

WEST VIRGINIA LEGISLATURE
2016 FIRST EXTRAORDINARY SESSION

Enrolled

Senate Bill 1012

BY SENATORS COLE (MR. PRESIDENT) AND KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Passed June 13, 2016; in effect from passage]

1 AN ACT 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 other tobacco products;
4 requiring a physical inventory of tax stamps and tobacco products upon the effective date
5 of tax imposition and upon any tax rate increase; applying tax rate changes to inventories;
6 requiring a report of such inventory be filed within sixty days after the effective date of the
7 tax imposition or tax rate change; levying the excise tax on e-cigarette liquid; defining
8 terms; providing for administration of the tax on e-cigarette liquid; providing for
9 examination of records and stocks and examination of witnesses; declaring a presumption
10 in absence of evidence of payment; specifying penalty for failure to file required reports;
11 specifying criminal sanctions; and specifying 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; 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. Only one sale of*
8 *the same article shall be used in computing the amount of tax due under this subsection.*

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

20
21 (d) *Effective date of amendments.* — Amendments to this section enacted in the year
22 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30,
23 2016. Amendments to this section enacted in the year 2016 apply in determining tax imposed
24 under this article effective on and after July 1, 2016.

**§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report;
discount.**

1 (a) Any cigarette tax stamps on hand or in inventory on the effective date of a rate change,
2 whether affixed to the cigarette package, on hand but not affixed to the cigarette package or
3 stamps purchased to be affixed by a meter, are considered to have been purchased or received
4 on the effective date of the change in rate. Any tobacco products, on hand or in inventory other
5 than cigarettes, on the effective date of any rate change are hereby considered to have been
6 purchased or received on the effective date of the change in rate.

7 (b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine
8 operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco

9 products or cigarette tax stamps, whether affixed to the cigarette package, on hand but not affixed
10 to the cigarette package, or stamps purchased to be affixed by a meter, and upon which the tax
11 has not been paid or upon which the tax or any portion of the tax has been previously paid, shall
12 take a physical inventory and shall file a report of the inventory with the Tax Commissioner, in the
13 format required by the Tax Commissioner, and shall file the inventory within sixty days after the
14 effective date of the rate change and shall pay to the Tax Commissioner any additional tax due
15 under an increased rate within sixty days after the effective date of the rate change.

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

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

20 (d) The changes set forth to this section and enacted in 2016 shall be effective on and
21 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. For purposes of this article, any distributor, dealer,
26 subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette
27 liquids into this state, or that causes e-cigarette liquids to be imported or transported into this
28 state, is hereby deemed to be a wholesaler for purposes of this section and is liable for the tax
29 imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from
30 any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette
31 liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in
32 milliliters, that can be produced by or from the kit or components thereof, as determined by the
33 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 fifteenth 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 section nineteen-a of this article.

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 and
80 papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept in or
81 upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of
82 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 article ten of this chapter, the
86 Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order
87 to ascertain the amount of taxes and reports due under this article. If a witness or person fails or
88 refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus,

89 or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports
90 due under this article, the Tax Commissioner shall certify the facts and names to the circuit court
91 of the county having jurisdiction of the party and the court shall issue a summons to the party to
92 appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on
93 a day fixed, to be continued as the occasion may require for good cause shown, to testify and
94 give evidence and to produce for inspection any books, records and papers that may be required
95 and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock
96 of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

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

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

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

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

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