

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Senate Bill 837

BY SENATORS BLAIR, TARR, MARONEY, ROBERTS,

SWOPE, AND TAKUBO

[Originating in the Committee on Finance; reported on

February 19, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-5A-1, §11-5A-2, §11-5A-3, §11-5A-4, §11-5A-5, §11-5A-6, §11-5A-7,
3 §11-5A-8, and §11-5A-9; to amend and reenact §11-15-3 of said code; to amend and
4 reenact §11-15A-2 of said code; and to amend and reenact §11-17-3 and §11-17-4b of
5 said code, all relating to providing exemptions from ad valorem taxation for certain types
6 of personal property and providing substitute revenue sources to levying bodies; setting
7 out legislative findings; defining terms; setting out legislative intent; providing for an
8 exemption from ad valorem taxation for property classified as manufacturing machinery,
9 equipment, and inventory over a six-year period; setting out exclusions from the
10 exemption; providing for exemption from ad valorem taxation on motor vehicles over a six-
11 year period; providing for exemption from ad valorem taxation on retail inventory over a
12 six-year period; requiring the Governor and Legislature appropriate replacement revenue
13 to levying bodies; providing for a four-year lookback from effective date of provision;
14 providing that the state share of the county's basic foundation will be replaced; providing
15 that any general revenue bond or levy in existence shall not be effected; allowing for
16 procedural rules; creating a special revenue account; providing for an effective date;
17 making elimination of ad valorem taxes contingent upon passage of constitutional
18 amendment; increasing tax levied and imposed on sales and service; making increase of
19 tax levied and imposed on sales and service contingent upon passage of constitutional
20 amendment; providing for an effective date for the sales and service tax increase;
21 increasing levied and imposed use tax; making increase of imposed and levied use tax
22 contingent upon passage of constitutional amendment; providing for an effective date for
23 the use tax increase; increasing excise tax levied and imposed on tobacco products;
24 making increase excise tax levied and imposed on tobacco products contingent upon
25 passage of constitutional amendment; providing for an effective date for the tax increase
26 imposed on tobacco products increase; providing for apportion of the increased revenue

27 to be dedicated to a special account for tobacco use prevention, cessation, and nicotine
28 treatment; increasing excise tax levied and imposed on sale of e-cigarette liquid; making
29 increased excise tax levied and imposed on e-cigarette liquid contingent upon passage of
30 constitutional amendment; providing for an effective date for the tax increase imposed on
31 e-cigarette liquid; setting effective dates for tax increases; and providing additional tax
32 revenue on tax increases be deposited in special revenue account.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. PERSONAL PROPERTY TAX EXEMPTIONS AND REDUCTIONS.

§11-5A-1. Legislative findings and intent.

1 (a) The Legislature finds that West Virginia needs to regain a competitive edge by
2 invigorating its economy, its workforce, and its citizens. This can be best accomplished by
3 empowering the population, identifying our state's strengths, building on those strengths, and
4 ensuring the state remains economically competitive moving forward.

5 (b) The Legislature further finds that these goals may be realized through a tax structure
6 that reduces the personal property tax as a means to encourage the state's citizens and promote
7 business development, recognizing that both of these elements are crucial to economic growth,
8 job creation, and a prosperous state.

9 (c) The Legislature intends to balance any reduction in personal property taxes by finding
10 a means to reallocate revenue to ensure growth and prosperity to its citizens, continuing to fund
11 areas affected from personal property tax reductions, and fostering a state that is seen as an
12 attractive option by business and industry.

§11-5A-2. Definitions.

1 For purposes of this article, the following words shall have the following meaning:

2 (1) "Ad valorem tax" means a tax based on the assessed value of an item of real or
3 personal property.

4 (2) "Manufacturing machinery and equipment" includes machinery and equipment,
5 including motor vehicles, owned by the taxpayer that is directly used or consumed in
6 manufacturing business in West Virginia, except for the tangible manufacturing machinery and
7 equipment personal property of public service companies and railroads pursuant to the provisions
8 of the Railroad Revitalization Reform Act of 1976 codified at 45 U.S.C. §801. Tangible
9 manufacturing machinery and equipment personal property does not include:

10 (A) Furniture;

11 (B) Barges;

12 (C) Ships; and

13 (D) Any other tangible personal property:

14 (i) Not directly used in manufacturing business activity;

15 (ii) Assessed as part of the working interest in an oil or gas well;

16 (iii) Manufacturing operating property of public service business as defined in §11-6-1 et
17 seq. of this code; or

18 (iv) Property of railroads pursuant to the provisions of the Railroad Revitalization Reform
19 Act of 1976 codified at 45 U.S.C. §801.

20 (3) "Manufacturing inventory" means raw materials, goods in process, and finished goods
21 of a business located in West Virginia and primarily engaged in a manufacturing business activity,
22 except for the manufacturing personal property of public service companies and property of
23 railroads pursuant to the provisions of the Railroad Revitalization Reform Act of 1976 codified at
24 45 U.S.C. §801.

25 (4) "Motor Vehicle" means the following class of vehicles defined in §17A-10-1 of this code:
26 Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility-
27 terrain vehicles as defined in §20-15-2 of this code.

28 (5) "Public service company" means a corporation or other business entity which delivers
29 services considered essential to the public interest that are regulated by the applicable federal or

30 state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas,
31 telecommunications, and water, and those transporting personal property or passengers,
32 including, but not limited to, airlines, railroads, trucking, and bus companies, and which are
33 centrally assessed by the state for property tax purposes.

34 (6) "Replacement revenue" means funds paid to levying bodies, including tax increment
35 financing districts to replace revenue lost by the reduction or elimination of ad valorem personal
36 property taxes pursuant to this article.

37 (7) "Retail inventory" means all tangible property consisting of movable personal chattels
38 of value, the owners of which hold the same for the commercial purpose of sale to final purchasers
39 thereof for the purchasers' use or consumption, but not for the purchasers' regular resale of the
40 same.

41 (8) "Tangible personal property" means personal property that can be physically relocated,
42 such as equipment, machinery, furniture, and office equipment except as otherwise provided in
43 this article.

44 (9) "Taxable year or years" means the 12-month time period beginning January 1 of each
45 year and concluding on December 31 of each year.

§11-5A-3. Exemption of manufacturing machinery, equipment, and inventory.

1 (a) For taxable years beginning July 1, 2021, all new tangible manufacturing machinery,
2 equipment, and inventory personal property directly used in manufacturing business activity
3 purchased on and after that date shall be exempt from ad valorem taxation in accordance with
4 this article and other applicable provisions of this article not inconsistent with this section.

5 (b) On and after July 1, 2021, the regular levy rate tax on assessed value of tangible
6 manufacturing machinery, equipment, and inventory personal property directly used in
7 manufacturing business activity purchased prior to July 1, 2021, and tangible manufacturing
8 inventory personal property directly used in manufacturing business activity shall both be
9 determined as follows:

10 (1) For taxable years beginning on and after July 1, 2021, the regular levy rate tax on
11 tangible manufacturing machinery, equipment, and inventory personal property directly used in
12 manufacturing business, as these terms are defined in this article, shall be reduced by 17 percent.

13 (2) For taxable years beginning on and after July 1, 2022, the regular levy rate tax on
14 tangible manufacturing machinery, equipment, and inventory personal property directly used in
15 manufacturing business, as these terms are defined in this article, shall be reduced by an
16 additional 17 percent.

17 (3) For taxable years beginning on and after July 1, 2023, the regular levy rate tax on
18 tangible manufacturing machinery, equipment, and inventory personal property directly used in
19 manufacturing business, as these terms are defined in this article, shall be reduced by an
20 additional 17 percent.

21 (4) For taxable years beginning on and after July 1, 2024, the regular levy rate tax on
22 tangible manufacturing machinery, equipment, and inventory personal property directly used in
23 manufacturing business, as these terms are defined in this article, shall be reduced by an
24 additional 17 percent.

25 (5) For taxable years beginning on and after July 1, 2025, the regular levy rate tax on
26 tangible manufacturing machinery, equipment, and inventory personal property directly used in
27 manufacturing business, as these terms are defined in this article, shall be reduced by an
28 additional 15 percent.

29 (6) For taxable years beginning on or after July 1, 2026, and every year thereafter, the
30 regular levy rate tax on tangible manufacturing machinery, equipment, and inventory personal
31 property directly used in manufacturing business as those terms are defined in this articles shall
32 be completely eliminated.

§11-5A-4. Exemption of motor vehicles from personal property.

1 (a) For taxable years beginning July 1, 2021, all new motor vehicles as defined in this
2 article purchased on and after that date shall be exempt from ad valorem taxation in accordance
3 with this article and other applicable provisions of this article not inconsistent with this section.

4 (b) On and after July 1, 2021, the regular levy rate tax on assessed value of motor vehicles
5 as that term is defined in this article, purchased prior to July 1, 2021, shall be determined as
6 follows:

7 (1) For taxable years beginning on and after July 1, 2021, the regular levy rate tax on
8 motor vehicles, as that term is defined in this article, shall be reduced by 17 percent.

9 (2) For taxable years beginning on and after July 1, 2022, the regular levy rate tax on
10 motor vehicles, as that term is defined in this article, shall be reduced by an additional 17 percent.

11 (3) For taxable years beginning on and after July 1, 2023, the regular levy rate tax on
12 motor vehicles, as that term is defined in this article, shall be reduced by an additional 17 percent.

13 (4) For taxable years beginning on and after July 1, 2024, the regular levy rate tax on
14 motor vehicles, as that term is defined in this article, shall be reduced by an additional 17 percent.

15 (5) For taxable years beginning on and after July 1, 2025, the regular levy rate tax on
16 motor vehicles, as that term is defined in this article, shall be reduced by an additional 15 percent.

17 (6) For taxable years beginning on or after July 1, 2026, and every year thereafter the
18 regular levy rate tax on motor vehicles shall be completely eliminated.

§11-5A-5. Exemption of retail inventory.

1 (a) For taxable years beginning July 1, 2021, all new retail inventory, as defined in this
2 article, purchased on and after that date shall be exempt from ad valorem taxation in accordance
3 with this article and other applicable provisions of this article not inconsistent with this section.

4 (b) On and after July 1, 2021, the regular levy rate tax on assessed value of retail
5 inventory, as that term is defined in this article, purchased prior to July 1, 2021, shall be
6 determined as follows:

7 (1) For taxable years beginning on and after July 1, 2021, the regular levy rate tax on retail
8 inventory, as that term is defined in this article, shall be reduced by 17 percent.

9 (2) For taxable years beginning on and after July 1, 2022, the regular levy rate tax on retail
10 inventory, as that term is defined in this article, shall be reduced by an additional 17 percent.

11 (3) For taxable years beginning on and after July 1, 2023, the regular levy rate tax on retail
12 inventory, as that term is defined in this article, shall be reduced by an additional 17 percent.

13 (4) For taxable years beginning on and after July 1, 2024, the regular levy rate tax on retail
14 inventory, as that term is defined in this article, shall be reduced by an additional 17 percent.

15 (5) For taxable years beginning on and after July 1, 2025, the regular levy rate tax on retail
16 inventory, as that term is defined in this article, shall be reduced by an additional 15 percent.

17 (6) For taxable years beginning on or after July 1, 2026, and every year thereafter the
18 regular levy rate tax on retail inventory shall be completely eliminated.

§11-5A-6. Replacement Revenue.

1 (a) The Governor shall be required to annually provide an item of appropriation, and the
2 Legislature shall be required to appropriate and place into the special revenue account created
3 pursuant to §11-15A-7 of this code, funds sufficient to restore any reduction of funding directly
4 attributable to the reduction or elimination of an ad valorem personal property tax as set forth in
5 this article. These funds:

6 (1) Shall be based upon the highest assessed value of ad valorem personal property over
7 the immediately preceding four-year period at the time the provisions of this article become
8 effective; and

9 (2) Shall be distributed to the levying bodies, including tax increment financing districts, in
10 the same proportions that the eliminated or reduced personal property tax revenue collection were
11 distributed to those bodies during fiscal year 2020.

12 (b) Nothing in this article modifies the state aid share of the county basic foundation
13 provided in the public school support plan as required by the provisions of §18-9A-12 of this code.

14 (c) Any such exemption, rate reduction, or assessment ratio reduction may not reduce any
15 general obligation bond levy or other levy in effect or which becomes effective pursuant to the
16 provisions of article X, section one of the Constitution of West Virginia, article X, section nine of
17 the Constitution of West Virginia, and article X, Section 10 of the Constitution of West Virginia at

18 the time such exemption or rate reduction takes effect, but only for such time as such excess levy
19 is in effect.

§11-5A-7. Special revenue account.

1 (a) Any moneys collected and dedicated to reallocation of revenues as replacement
2 revenue as set forth in §11-5A-5 of this code shall be deposited in a special account in the State
3 Treasury to be known as the Revenue Reallocation Fund. Expenditures from the fund shall be
4 for the purposes set forth in this article and not authorized from collections but are to be made in
5 accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
6 1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code:
7 Provided, That for the fiscal year ending June 30, 2020, expenditures are authorized from
8 collections rather than pursuant to appropriation by the Legislature.

9 (b) The moneys remaining at the end of each fiscal year as may be certified as necessary
10 by the Director of the Budget Office for the purposes of this section, shall be made available to
11 the West Virginia Board of Treasury Investments for management and investment of the moneys
12 in accordance with the provisions of §12-6C-1 et seq. of this code.

§11-5A-8. Rulemaking.

1 The Tax Commissioner shall promulgate procedural rules to effectuate the provisions of
2 this article.

§11-5A-9. Effective date.

1 (a) The provisions of this article shall become effective upon the ratification of the
2 constitutional amendment proposed in Senate Joint Resolution 9, which was adopted and
3 submitted to the voters by the Legislature during the 2020 Regular Legislative Session, or any
4 other amendment to the Constitution of West Virginia permitting the exemption from or reduction
5 of rates in ad valorem personal property taxation for different species of personal property.

6 (b) All tax exemptions, credits, deductions, discounts, and other tax relief benefits, earned
7 prior to and in effect on the date of the exemption, rate reduction, or assessment reduction, shall

8 be preserved and remain in effect for the tangible personal property subject to the requirements
9 of this article.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom
2 software and for the privilege of furnishing certain selected services defined in §11-15-2 and §11-
3 15-8 of this code, the vendor shall collect from the purchaser the tax as provided under this article
4 and §11-15B-1 *et seq.* of this code, and shall pay the amount of tax to the Tax Commissioner in
5 accordance with the provisions of this article or §11-15B-1 *et seq.* of this code.

6 (b) *Amount of tax.* — The general consumer sales and service tax imposed by this article
7 shall be at the rate of ~~6 cents~~ six and one-half cents on the dollar of sales or services, excluding
8 gasoline and special fuel sales, which remain taxable at the rate of 5 cents on the dollar of sales.

9 (c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be
10 no tax on sales where the monetary consideration is 5 cents or less. The amount of the tax shall
11 be computed as follows:

12 (1) On each sale, where the monetary consideration is from 6 cents to 16 cents, both
13 inclusive, 1 cent.

14 (2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both
15 inclusive, 2 cents.

16 (3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both
17 inclusive, 3 cents.

18 (4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both
19 inclusive, 4 cents.

20 (5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both
21 inclusive, 5 cents.

22 (6) On each sale, where the monetary consideration is from 85 cents to \$1, both inclusive,
23 6 cents.

24 (7) If the sale price is in excess of \$1, 6 cents on each whole dollar of sale price, and upon
25 any fractional part of a dollar in excess of whole dollars as follows: 1 cent on the fractional part of
26 the dollar if less than 17 cents; 2 cents on the fractional part of the dollar if in excess of 16 cents
27 but less than 34 cents; 3 cents on the fractional part of the dollar if in excess of 33 cents but less
28 than 51 cents; 4 cents on the fractional part of the dollar if in excess of 50 cents but less than 68
29 cents; 5 cents on the fractional part of the dollar if in excess of 67 cents but less than 85 cents;
30 and 6 cents on the fractional part of the dollar if in excess of 84 cents. For example, the tax on
31 sales from \$1.01 to \$1.16, both inclusive, 7 cents; on sales from \$1.17 to \$1.33, both inclusive, 8
32 cents; on sales from \$1.34 to \$1.50, both inclusive, 9 cents; on sales from \$1.51 to \$1.67, both
33 inclusive, 10 cents; on sales from \$1.68 to \$1.84, both inclusive, 11 cents and on sales from \$1.85
34 to \$2, both inclusive, 12 cents: *Provided*, That beginning January 1, 2004, tax due under this
35 article shall be calculated as provided in subsection (d) of this section and this subsection does
36 not apply to sales made after December 31, 2003.

37 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning
38 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the
39 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal
40 place is greater than four and rounded down to the lower whole cent whenever the third decimal
41 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item
42 basis or on an invoice basis provided the method used is consistently used during the reporting
43 period.

44 (e) *No aggregation of separate sales transactions, exception for coin-operated devices.*
45 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
46 computation of the tax even though the sales are aggregated in the billing or payment therefor.

47 Notwithstanding any other provision of this article, coin-operated amusement and vending
48 machine sales shall be aggregated for the purpose of computation of this tax.

49 (f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to
50 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
51 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
52 to six percent of 50 percent of the sales price.

53 (g) *Construction; custom software.* — After December 31, 2003, whenever the words
54 “tangible personal property” or “property” appear in this article, the same shall also include the
55 words “custom software”.

56 (h) *Computation of tax on sales of gasoline and special fuel.* — The method of computation
57 of tax provided in this section does not apply to sales of gasoline and special fuel.

58 (i) The changes made to this section during the 2020 Regular Legislative Session shall
59 only become effective April 1, 2021, following ratification of the constitutional amendment
60 proposed in Senate Joint Resolution 9, which was adopted during the 2020 Regular Legislative
61 Session and submitted to the voters by the Legislature, or any other amendment to the
62 Constitution of West Virginia permitting the exemption from or reduction of rates in ad valorem
63 personal property taxation for different species of personal property.

64 (j) Revenues received from the first six percent of this tax shall be deposited into the
65 General Revenue Fund. All revenue collected in excess of six percent of this tax shall be
66 deposited in the Revenue Reallocation Fund established pursuant to §11-5A-7 of this code.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; ~~six percent tax rate~~ six and one-half percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal
2 property, custom software or taxable services, to be collected and paid as provided in this article

3 or §11-15B-1 *et seq.* of this code, at the rate of six and one-half percent of the purchase price of
4 the property or taxable services, except as otherwise provided in this article.

5 (b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under
6 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to
7 the next whole cent whenever the third decimal place is greater than four and rounded down to
8 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
9 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
10 method used is consistently used during the reporting period.

11 (c) “Taxable services”, for the purposes of this article, means services of the nature that
12 are subject to the tax imposed by §11-15B-1 *et seq.* of this code. In this article, wherever the
13 words “tangible personal property” or “property” appear, the same shall include the words “or
14 taxable services”, where the context so requires.

15 (d) Use tax is hereby imposed upon every person using tangible personal property, custom
16 software or taxable service within this state. That person’s liability is not extinguished until the tax
17 has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in
18 business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect
19 the tax imposed by this article, relieves the purchaser from further liability for the tax to which the
20 receipt refers.

21 (e) Purchases of tangible personal property or taxable services made for the government
22 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed
23 by this section. Industrial materials and equipment owned by the federal government within the
24 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject
25 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes
26 if sold outside of the state for use in West Virginia.

27 (f) This article does not apply to purchases made by counties or municipal corporations.

28 (g) The changes made to this section during the 2020 Regular Legislative Session shall
29 only become effective on April 1, 2021, upon the ratification of the constitutional amendment
30 proposed in Senate Joint Resolution 9, which was adopted during the 2020 Regular Legislative
31 Session and submitted to the voters by the Legislature, or any other amendment to the
32 Constitution of West Virginia permitting the exemption from or reduction of rates in ad valorem
33 personal property taxation for different species of personal property.

34 (h) Revenues received from the first six percent of this tax shall be deposited into the
35 General Revenue Fund. All revenue collected in excess of six percent of this tax shall be
36 deposited in the Revenue Reallocation Fund established pursuant to §11-5A-7 of this code.

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 20 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 20 cigarettes or in like ratio on any part thereof. Only one sale of the
8 same article shall be used in computing the amount of tax due under this subsection: *Provided*,
9 however, That on and after July 1, 2020, the excise tax rate levied and imposed on the sale of
10 cigarettes is \$2.00 on each 20 cigarettes or in like ratio on any part thereof. Only one sale of the
11 same article shall be used in computing the amount of tax due under this subsection.

12 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise
13 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
14 equal to seven percent of the wholesale price of each article or item of tobacco products other

15 than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if
16 not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and
17 after ~~July 1, 2016~~ July 1, 2020, the excise tax rate levied and imposed on the sales or use of
18 tobacco products other than cigarettes is at the rate equal to ~~twelve~~ 50 percent of the wholesale
19 price of each article or item of tobacco products other than cigarettes sold by the wholesaler or
20 subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the
21 use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the
22 amount of tax due under this subsection.

23 (d) *Effective date of amendments.* —

24 (1) Amendments to this section enacted in the year 2003 apply in determining tax imposed
25 under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted
26 in the year 2016 apply in determining tax imposed under this article effective on and after July 1,
27 2016.

28 (2) All revenue collected in excess of \$1.20 on each 20 cigarettes or in like ratio on any
29 part thereof shall be deposited in the Revenue Reallocation Fund established pursuant to §11-
30 5A-7 of this code.

31 (3) Revenues received from the first 12 percent of this tax on tobacco products other than
32 cigarettes shall be deposited into the General Revenue Fund. All revenue collected in excess of
33 12 percent of this tax shall be deposited in the Revenue Reallocation Fund established pursuant
34 to §11-5A-7 of this code.

35 (4) Two million dollars of the money collected pursuant to this section shall be deposited
36 in a special account in the State Treasury to be known as the West Virginia Healthy Future Fund.
37 Expenditures from the fund shall be made annually to the Department of Health and Human
38 Resources for implementation of comprehensive tobacco prevention and cessation programming
39 and for nicotine treatment.

40 (5) The changes made to this section during the 2020 Regular Legislative Session shall
41 only become effective on April 1, 2021, upon the ratification of the constitutional amendment
42 proposed in Senate Joint Resolution 9, which was adopted during the 2020 Regular Legislative
43 Session and submitted to the voters by the Legislature, or any other amendment to the
44 Constitution of West Virginia permitting the exemption from or reduction of rates in ad valorem
45 personal property taxation for different species of personal property.

**§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
7 that is composed of a heating element, battery, or electrical or electronic circuit, or a combination
8 of 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
10 so designed, or similarly designed, product that is manufactured, distributed, marketed, or sold
11 as 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, vapor, or combustion product of burning tobacco, e-cigarette liquid, or any other product
15 or material that can be 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~~ July 1, 2020, an excise tax is levied and imposed on sales
24 of e-cigarette liquid at the rate of ~~7.5 cents~~ of 50 percent of the wholesale price of each article or
25 item, or if not sold, then at the same rate upon the use by the wholesaler or dealer. For purposes
26 of this article, any distributor, dealer, subjobber, subjobber dealer, retailer, or any other person
27 that imports or transports e-cigarette liquids into this state, or that causes e-cigarette liquids to be
28 imported or transported into this state, is hereby deemed to be a wholesaler for purposes of this
29 section and is liable for the tax imposed under this article. No wholesaler or other person may
30 purchase e-cigarette liquids from any seller not approved by the Tax Commissioner. E-cigarette
31 liquid mixing kits and e-cigarette liquid mixing kit components shall be taxed in accordance with
32 the amount of e-cigarette liquid, in milliliters, that can be produced by or from the kit or
33 components thereof, as 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 (3) Revenues received from the tax on the first 7.5 milliliter, or fraction thereof of the tax
37 as set forth in subdivision (1) of this subsection shall be deposited into the General Revenue
38 Fund. All revenue collected in excess of that amount shall be deposited in the Revenue
39 Reallocation Fund established pursuant to §11-5A-7 of this code.

40 (4) The changes made to this section during the 2020 Regular Legislative Session shall
41 only become effective April 1, 2021, upon the ratification of the constitutional amendment
42 proposed in Senate Joint Resolution 9, which was adopted during the 2020 Regular Legislative
43 Session and submitted to the voters by the Legislature, or any other amendment to the

44 Constitution of West Virginia permitting the exemption from or reduction of rates in ad valorem
45 personal property taxation for different species of personal property.

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

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

49 (2) The tax will be paid on any and all e-cigarette liquid coming into the state for the
50 purpose of sale or use in this state on and after ~~July 1, 2016~~ July 1, 2020.

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

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

55 (B) The point of delivery;

56 (C) The date;

57 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii)
58 the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale
59 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or
60 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-
61 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and
62 the wholesale price of the e-cigarette liquid;

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

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

67 (4) *Reports and payments due date.* — On or before the fifteenth day of each month,
68 manufacturers, importers, every place of business as defined in this article, retail dealers,
69 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report

70 covering the business transacted in the previous month providing any information the Tax
71 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
72 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
73 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
74 remitted on or before the due date of the monthly report. ~~The first report due for e-liquid sales is~~
75 ~~August 15, 2016, for the sales completed in July 2016.~~

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

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

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

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

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

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

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

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

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

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