

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 735

FISCAL
NOTE

BY SENATORS TAKUBO, MARONEY, AND ROBERTS

[Introduced February 7, 2020; 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 excise tax on tobacco products; increasing excise tax levied and
 3 imposed on sale of cigarettes; and increasing excise tax levied and imposed on sale of e-
 4 cigarette liquid.

Be it enacted by the Legislature of West Virginia:

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~~ Effective July 1, 2020, the excise tax rate levied and
 7 imposed on the sale of cigarettes is ~~\$1.20~~ \$2.00 on each 20 cigarettes or in like ratio on any part
 8 thereof. Only one sale of the same article shall be used in computing the amount of tax due under
 9 this subsection.

10 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise
 11 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
 12 equal to seven percent of the wholesale price of each article or item of tobacco products other
 13 than cigarettes sold by the wholesaler or sub-jobber dealer, whether or not sold at wholesale, or
 14 if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided,* That on and
 15 after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products
 16 other than cigarettes is at the rate equal to 12 percent of the wholesale price of each article or
 17 item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether
 18 or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or
 19 dealer. Only one sale of the same article shall be used in computing the amount of tax due under

20 this subsection.

21 (d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003
22 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016.
23 Amendments to this section enacted in the year 2016 apply in determining tax imposed under this
24 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
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-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~~ Effective July 1, 2020, an excise tax is levied and imposed
24 on sales of e-cigarette liquid at the rate of ~~7.5 cents~~ \$1.00 per milliliter or fraction thereof, or if not
25 sold, then at the same rate upon the use by the wholesaler or dealer. For purposes of this article,
26 any distributor, dealer, subjobber, subjobber dealer, retailer, or any other person that imports or
27 transports e-cigarette liquids into this state, or that causes e-cigarette liquids to be imported or
28 transported into this state, is hereby deemed to be a wholesaler for purposes of this section and
29 is liable for the tax imposed under this article. No wholesaler or other person may purchase e-
30 cigarette liquids from any seller not approved by the Tax Commissioner. E-cigarette liquid mixing
31 kits and e-cigarette liquid mixing kit components shall be taxed in accordance with the amount of
32 e-cigarette liquid, in milliliters, that can be produced by or from the kit or components thereof, as
33 determined by the Tax 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) *How tax paid; invoice required; reports required; due date; records to be kept.* —

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

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

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

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

45 (B) The point of delivery;

46 (C) The date;

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

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

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

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

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

71 any penalties imposed under §11-17-19a of this code.

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

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

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

85 (2) In addition to the Tax Commissioner's powers set forth in §11-10-1 *et seq.* of this code,
86 the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in
87 order to ascertain the amount of taxes and reports due under this article. If a witness or person
88 fails or refuses to testify or grant access to records, books, papers, equipment, or e-cigarette
89 apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes
90 and reports due under this article, the Tax Commissioner shall certify the facts and names to the
91 circuit court of the county having jurisdiction of the party and the court shall issue a summons to
92 the party to appear before the Tax Commissioner at a place designated within the jurisdiction of
93 the court, on a day fixed, to be continued as the occasion may require for good cause shown, to
94 testify and give evidence and to produce for inspection any books, records, and papers that may
95 be required and to grant access to records, books, papers, equipment, or e-cigarette apparatus,
96 or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports

97 due, if any.

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

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

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

112 (f) *Administration and enforcement.* — The provisions of this article and §11-9-1 *et seq.*
113 and §11-10-1 *et seq.* of this code apply to administration and enforcement of the excise tax on e-
114 cigarette liquid in the same manner and to the same extent as they apply to administration and
115 enforcement of the excise tax on tobacco products, as imposed under this article.

116 (g) *Criminal sanctions.* — The criminal sanctions imposed in §11-17-19a of this code are
117 hereby imposed with equal force and application with relation to actions, transactions, and
118 responsibilities prescribed under this section and under this article. For the purpose of applying
119 and interpreting the provisions of §11-17-19a of this code, the words “container of tobacco
120 products” shall be interpreted to mean and include the words “container of tobacco products or e-
121 cigarette liquid”.

NOTE: The purpose of this bill is to increase the excise tax on cigarettes to \$2.00 on each 20 cigarettes or in like ratio on any part thereof; and to increase the excise tax on sales of e-cigarette liquid at the rate of \$1.00 per milliliter or fraction thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer.

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