

WEST VIRGINIA LEGISLATURE
2016 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 103

**FISCAL
NOTE**

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Introduced May 16, 2016; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §11-17-3 and §11-17-4 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §11-17-
 3 4b, all relating to increasing the tax rate on cigarettes and tobacco products; requiring a
 4 physical inventory of tax stamps, tobacco products and e-cigarette liquids upon the
 5 effective date of tax imposition and upon any tax rate increase; applying tax rate changes
 6 to inventories; requiring a report of such inventory be filed sixty days after the effective
 7 date of the tax imposition or tax rate change; levying the excise tax on e-cigarette liquid;
 8 defining terms; providing for administration of the tax on e-cigarette liquid; specifying
 9 penalty for failure to file required reports; specifying criminal sanctions; and specifying
 10 effective date.

Be it enacted by the Legislature of West Virginia:

1 That §11-17-3 and §11-17-4 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that said code be amended by adding thereto a new section, designated §11-
 3 17-4b, all to read as follows:

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; rate and ratio; dedication of proceeds.; intent of the Legislature.

1 (a) Tax on cigarettes and tobacco products other than cigarettes. -- For the purpose of
 2 providing revenue for the ~~general revenue fund of the state~~, an excise tax is hereby levied and
 3 imposed on sales of cigarettes ~~at the rate of 55 ¢ on each twenty cigarettes or in like ratio on any~~
 4 ~~part thereof. Only one sale of the same article shall be used in computing the amount of tax due~~
 5 ~~under this subsection~~ and tobacco products other than cigarettes.

6 (b) Tax rate on cigarettes. – Effective May 1, 2003, the excise tax rate levied and imposed
 7 on the sale of cigarettes is 55¢ on each twenty cigarettes or in like ratio on any part thereof:
 8 Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of
 9 cigarettes is \$1.00 on each twenty cigarettes or in like ratio on any part thereof. Only one sale of

10 the same article shall be used in computing the amount of tax due under this subsection.

11 ~~(b)~~ (c) Tax on tobacco products other than cigarettes. -- Effective January 1, 2002, ~~an the~~
 12 excise tax ~~is hereby~~ levied and imposed on the ~~sale~~ sales or use of, tobacco products other than
 13 cigarettes, ~~tobacco products~~ is at a the rate equal to seven percent of the wholesale price of each
 14 article or item of tobacco ~~product~~ products other than cigarettes sold by the wholesaler or
 15 subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the
 16 use by the wholesaler or dealer: Provided, That on and after July 1, 2016, the excise tax rate
 17 levied and imposed on the sale of tobacco products other than cigarettes is at the rate equal to
 18 twelve percent of the wholesale price of each article or item of tobacco products other than
 19 cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not
 20 sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same
 21 article shall be used in computing the amount of tax due under this subsection. ~~Revenues received~~
 22 ~~from this tax shall be deposited into the general revenue fund~~

23 ~~(c) Effective date. -- The changes set forth herein to this section and section four of this~~
 24 ~~article shall become effective the first day of May, two thousand three~~

25 (d) **Effective date of amendments.** -- Amendments to this section enacted in the year 2003
 26 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016.
 27 Amendments to this section enacted in the year 2016 apply in determining tax imposed under this
 28 article effective on and after July 1, 2016.

**§11-17-4. Effect of rate changes; cigarette tax stamps and tobacco products on hand or in
inventory; report; discount; effective date.**

1 ~~(a) Notwithstanding other provisions of this article, it is hereby declared to be the intent of~~
 2 ~~the Legislature that one rate of excise tax is applicable to all quantities of cigarettes and another~~
 3 ~~rate of excise tax is applicable to all tobacco products other than cigarettes in this state on and~~
 4 ~~after the first day of July, two thousand one, under the provisions of this article~~ Any cigarette tax
 5 stamps on hand or in inventory on the effective date of a rate change, whether affixed to the

6 cigarette package, on hand but not affixed to the cigarette package, or stamps purchased to be
7 affixed by a meter, are considered to have been purchased or received on the effective date of
8 the change in rate. Any tobacco products other than cigarettes, on hand or in inventory, on the
9 effective date of any rate change are hereby considered to have been purchased or received on
10 the effective date of the change in rate.

11 (b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine
12 operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco
13 products or cigarette tax stamps, whether affixed to the cigarette package, on hand but not affixed
14 to the cigarette package, or stamps purchased to be affixed by a meter, and upon which the tax
15 has not been paid or upon which the tax or any portion of the tax has been previously paid, shall
16 take a physical inventory and shall file a report of the inventory with the Tax Commissioner, in the
17 format required by the Tax Commissioner, and shall file the inventory within thirty sixty days after
18 the inventory effective date of the rate change and shall pay to the Tax Commissioner any
19 additional tax due under an increased rate within sixty days after the effective date of the rate
20 change. ~~in accordance with the following schedule:~~

- 21 ~~(1) One third at the time of filing the report;~~
22 ~~(2) One third not later than sixty days after the effective date of the rate change; and~~
23 ~~(3) One third not later than ninety days after the effective date of the rate change.~~

24 A discount of four percent shall be allowed on all tax due for persons who pay additional
25 tax under this section.

26 (c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a
27 change in rate on the effective date of the tax.

28 (d) Effective date. -- The changes set forth to this section of this article and enacted in
29 2016 shall be effective on and after July 1, 2016.

§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; inventory; invoice; report;
payment; authority of the Tax Commissioner to inspect and examine witnesses;

presumption; bond.

1 (a) Definitions. -- When used in this section, words, terms and phrases defined in this
2 subsection, and any variations thereof required by the context, have the meaning ascribed to
3 them in this subsection, except where the context indicates a different meaning is intended.

4 (1) "E-cigarette" means an electrical or electronic device that provides a smoke, vapor,
5 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,
6 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that
7 is composed of a heating element, battery, or electrical or electronic circuit, or a combination of
8 heating element, battery, and electrical or electronic circuit, which works in combination with e-
9 liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so
10 designed, or similarly designed, product that is manufactured, distributed, marketed, or sold as
11 an e-cigarette, e-cigar, e-pipe, or under any other name or descriptor. The term "simulates the
12 activity of smoking," in the context of this definition, means replicating, mimicking or reproducing
13 an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling, the
14 smoke or combustion product of burning tobacco or any other product or material that can be
15 used in a similar fashion.

16 (2) "E-cigarette liquid" means any of the liquids or liquid mixtures used in e-cigarettes, and
17 is also known as e-juice, e-fluid, e-liquid, or e-liquid product. E-cigarette liquid includes e-
18 cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an
19 e-cigarette, e-cigarette liquid is vaporized, or otherwise converted into an inhalable product. E-
20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
21 nicotine from any source, or flavorings.

22 (b) Levy of tax: rate. -

23 (1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette
24 liquid at the rate of 7.5 ¢ per milliliter or fraction thereof, or if not sold, then at the same rate upon
25 the use by the wholesaler or dealer. For purposes of this article, any distributor, dealer, subjobber,

26 subjobber dealer, retailer or any other person that imports or transports e-cigarette liquids into
27 this state, or that causes e-cigarette liquids to be imported or transported into this state, is hereby
28 deemed to be a wholesaler for purposes of this section, and is liable for the tax imposed under
29 this article. No wholesaler or other person may purchase e-cigarette liquids from any seller not
30 approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette liquid mixing kit
31 components shall be taxed in accordance with the amount of e-cigarette liquid, in milliliters, that
32 can be produced by or from the kit or components thereof, as determined by the Tax
33 Commissioner.

34 (2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due
35 under this section.

36 (c) E-cigarette liquid on hand or in inventory; effect of rate changes; inventory; report. -
37 On July 1, 2016, and on the effective date of any rate change thereafter, every place of business
38 as defined in this article, retail dealer, subjobber, vending machine operator or wholesaler who
39 has on hand or in inventory any e-cigarette liquid, shall take a physical inventory thereof, and
40 shall file a report of the inventory with the Tax Commissioner in the format required by the Tax
41 Commissioner, and shall pay the full amount of the tax due within sixty days after the effective
42 date of the rate imposition or, in the case of a rate change, shall pay any additional tax due from
43 the effective date of the rate change. Imposition of the tax on sales of e-cigarette liquid shall be
44 treated as a change in rate on the effective date of the tax.

45 (d) How tax paid; invoice required; reports required; due date; records to be kept. -

46 (1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice
47 method prescribed by the Tax Commissioner.

48 (2) The tax will be paid on any and all e-cigarette liquid coming into the state for the
49 purpose of sale or use in this state on and after July 1, 2016.

50 (3) Contents of delivery ticket or invoice. - Unless otherwise permitted, in writing, by the
51 Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid

52 must be recorded upon a serially numbered invoice showing:

53 (A) The name and address of the seller and the purchaser;

54 (B) The point of delivery;

55 (C) The date,

56 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices, (ii)

57 the quantity in milliliters of each cartridge, apparatus, container or other device, (iii) the wholesale

58 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state, or

59 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-

60 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and

61 the wholesale price of the e-cigarette liquid;

62 (E) The invoice must either set out the amount of tax imposed by this article separately on

63 the invoice, or the invoice may instead indicate that the tax imposed under this article is included

64 in the total price; and

65 (F) Any other information required by the Tax Commissioner.

66 (4) Reports and payments due date. – On or before the fifteenth day of each month,

67 manufacturers, importers, every place of business as defined in this article, retail dealers,

68 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report

69 covering the business transacted in the previous month providing any information the Tax

70 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed

71 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by

72 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be

73 remitted on or before the due date of the monthly report. The first report due for e-liquid sales is

74 August 15, 2016 for the sales completed in July, 2016.

75 (5) Reports required. -- The reports prescribed in this article are required, although a tax

76 may not be due or no business transacted, for the period covered by the report. In the case of

77 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown

78 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
79 month or fraction of a month that such report is delinquent, until the report is filed, in addition to
80 any penalties imposed under section nineteen-a of this article.

81 (6) Records. - Each person required to file a report shall make and keep the records
82 necessary to substantiate the accuracy of the reports required by this section, including, but not
83 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained
84 for a period of time not less than three years from the time the report is due or the time when the
85 report is filed, whichever is later.

86 (e) Inspection of records and stocks; examination of witnesses; registration of e-cigarette
87 sellers; presumption of nontax paid. -

88 (1) The Tax Commissioner has the authority to inspect or examine the records, books,
89 and papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept
90 in or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose
91 of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify
92 the truth and accuracy of any statement, return, form, or report, and to ascertain whether the tax
93 imposed by this article has been properly paid.

94 (2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the
95 Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order
96 to ascertain the amount of taxes and reports due under this article. If a witness or person fails or
97 refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus,
98 or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports
99 due under this article, the Tax Commissioner shall certify the facts and names to the circuit court
100 of the county having jurisdiction of the party, and the court shall issue a summons to the party to
101 appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on
102 a day fixed, to be continued as the occasion may require for good cause shown, to testify and
103 give evidence and to produce for inspection any books, records and papers that may be required

104 and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock
105 of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

106 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner
107 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid
108 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products
109 prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A
110 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer
111 or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller
112 not approved by the Tax Commissioner.

113 (4) Whenever e-cigarette liquid is found in the place of business of any retail dealer,
114 without evidence that the tax imposed by this section has been paid, it shall be presumed that the
115 e-cigarette liquid is kept on the premises in violation of this article.

116 (f) *Bond.* - The Tax Commissioner may require wholesalers, subjobbers or retail dealers
117 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less
118 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this
119 article including the filing of the returns and payment of all taxes prescribed by this article.

120 (g) *Administration and enforcement.* - The provisions of this article and articles nine and
121 ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid
122 in the same manner and to the same extent as they apply to administration and enforcement of
123 the excise tax on tobacco products, as imposed under this article.

124 (h) *Criminal sanctions.* - The criminal sanctions imposed in section nineteen-a of this
125 article are hereby imposed with equal force and application with relation to actions, transactions
126 and responsibilities prescribed under this section and under this article. For the purpose of
127 applying and interpreting the provisions of section nineteen-a of this article, the words “container
128 of tobacco products” shall be interpreted to mean and include the words “container of tobacco
129 products or e-cigarette liquid.”

NOTE: The purpose of this bill is to increase the excise tax on cigarettes and tobacco products, to impose tax resulting from a rate change on inventories, to specify due dates for payment of tax resulting from a rate change on cigarette stamps, to levy a tax upon e-cigarette liquid, to provide for the administration and enforcement of the tax on e-cigarette liquid, all effective July 1, 2016.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.