

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 677

BY SENATORS TAKUBO AND STOLLINGS

[Introduced March 20, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-17-3 and §11-17-4b of the Code of West Virginia, 1931, as
2 amended, all relating to increasing the tax rate on cigarettes and e-cigarettes liquid; and
3 specifying the effective date for the increase.

Be it enacted by the Legislature of West Virginia:

1 That §11-17-3 and §11-17-4b of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

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 and tobacco products other than cigarettes.

4 (b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed
5 on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof:
6 *Provided*, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of
7 cigarettes is \$1.20 on each twenty cigarettes or in like ratio on any part thereof: *Provided*,
8 *however*, That on and after July 1, 2017, the excise tax rate levied and imposed on the sale of
9 cigarettes is \$1.70 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 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise
12 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
13 equal to seven percent of the wholesale price of each article or item of tobacco products other
14 than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if
15 not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and
16 after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products
17 other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article

18 or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer,
19 whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the
20 wholesaler or dealer: Provided, however, That on and after July 1, 2017, the excise tax rate levied
21 and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to
22 seventeen percent of the wholesale price of each article or item of tobacco products other than
23 cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not
24 sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same
25 article shall be used in computing the amount of tax due under this subsection. Amendments to
26 this section enacted in the year 2017 apply in determining tax imposed under this article effective
27 on and after July 1, 2017.

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

**§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; 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 an
11 e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity
12 of smoking”, in the context of this definition, means replicating, mimicking or reproducing an
13 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke
14 or combustion product of burning tobacco or any other product or material that can be used in a
15 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-cigarette
18 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-
19 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 cents per milliliter or fraction thereof, or if not sold, then at the same rate
25 upon the use by the wholesaler or dealer: Provided, That on and after July 1, 2017, an excise tax
26 is levied and imposed on sales of e-cigarette liquid at the rate of 10.5 cents per milliliter or fraction
27 thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer. For
28 purposes of this article, any distributor, dealer, subjobber, subjobber dealer, retailer or any other
29 person that imports or transports e-cigarette liquids into this state, or that causes e-cigarette
30 liquids to be imported or transported into this state, is hereby deemed to be a wholesaler for
31 purposes of this section and is liable for the tax imposed under this article. No wholesaler or other
32 person may purchase e-cigarette liquids from any seller not approved by the Tax Commissioner.
33 E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components shall be taxed in
34 accordance with the amount of e-cigarette liquid, in milliliters, that can be produced by or from the
35 kit or components thereof, as determined by the Tax Commissioner.

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

38 (c) *How tax paid; invoice required; reports required; due date; records to be kept.* —

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

41 (2) The tax will be paid on ~~any~~ and all e-cigarette liquid coming into the state for the
42 purpose of sale or use in this state on and after July 1, 2016. Amendments to this section enacted
43 in the year 2017 apply in determining tax imposed under this article effective on and after July 1,
44 2017.

45 (3) *Contents of delivery ticket or invoice.* — Unless otherwise permitted in writing by the
46 Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid
47 must be recorded upon a serially numbered invoice showing:

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

49 (B) The point of delivery;

50 (C) The date;

51 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii)
52 the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale
53 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or
54 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-
55 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and
56 the wholesale price of the e-cigarette liquid;

57 (E) The invoice must either set out the amount of tax imposed by this article separately on
58 the invoice or the invoice may instead indicate that the tax imposed under this article is included
59 in the total price; and

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

61 (4) *Reports and payments due date.* — On or before the fifteenth day of each month,

62 manufacturers, importers, every place of business as defined in this article, retail dealers,
63 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report
64 covering the business transacted in the previous month providing any information the Tax
65 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
66 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
67 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
68 remitted on or before the due date of the monthly report. The first report due for e-liquid sales is
69 August 15, 2016, for the sales completed in July 2016.

70 (5) *Reports required.* — The reports prescribed in this article are required, although a tax
71 may not be due or no business transacted, for the period covered by the report. In the case of
72 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown
73 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
74 month or fraction of a month that such report is delinquent, until the report is filed, in addition to
75 any penalties imposed under section nineteen-a of this article.

76 (6) *Records.* — Each person required to file a report shall make and keep the records
77 necessary to substantiate the accuracy of the reports required by this section including, but not
78 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained
79 for a ~~period of time~~ not less than three years from the time the report is due or the time when the
80 report is filed, whichever is later.

81 (d) *Inspection of records and stocks; examination of witnesses; registration of e-cigarette*
82 *sellers; presumption of nontax paid.* —

83 (1) The Tax Commissioner ~~has the authority to~~ may inspect or examine the records, books
84 and papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept
85 in or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose
86 of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify
87 the truth and accuracy of any statement, return, form or report and to ascertain whether the tax

88 imposed by this article has been properly paid.

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

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

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

111 (e) *Bond.* — The Tax Commissioner may require wholesalers, subjobbers or retail dealers
112 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less
113 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this

114 article including the filing of the returns and payment of all taxes prescribed by this article.

115 (f) *Administration and enforcement.* — The provisions of this article and articles nine and
116 ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid
117 in the same manner and to the same extent as they apply to administration and enforcement of
118 the excise tax on tobacco products, as imposed under this article.

119 (g) *Criminal sanctions.* — The criminal sanctions imposed in section nineteen-a of this
120 article are hereby imposed with equal force and application with relation to actions, transactions
121 and responsibilities prescribed under this section and under this article. ~~For the purpose of~~ In
122 applying and interpreting the provisions of section nineteen-a of this article, the words “container
123 of tobacco products” ~~shall be interpreted to mean and include the words~~ “container of tobacco
124 products or e-cigarette liquid”.

NOTE: The purpose of this bill is to increase the tax rate on cigarettes and e-cigarettes liquid; and specifying an effective date.

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