

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 426

FISCAL  
NOTE

BY SENATOR TAKUBO

[Introduced January 19, 2022; referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-17-3 and §11-17-4B of the Code of West Virginia, 1931, as  
2 amended, all relating to increasing the tax on cigarettes to the amount of \$1.50 and an  
3 equal rate of tax on the nicotine in e-cigarettes and vape products.

*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 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~~ \$1.50 on each 20 cigarettes or in like ratio on any part thereof. Only one sale*  
8 *of 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 12 percent of the wholesale price of each article or*  
16 *item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether*  
17 *or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or*  
18 *dealer. Only one sale of the same article shall be used in computing the amount of tax due under*  
19 *this subsection.*

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

**§11-17-4B. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment;  
authority of the Tax Commissioner to inspect and examine witnesses; presumption;  
bond.**

1 (a) *Definitions.* — When used in this section, words, terms and phrases defined in this  
2 subsection, and any variations thereof required by the context, have the meaning ascribed to  
3 them in this subsection, except where the context indicates a different meaning is intended.

4 (1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor,  
5 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,  
6 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that  
7 is composed of a heating element, battery or electrical or electronic circuit, or a combination of  
8 heating element, battery and electrical or electronic circuit, which works in combination with e-  
9 liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so  
10 designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an  
11 e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity  
12 of smoking”, in the context of this definition, means replicating, mimicking or reproducing an  
13 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke  
14 or combustion product of burning tobacco or any other product or material that can be used in a  
15 similar fashion.

16 (2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and  
17 is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette  
18 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-  
19 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-

20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,  
21 nicotine from any source or flavorings.

22 (b) *Levy of tax; rate.* —

23 (1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette  
24 liquid at the rate of ~~7.5~~ 9.75 cents per milliliter or fraction thereof, or if not sold, then at the same  
25 rate 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”.

NOTE: The purpose of this bill is to increase the raise of taxation on cigarettes to \$1.50  
and the tax on nicotine in e-cigarettes and vapes to an equal rate.

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