressions on  
14 cigarettes returned to the manufacturers will be subject  
15 to refund upon the filing of an affidavit in duplicate  
16 issued by the manufacturer evidencing the destruction of  
17 stamps or meter impressions, the tax commissioner may  
18 by regulation prescribe procedures for refund.

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

1 The tax commissioner may require wholesalers, sub-  
2 jobbers or retail dealers to file continuous surety bond  
3 in an amount to be fixed by the tax commissioner except  
4 that the amount shall not be less than one thousand  
5 dollars. Upon completion of the filing of a surety bond  
6 an annual notice of renewal, only, shall be required  
7 thereafter. The surety must be authorized to engage in  
8 business within this state. The bond shall be conditioned  
9 upon faithfully complying with the provisions of this  
10 article including the filing of the returns and payment  
11 of all taxes prescribed by this article.

12 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.

12     The reports imposed by this section shall be deemed  
13     as having been timely filed for the purpose of avoiding  
14     penalties only if the postmark date thereon is clearly  
15     within the said due date of the calendar month, or is  
16     received within such period. If the due date falls on a  
17     Saturday or Sunday, or a day which is a legal holiday  
18     in the state of West Virginia, filing will be considered  
19     timely if it is done on the next succeeding secular day  
20     which is not a legal holiday.

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

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

30     Unless otherwise permitted, in writing, by authority  
31     of the tax commissioner, each delivery ticket or invoice  
32     for each purchase or sale of cigarettes must be recorded

33 upon a serially numbered invoice showing the name and  
34 address of the seller and the purchasers, point of delivery,  
35 the date, quantity, price of product, and the tax must  
36 be set out separate or the invoice must indicate whether  
37 or not the West Virginia cigarette excise tax is included  
38 in the total price and such other reasonable information  
39 as the tax commissioner may require. However, these  
40 invoicing requirements do not apply to cash sales, and a  
41 person making such sales must maintain such records  
42 as may be reasonably necessary to substantiate his re-  
43 turn.

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

52 As a further means of obtaining the records, books and  
53 papers of a manufacturer, common carrier, wholesaler,

54 subjobber, or retailer or any other person and ascertaining  
55 the amount of taxes and reports due under this article  
56 the commissioner and his duly appointed agent, shall  
57 have the power to examine witnesses under oath; and if  
58 the witness shall fail or refuse at the request of the tax  
59 commissioner or his duly appointed agent to grant access  
60 to the books, records, or papers, the tax commissioner  
61 or such agent shall certify the facts and names to the  
62 circuit court of the county having jurisdiction of the  
63 party and such court shall thereupon issue summons to  
64 such party to appear before the tax commissioner or his  
65 agent, at a place designated within the jurisdiction of  
66 such court, on a day fixed, to be continued as the occasion  
67 may require for good cause shown and give such evi-  
68 dence and lay open for inspection such books and papers  
69 as may be required for the purpose of ascertaining the  
70 amount of tax and reports due, if any.

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

1 (1) Except when required in an official investigation,  
2 administrative tax hearing or proceedings in court in-  
3 volving taxes payable under this article, and except as

4 provided in subsections (2) and (3) of this section, it  
5 shall be unlawful for any officer or employee of the state  
6 to divulge or make known in any manner the amount of  
7 tax on cigarettes or any particulars set forth or dis-  
8 closed in any report, return, or statement required to  
9 be filed with the tax commissioner by this article or any  
10 regulation of the tax commissioner issued hereunder and  
11 any person who shall divulge such other information  
12 shall be guilty of a misdemeanor, and, upon conviction  
13 thereof, shall be fined not more than one thousand dollars  
14 for each offense, or, shall forfeit his office or appoint-  
15 ment held or both.

16 (2) The tax commissioner, or his representative, may  
17 upon request permit the proper officer of the United States  
18 or any state, territory or political subdivision of the  
19 United States, to inspect reports, returns or statements  
20 filed with the tax commissioner or may furnish to such  
21 officer or representative a copy of any such document  
22 provided such other jurisdiction grants substantially  
23 similar privileges to the tax commissioner of this state.  
24 Subsection (1) of this section shall not be construed to

25 prohibit the publication of statistics so classified as to  
26 prevent the identification of particular reports and the  
27 items therein.

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

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

1 Whenever any person pursuant to the requirements of  
2 this article shall neglect or refuse to make or file any  
3 report or pay the taxes or penalties in the time required  
4 by this article or related regulations or shall file an in-  
5 correct or fraudulent report, the tax commissioner may  
6 estimate, from any information obtainable, the number  
7 of cigarettes manufactured, purchased, received, sold or  
8 used with respect to which the person has incurred  
9 liability under this article, the tax commissioner may  
10 give a notice of assessment in person or by certified mail,

11 and, in any action or proceeding for the collection of  
12 the tax or any penalties imposed by this article, an as-  
13 sessment by the tax commissioner shall constitute prima  
14 facie evidence of the claim of the state and the burden  
15 of proof shall be upon the person assessed to show that  
16 the assessment was incorrect and contrary to law.

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

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

31 The petition for reassessment shall be in writing with

32 an original and one copy. It shall be complete in itself  
33 so as to fully state the issues. The tax commissioner may  
34 by regulations adopt procedures and forms relating to  
35 petitions. No telegrams, telephone calls or similar com-  
36 munication will be recognized as a petition.

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

41 In the case of jeopardy assessments, wherein the tax  
42 commissioner believes that the collection of the tax will  
43 be jeopardized by delay the amount assessed shall be  
44 immediately due and payable and a bond with corporate  
45 surety thereon in an amount to be fixed by the tax com-  
46 missioner, conditioned upon the payment of all taxes,  
47 penalties and cost legally due, shall accompany the peti-  
48 tion for reassessment.

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

51 If the statement of tax or notice of assessment men-  
52 tioned hereinbefore in this section is not paid and no



53 petition for reassessment is filed as hereinbefore pre-  
54 scribed in this section then it shall be lawful for:

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

60 (2) If goods, chattels or effects sufficient to pay such  
61 tax and penalty due from such person are not found by  
62 the tax commissioner, or his duly appointed agent, the  
63 tax commissioner is authorized to collect such tax and  
64 penalty stated hereinbefore by seizure and sale of real  
65 estate. Further, the tax commissioner shall cause appro-  
66 priate action for the recovery of such tax and/or penalty,  
67 or to enforce the lien of the state of West Virginia for  
68 tax upon any real estate, to be brought in the name of the  
69 state, and it shall be the duty of the attorney general  
70 of this state or the prosecuting attorney of any county  
71 to take whatever appropriate legal action to prosecute  
72 said person, at the request of the tax commissioner, and  
73 judgment shall be rendered for the amount found to be

74 due, together with cost, and the amount collected shall  
75 be paid into the state treasury, as provided by this  
76 article.

**§11-17-15. Injunction.**

1 If any taxpayer or person fails to comply with any  
2 of the provisions of this article for a period more than  
3 thirty days the tax commissioner may institute a pro-  
4 ceeding to secure an injunction to restrain the taxpayer  
5 or person from doing business in this state until said  
6 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  
2 tax commissioner, or his representative has been ad-  
3 versely affected relating to the filing of returns, assess-  
4 ment of taxes, granting of refunds, any other matter  
5 wherein the findings are in the discretion of the tax  
6 commissioner, may appeal from such determination by  
7 requesting a hearing before the tax commissioner, or  
8 his examiner, if such request is made within thirty days  
9 from receipt of such order or decision.

10     The tax commissioner may designate an examiner  
11     to conduct a hearing, and when the term "commissioner"  
12     is used in this section relating to the conduct of the  
13     hearing it shall likewise mean "examiner."

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

16     The commissioner shall notify the petitioner, his coun-  
17     sel or representative, by certified mail, of the time and  
18     place of the hearing but not less than twenty days prior  
19     to the hearing. The hearing shall be held in Charleston,  
20     West Virginia unless the commissioner determines other-  
21     wise, and such hearing shall be informal unless other-  
22     wise stipulated in writing by either party.

23     The tax commissioner shall issue a ruling by certi-  
24     fied mail within a reasonable time from the date of the  
25     hearing.

26     An appeal may be taken by the taxpayer if the appeal  
27     is filed with the circuit court of the county in which  
28     the activity taxed was engaged, or in the circuit court  
29     of Kanawha county, within thirty days after he shall  
30     have received notice from the tax commissioner of his

31 determination as provided in this section.

32 The appeal shall be taken by written notice to the  
33 tax commissioner and served as an original notice. When  
34 said notice is so served it shall, with the return thereon,  
35 be filed in the office of the clerk of the circuit court  
36 and docketed as other cases with the taxpayer as plain-  
37 tiff and the tax commissioner as defendant.

38 The court shall hear the appeal and determine anew  
39 all questions submitted to it on appeal from the deter-  
40 mination of the tax commissioner. In such an appeal  
41 a certified copy of the tax commissioner's assessment  
42 shall be admissible and shall constitute prima facie  
43 evidence of the tax due under the provisions of this  
44 article. The court shall render its decree thereon and  
45 a certified copy of said decree shall be filed by the clerk  
46 of said court with the tax commissioner who shall then  
47 if necessary, correct the assessment in accordance with  
48 said decree. An appeal may be taken by the taxpayer  
49 or the tax commissioner to the supreme court of appeals  
50 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

21 the same shall be filed with the secretary of state and  
22 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

13 to reasonable cause and not due to wilful neglect, there  
14 may be added to the tax a penalty of five percent per  
15 month if a failure is not for more than one month, with  
16 an additional five percent for each additional month  
17 or fraction thereof during which failure shall continue,  
18 not to exceed twenty-five percent in the aggregate. If  
19 no tax is due, the penalty will be twenty-five dollars  
20 per month or fraction thereof for failure to file a tax  
21 return: *Provided*, That in all cases of delinquency in  
22 the payment of taxes due, interest shall be assessed.

23 (2) If any person:

24 (a) Files a false or fraudulent return with intent  
25 to evade the tax imposed by this article, or in the case  
26 of a wilful failure to file a return with intent to evade  
27 the tax, or file a false claim for credit or refund there  
28 shall be added to the tax due an amount equal to one  
29 hundred percent of the tax due. The burden of prov-  
30 ing fraud, wilfulness, or intent to evade tax shall be upon  
31 the tax commissioner.

32 (3) If any person:

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

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

44       (c) Sells cigarettes in this state without there hav-  
45 ing been first affixed to each individual package thereof  
46 the stamp or stamps required to be affixed thereto by  
47 this article, or

48       (d) Being a retail dealer in this state, has in his  
49 possession packages of cigarettes not bearing the stamps  
50 herein required to be affixed thereto or, whoever fails  
51 to produce on demand by the commissioner invoices  
52 of all cigarettes purchased or received by him within  
53 two years prior to such demand, unless upon satisfactory



54 proof it is shown that such nonproduction is due to  
55 providential or other causes beyond his control, or

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

61 (f) If any wholesale dealer shall sell cigarettes to  
62 any person in this state other than to another whole-  
63 saler, subjobber, or retail dealer and no person in this  
64 state other than a wholesaler, or subjobber, shall sell  
65 cigarettes to a retail dealer. It shall be unlawful and a  
66 violation of this article for any retail cigarette dealer  
67 to purchase or acquire cigarettes from any person other  
68 than a wholesaler or subjobber. The original whole-  
69 saler who purchases unstamped cigarettes from the manu-  
70 facturer is liable for the excise tax and the affixing of  
71 the required stamps, or

72 (g) If a person, firm or corporation, who is not a  
73 wholesaler, subjobber or retail dealer in tobacco products,  
74 as provided by this article, shall have in his possession

75 within the state more than ten packages of cigarettes  
76 not bearing cigarette tax paid indicia of this state, such  
77 possession shall be presumed to be for the purpose of  
78 evading the payment of the taxes due thereon, or

79 (h) Whoever violates any of the provisions of sec-  
80 tion nineteen, subsection (2) (a) through section nine-  
81 teen, subsection (3) (g) or any lawful rule or regula-  
82 tion promulgated by the commissioner under authority  
83 of this article shall be guilty of a misdemeanor, and, upon  
84 conviction thereof, shall be fined not less than five hun-  
85 dred dollars nor more than five thousand dollars, or  
86 imprisoned in the county jail for not more than one  
87 year, or both, in the discretion of the court.

88 (4) Whoever falsely or fraudulently makes, forges,  
89 alters or counterfeits any stamp prescribed, or defined,  
90 by the provisions of this article, or its related rules and  
91 regulations, and any person who knowingly and wil-  
92 fully makes, causes to be made, purchases, receives or  
93 has in his possession, any device for forging or counter-  
94 feiting any stamp or has in his possession, any stamps  
95 not properly issued by the commissioner or his agent

96 or deputy, or uses more than once any stamp provided  
97 for and required by this article for the purpose of evad-  
98 ing the tax hereby imposed, shall be guilty of a felony,  
99 and, upon conviction thereof, shall be sentenced to pay  
100 a fine of not less than five thousand dollars nor more  
101 than ten thousand dollars and imprisoned in the peni-  
102 tentiary for a term of not less than one year nor more  
103 than five years.

104 (5) Whenever the commissioner or any of his dep-  
105 uties or employees authorized by him for the purpose  
106 shall discover any cigarettes subject to tax as provided  
107 by this section of this article and upon which the tax  
108 has not been paid as herein required, the commissioner,  
109 or such deputy or employee is hereby authorized and  
110 empowered forthwith to seize and take possession of  
111 such cigarettes, without a warrant, which shall there-  
112 upon be deemed to be contraband, forfeited to the state  
113 and the commissioner shall within a reasonable time  
114 thereafter sell such forfeited cigarettes: *Provided, how-*  
115 *ever,* That such seizure and sale shall not be deemed to  
116 relieve any person from fine or imprisonment as pro-

117 vided herein for violation of any provisions of this arti-  
118 cle. Such sale may be made in any county the tax com-  
119 missioner deems most convenient and economical. No-  
120 tice of such sale shall be published as Class I legal ad-  
121 vertisement in compliance with the provisions of article  
122 three, chapter fifty-nine of this code, and the publica-  
123 tion area for such publication shall be the county where-  
124 in such seizure was made and the county wherein the  
125 sale is to take place. Notice shall be published at least  
126 five days prior to the sale. All taxes and penalties  
127 collected under the provisions of this section shall be  
128 paid into the state treasury and treated as other taxes  
129 collected under this article.

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

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

1 Every person who shall transport cigarettes not stamped  
2 as required by this article upon the public highways,  
3 waterways, roads or streets of this state shall have in

4 his actual possession invoices or delivery tickets for such  
5 cigarettes which shall show the true name and complete  
6 and exact address of the consignor or seller, the true  
7 name and complete and exact address of the consignee,  
8 or purchaser, the quantity and brands of the cigarettes  
9 transported and the true name and complete and exact  
10 address of the person who has or shall assume payment  
11 of the West Virginia state tax, or the tax, if any, of the  
12 state or foreign country at the point of ultimate destina-  
13 tion: *Provided*, That any common carrier which has issued  
14 a bill of lading for a shipment of cigarettes and is with-  
15 out notice to itself or to any of its agents or employees  
16 that said cigarettes are not stamped as required by this  
17 article shall be deemed to have complied with this article  
18 and the vehicle or vessel in which said cigarettes are being  
19 transported shall not be subject to confiscation hereunder.  
20 In the absence of such invoices, delivery tickets or bills  
21 of lading, as the case may be, the cigarettes so transported,  
22 the vehicle or vessel in which the cigarettes are being  
23 transported and any paraphernalia or devices used in  
24 connection with the unstamped cigarettes, are declared

25 to be contraband goods and may be seized by the com-  
26 missioner, his agents or employees or by any peace  
27 officer of the state when directed by the commissioner,  
28 his agents or employees so to do without a warrant.

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

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

40 The commissioner shall immediately, after any seizure  
41 made pursuant to this section, institute a proceeding for  
42 the confiscation thereof in the circuit court of the county  
43 in which the seizure is made. The court may proceed  
44 in a summary manner and may direct confiscation to the  
45 commissioner: *Provided, however,* That anything to the

46 contrary notwithstanding that any person claiming to  
47 be the holder of security interest in any vehicle or vessel,  
48 or vending machine, the disposition of which is provided  
49 for above, may present his petition so alleging and be  
50 heard, and in the event it appears to the court that  
51 the property was unlawfully used by a person other than  
52 such claimant, and if the said claimant acquired his  
53 security interest in good faith and without knowledge  
54 that the vehicle or vessel or vending machine, was  
55 going to be so used, the court shall either waive for-  
56 feiture in favor of such claimant and order the vehicle  
57 or vessel or vending machine returned or delivered to  
58 such claimant or if it is found that the value thereof  
59 exceeds the amount of the claim, the court shall order  
60 payment of the amount of the claim out of the proceeds  
61 of the sale.

**§11-17-21. Severability.**

1 If any provision of this article or the application thereof  
2 shall for any reason be adjudged by any court of com-  
3 petent jurisdiction to be invalid, such judgment shall not  
4 affect, impair or invalidate the remainder of said article,

5 but shall be confined in its operation to the provision  
6 thereof directly involved in the controversy in which  
7 such judgment shall have been rendered, and the ap-  
8 plicability of such provision to other persons or circum-  
9 stances shall not be affected thereby.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

Thomas Myers

Clerk of the Senate

A. Blankenship

Clerk of the House of Delegates

Lyndon B. Johnson

President of the Senate

Sam F. Bowers

Speaker House of Delegates

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

Arch A. Shivers

Governor

7

PRESENTED TO THE  
GOVERNOR

Date 2/11/70

Time 10:30 A.M.