

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 392

BY SENATORS SMITH (MR. PRESIDENT) AND WOELFEL

(BY REQUEST OF THE EXECUTIVE)

[Reported February 17, 2026, from the Committee on
Finance]

1 A BILL to amend and reenact §11-17-4b and §11-21-4h of the Code of West Virginia, 1931, as
2 amended; and to amend the code by adding a new section, designated §11-21-4j, relating
3 to taxation; providing a reduction in personal income tax; modifying the effective date of
4 future personal income tax reductions; providing for reduced graduated income tax rates;
5 reducing the rate of tax on certain composite returns; reducing the rate of withholding tax
6 on nonresident income; reducing the rate of withholding tax on the nonresident sale of real
7 estate; reducing the rate of withholding on lottery winnings; applying reduced rates
8 beginning on and after January 1, 2026; providing for contingent additional future
9 reductions in the personal income tax rates when certain criteria have been met; providing
10 for revenue replacement; increasing the excise tax on e-cigarettes; setting an excise tax
11 rate on closed vapor cartridges; setting an excise tax rate on open vaping systems;
12 defining terms; making technical corrections; making conforming amendments; and
13 providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

**§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 “Closed vapor cartridge” means a pre-filled disposable cartridge that is intended to be
5 used with or in a noncombustible product that employs a heating element, battery power source,
6 electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size,
7 to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users
8 that may be inhaling from the product such as any electronic cigarette, e-cigarette, electronic

9 cigar, electronic cigarillo, electronic pipe, or other similar product or device and every variation
10 thereof, regardless of whether marketed as such, and contains nicotine or non-nicotine
11 substances or other material consumed during the process of vaporization or aerosolization:
12 Provided, That “closed vaping system” does not include any product regulated as a drug or device
13 by the United States Food and Drug Administration under Chapter V of the Food, Drug, and
14 Cosmetic Act.

15 (4) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor,
16 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,
17 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, ~~a device~~ any
18 noncombustible product that is composed of a heating element, battery, or electrical or electronic
19 circuit, or ~~a combination of heating element, battery and electrical or electronic circuit,~~ other
20 electronic, chemical, or mechanical means, regardless of shape or size and including the
21 component parts and accessories thereto, which works in combination with ~~e-liquid~~ e-cigarette
22 liquid to produce an inhalable product that uses a refillable or non-refillable liquid solution to
23 deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials which users
24 may be inhaling from the product, regardless of whether marketed as such. The term e-cigarette
25 includes, but is not limited to, any so designed, or similarly designed, product that is manufactured,
26 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other name or
27 descriptor, and any cartridge or container of e-cigarette liquid. The term “simulates the activity of
28 smoking”, in the context of this definition, means replicating, mimicking, or reproducing an
29 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke
30 or combustion product of burning tobacco or any other product or material that can be used in a
31 similar fashion.

32 (2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and
33 is also known as e-juice, e-fluid, e-liquid, or e-liquid product. E-cigarette liquid includes e-cigarette
34 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-

35 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-
36 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
37 nicotine from any source, or flavorings.

38 "Open vaping system" means any noncombustible product that employs a heating
39 element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical
40 means, regardless of shape or size and including the component parts and accessories thereto,
41 that uses a refillable liquid solution to deliver vaporized or aerosolized nicotine, non-nicotine
42 substances, or other materials to users that may be inhaling from the product such as any e-
43 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and
44 every variation thereof, regardless of whether marketed as such; and any liquid solution that is
45 intended to be used with an e-cigarette: *Provided*, That "open vaping system" does not include
46 any product regulated as a drug or device by the United States Food and Drug Administration
47 under Chapter V of the Food, Drug, and Cosmetic Act.

48 (b) *Levy of tax; rate.* —

49 ~~(1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette~~
50 ~~liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate~~
51 ~~upon the use by the wholesaler or dealer. For purposes of this article, any distributor, dealer,~~
52 ~~subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette~~
53 ~~liquids into this state, or that causes e-cigarette liquids to be imported or transported into this~~
54 ~~state, is hereby deemed to be a wholesaler for purposes of this section and is liable for the tax~~
55 ~~imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from~~
56 ~~any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette~~
57 ~~liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in~~
58 ~~milliliters, that can be produced by or from the kit or components thereof, as determined by the~~
59 ~~Tax Commissioner.~~

60 (1) On and after July 1, 2026, an excise tax is levied and imposed on the sale of each
61 closed vapor cartridge, container, or e-cigarette liquid at the rate of \$1.20 per cartridge or
62 container, or if not sold, then at the same rate upon the use by the wholesaler or dealer.

63 (2) On and after July 1, 2026, an excise tax is levied and imposed on the sale of open
64 vaping systems at the rate of 25 cents per milliliter or fraction thereof, or if not sold, then at the
65 same rate upon the use by the wholesaler or dealer.

66 (3) For purposes of this article, any distributor, dealer, sub-jobber, sub-jobber dealer,
67 retailer or any other person that imports or transports e-cigarette liquids into this state, or that
68 causes e-cigarette liquids to be imported or transported into this state, is hereby deemed to be a
69 wholesaler for purposes of this section and is liable for the tax imposed under this article. No
70 wholesaler or other person may purchase e-cigarette liquids from any seller not approved by the
71 Tax Commissioner.

72 ~~(2)~~ (4) Only one sale of e-cigarette liquid shall be used in computing the amount of tax
73 due under this section.

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

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

77 (2) The tax will be paid on any and all e-cigarettes and e-cigarette liquid coming into the
78 state for the purpose of sale or use in this state on and after ~~July 1, 2016~~ July 1, 2026.

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

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

83 (B) The point of delivery;

84 (C) The date;

85 (D) (i) The number of e-cigarettes, e-cigarette cartridges, apparatus, containers or other
86 devices; (ii) the quantity in milliliters of each cartridge, apparatus, container or other device; (iii)
87 the wholesale price of each e-cigarette cartridge, apparatus, container or other device delivered
88 in this state; or (iv) if sold outside of a cartridge or other device or container, the total quantity in
89 milliliters of e-cigarette liquid not in cartridges, apparatus or other device or container delivered in
90 this state and the wholesale price of the e-cigarette liquid;

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

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

95 (4) *Reports and payments due date.* — On or before the 15th day of each month,
96 manufacturers, importers, every place of business as defined in this article, retail dealers, sub-
97 jobbers, vending machine operators and wholesale dealers and their agents shall file a report
98 covering the business transacted in the previous month providing any information the Tax
99 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
100 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
101 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
102 remitted on or before the due date of the monthly report. Effective July 1, 2026, the first report
103 due for e-liquid sales is ~~August 15, 2016, for the sales completed in July 2016~~ August 15, 2026,
104 for the sales completed in July, 2026.

105 (5) *Reports required.* — The reports prescribed in this article are required, although a tax
106 may not be due or no business transacted, for the period covered by the report. In the case of
107 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown
108 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
109 month or fraction of a month that such report is delinquent, until the report is filed, in addition to
110 any penalties imposed under §11-17-19a of this code.

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

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

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

124 (2) In addition to the Tax Commissioner's powers set forth in §11-10-1 *et seq.* of this code,
125 the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in
126 order to ascertain the amount of taxes and reports due under this article. If a witness or person
127 fails or refuses to testify or grant access to records, books, papers, equipment, or e-cigarette
128 apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes
129 and reports due under this article, the Tax Commissioner shall certify the facts and names to the
130 circuit court of the county having jurisdiction of the party and the court shall issue a summons to
131 the party to appear before the Tax Commissioner at a place designated within the jurisdiction of
132 the court, on a day fixed, to be continued as the occasion may require for good cause shown, to
133 testify and give evidence and to produce for inspection any books, records, and papers that may
134 be required and to grant access to records, books, papers, equipment, or e-cigarette apparatus,
135 or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports
136 due, if any.

137 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner
138 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid
139 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products
140 prior to the sale or delivery of e-cigarette liquid to any retail dealer or sub-jobber in this state. A
141 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer
142 or sub-jobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller
143 not approved by the Tax Commissioner.

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

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

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

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4h. Future personal income tax reductions.

1 (a) For the purposes of this section, the terms defined in this section have the meanings
2 ascribed to them unless a different meaning is clearly required by the context in which the term is
3 used:

4 (1) "Adjusted consumer price ratio" means the fiscal year consumer price index divided by
5 the base year consumer price index.

6 (2) "Adjusted general revenue fund collections" means all net general revenue fund
7 collections minus the net general revenue fund collections related to the imposition of the taxes
8 imposed under the provisions of §11-13A-1 *et seq.* of this code.

9 (3) "Base year revenues" means actual general revenue fund collections for 2019 fiscal
10 year, which is \$4,293,884,754.

11 (4) "Base year consumer price index" means a 12-month average of the not seasonally
12 adjusted Consumer Price Index for all urban consumers for the months between July 2018 and
13 June 2019.

14 (5) "Excess fiscal year general revenue fund collections" means the positive difference
15 from subtracting the inflation adjusted base year revenues from the adjusted general revenue
16 fund collections from the immediately preceding fiscal year.

17 (6) "Fiscal year consumer price index" means a 12-month average of the not seasonally
18 adjusted Consumer Price Index for all urban consumers for the months between July and June
19 of the immediately preceding fiscal year.

20 (7) "Inflation adjusted base year revenues" means the base year general revenue fund
21 collections multiplied by the adjusted consumer price ratio.

22 (b) *Future personal income tax rate reductions.* — Beginning on August 15, ~~2025~~ 2026,
23 and every August 15 thereafter, the Secretary of Revenue will determine whether the total fiscal
24 year adjusted general revenue fund collections from the immediately preceding fiscal year are in
25 excess of the inflation adjusted base year revenues. If the total fiscal year adjusted
26 general revenue fund collections from the immediately preceding fiscal year are in excess of the

27 inflation adjusted base year revenues, then there will be a reduction in the personal income tax
28 rates as determined under this section beginning the second taxable year following the
29 determination.

30 (c) *Determination of rate.* — In order to determine the amount of a personal income tax
31 reduction, the excess fiscal year general revenue fund collections will be divided by the amount
32 of the immediately preceding fiscal year's total personal income tax collections for all funds and
33 will be rounded down to the nearest whole percentage. The amount of the percentage of reduction
34 will be applied equally across the tax rates applicable in the tax year immediately preceding the
35 rate reduction: *Provided*, That reduction in personal income tax rates may not result in an amount
36 larger than a 10 percent reduction in the rates set forth in §11-21-4e of this code.

37 (d) *Certification of reduction.* — The Secretary of Revenue and the State Auditor will certify
38 to the Tax Commissioner that a rate change is required under this section as soon as possible
39 after August 15 so that the Tax Commissioner may notify taxpayers of any change in personal
40 income tax rates. The certification will provide base year revenues, the total fiscal year
41 general revenue fund collections from the immediately preceding fiscal year, the base year
42 consumer price index, the fiscal year consumer price index, the adjusted consumer price ratio,
43 the amount of inflation adjusted base year revenues, the amount of excess fiscal year general
44 revenue fund collections and the amount of the immediately preceding fiscal year's total personal
45 income tax collections for all funds.

46 (e) *Applicability of this section.* — The provisions of this section shall be applicable in
47 determining the rates of tax imposed by this article and shall apply for all taxable years beginning
48 on and after January 1, ~~2026~~ 2027, and shall be in lieu of the rates of tax specified in ~~§11-21-4i~~
49 §11-21-4j of this code.

50 (f) *Annual reports.* — The Tax Commissioner shall prepare an annual report to the Joint
51 Committee on Government and Finance detailing any relevant modifications to the personal
52 income tax.

53 (g) *Rulemaking.* — Notwithstanding any provision of this code to the contrary, the Tax
 54 Commissioner may propose rules for legislative approval in accordance with the provisions of
 55 §29A-3-1 *et seq.* of this code explaining and implementing this section.

§11-21-4j. Rate of tax — Taxable years beginning on and after January 1, 2026.

1 (a) Rate of tax on individuals (except married individuals filing separate returns),
 2 individuals filing joint returns, heads of households, and estates and trusts. — For taxable years
 3 beginning on and after January 1, 2026, the tax imposed by §11-21-3 of this code on the West
 4 Virginia taxable income of every individual (except married individuals filing separate returns);
 5 every individual who is a head of a household in the determination of his or her federal income
 6 tax for the taxable year; every husband and wife who file a joint return under this article; every
 7 individual who is entitled to file his or her federal income tax return for the taxable year as a
 8 surviving spouse; and every estate and trust (except non-grantor trusts administered by licensed
 9 private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code) shall
 10 be determined in accordance with the following table:

<u>If the West Virginia taxable</u>	<u>income is:</u>	<u>The tax is:</u>
	<u>Not over \$10,000</u>	<u>2.00% of the taxable income</u>
	<u>Over \$10,000 but not over \$25,000</u>	<u>\$200 plus 2.66% of excess over \$10,000</u>
	<u>Over \$25,000 but not over \$40,000</u>	<u>\$599 plus 3.00% of excess over \$25,000</u>
	<u>Over \$40,000 but not over \$60,000</u>	<u>\$1,049 plus 4.00% of excess over \$40,000</u>
	<u>Over \$60,000</u>	<u>\$1,849 plus 4.34% of excess over \$60,000</u>

18 (b) Rate of tax on married individuals filing separate returns. — For taxable years
 19 beginning on and after January 1, 2026, in the case of husband and wife filing separate returns
 20 under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West
 21 Virginia taxable income of each spouse shall be determined in accordance with the following
 22 table:

23	<u>If the West Virginia taxable</u>	
24	<u>income is:</u>	<u>The tax is:</u>
25	<u>Not over \$5,000</u>	<u>2.00% of the taxable income</u>
26	<u>Over \$5,000 but not over \$12,500</u>	<u>\$100 plus 2.66% of excess over \$5,000</u>
27	<u>Over \$12,500 but not over \$20,000</u>	<u>\$299.50 plus 3.00% of excess over \$12,500</u>
28	<u>Over \$20,000 but not over \$30,000</u>	<u>\$524.50 plus 4.00% of excess over \$20,000</u>
29	<u>Over \$30,000</u>	<u>\$924.50 plus 4.34% of excess over \$30,000</u>

30 (c) Rate of tax on non-grantor trusts administered by licensed private trust companies. —
31 In the case of non-grantor trusts administered by licensed private trust companies created
32 pursuant to §311-1-1 et seq. of this code, there is no tax imposed by §11-21-3 of this code.

33 (d) Effect of rates on nonresident composite and withholding obligations. —
34 Notwithstanding any provision of this article to the contrary, for taxable years beginning on and
35 after the date specified in subsection (e) of this section, whenever the words "six and one-half
36 percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77 of this code, with relation
37 to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns,
38 heads of households, and estates and trusts (except non-grantor trusts administered by licensed
39 private trust companies created pursuant to the provisions of §311-1-1 et seq. of this code), the
40 stated percentage shall be changed to 4.34 percent.

41 (e) Applicability of this section. — The provisions of this section shall be applicable in
42 determining the rates of tax imposed by this article and shall apply for all taxable years beginning
43 on and after January 1, 2026, and shall be in lieu of the rates of tax specified in §11-21-4i of this
44 code.