

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 635

FISCAL
NOTE

BY SENATOR TAKUBO

[Introduced February 15, 2022; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to repeal §11-17-4a, §11-17-4b, and §11-17-9 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §11-17-2, §11-17-3, and §11-17-7 said code, all
 3 relating to the Tobacco Products Excise Tax Act; repealing discounts on tax stamps;
 4 adding definition of “Electronic smoking device”; increasing taxes on tobacco products;
 5 and providing that 10 percent of the revenue collected be dedicated to the West Virginia
 6 Division of Tobacco Prevention.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-2. Definitions.

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

4 (b) *Definitions.* --

5 ~~(4)~~ “Cigarette” means:

6 ~~(A)~~ (1) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or
 7 shape and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the
 8 wrapping or cover of which is made of paper or any substance or material, except tobacco.

9 ~~(B)~~ (2) Any roll of tobacco wrapped in any substance containing tobacco which, because
 10 of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be
 11 offered to, or purchased by, consumers as a cigarette described in paragraph ~~(A)~~ (1) of this
 12 subdivision.

13 ~~(2)~~ “Commissioner” means the State Tax Commissioner and, where the meaning of the
 14 context requires, all deputies or agents and employees duly authorized by him or her.

15 ~~(3)~~ “Consumer” means a person who receives or in any way comes into possession of
 16 tobacco products for the purpose of consuming or giving them away or disposing of them in any
 17 way other than by sale, barter, or exchange.

18 (4) “Counterfeit stamp” means any stamp, label or print, indicium, or character, that
19 evidences, or purports to evidence, the payment of any tax levied under this article and that has
20 not been printed, manufactured, or made by authority of the commissioner, as provided in this
21 article, and has not been issued, sold or circulated by the commissioner.

22 “Electronic smoking device” means any device that can be used to deliver aerosolized or
23 vaporized nicotine, whether natural or synthetic, to the person inhaling from the device, including,
24 but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking
25 device includes any component, part, or accessory of such a device, whether or not sold
26 separately, and includes any substance intended to be aerosolized or vaporized during the use
27 of the device. Electronic smoking device does not include any battery or battery charger when
28 sold separately. In addition, electronic smoking device does not include drugs, devices, or
29 combination products authorized for sale by the U.S. Food and Drug Administration, as those
30 terms are defined in the Federal Food, Drug and Cosmetic Act.

31 (5) “Manufacturer” means a person who manufactures or produces a tobacco product.

32 (6) “Other tobacco product” or “tobacco products other than cigarettes” means ~~snuff and~~
33 ~~chewing tobacco and any other tobacco product that is intended by the seller to be consumed by~~
34 ~~means other than smoking and any cigar, pipe tobacco or other tobacco product other than~~
35 ~~cigarettes~~ any product other than cigarettes, that is made from or derived from tobacco or that
36 contains nicotine whether natural or synthetic, that is intended for human consumption or is likely
37 to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by
38 any other means, including, but not limited to, a cigar, pipe tobacco, chewing tobacco, snuff, or
39 snus. “Other tobacco product” or “tobacco products other than cigarettes” also means electronic
40 smoking devices and any component or accessory used in the consumption of a tobacco product,
41 such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether
42 or not they contain nicotine. “Other tobacco product” or “tobacco products other than cigarettes”
43 does not include drugs, devices, or combination products authorized for sale by the U.S. Food

44 and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

45 ~~(7)~~ "Package" means the individual package, box, or other container in or from which retail
46 sales of tobacco products are normally made or intended to be made.

47 ~~(8)~~ "Person" means and includes any individual, firm, association, company, partnership,
48 corporation, joint-stock company, club, agency, syndicate, limited liability company, other legal
49 entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee,
50 fiduciary or conservator, and when used in connection with any penalties imposed by this article,
51 means and includes officers, directors, trustees or members of any firm, copartnership,
52 association, corporation, trust or any other unit acting as a group.

53 ~~(9)~~ "Place of business" means a place where a tobacco product is sold or where a tobacco
54 product is brought or kept for the purpose of sale or consumption, including a vessel, airplane,
55 train or vending machine.

56 ~~(10)~~ "Retail dealer" includes every person in this state, other than a wholesaler or
57 subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for
58 any purpose other than resale.

59 ~~(11)~~ "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or
60 distribution or disposition of cigarettes or other tobacco products.

61 ~~(12)~~ "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any
62 purpose other than resale.

63 ~~(13)~~ "Sale by wholesaler" means and includes any bona fide transfer of title to tobacco
64 products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in
65 the usual conduct of the wholesaler's business.

66 ~~(14)~~ "Stamp" or "meter impression" means any cigarette stamp or any meter or ink
67 impression or other indicia authorized by the Tax Commissioner to serve as a stamp and shall be
68 of the design and color as prescribed by the Tax Commissioner.

69 ~~(15)~~ "Stamped cigarettes" means that the stamp or meter impression, as required by this

70 article, has been affixed to the bottom of the package of cigarettes.

71 ~~(16)~~ "Subjobber" or "subjobber dealer" includes any person who purchases stamped
72 cigarettes or tax-paid tobacco products from a wholesaler or from any other person who
73 purchases from the manufacturer or importer and who purchases the tax-paid tobacco products
74 solely for the purpose of bona fide resale to retail dealers.

75 ~~(17)~~ "Tax-not-paid tobacco product" means a tobacco product upon which the tax imposed
76 by this article has not been paid.

77 ~~(18)~~ "Tax-paid tobacco products" means a tobacco product upon which the tax imposed
78 by this article has been paid.

79 ~~(19)~~ "Tobacco product" includes cigarettes and any other tobacco product.

80 ~~(20)~~ "Transportation company" means a person operating or supplying to common
81 carriers, cars, boats or other vehicles for the transportation or accommodation of passengers and
82 engaged in the sale of a tobacco product at retail.

83 ~~(21)~~ "Transporter" means a person importing or transporting into this state a tobacco
84 product obtained from a source located outside this state or transporting within this state tobacco
85 products belonging to another person.

86 ~~(22)~~ "Unstamped cigarettes" means that the stamp or impression as required by this article
87 has not been affixed to the bottom of the package of cigarettes.

88 ~~(23)~~ "Vending machine operator" means any person operating one or more vending
89 machines for the sale of tobacco products. The sale of tobacco products through a vending
90 machine will be construed as sales at retail and subjects the vending machine operator to this
91 article and rules pertaining to retail dealers.

92 Whenever any tobacco products vending machine operator purchases tax-not-paid
93 tobacco products directly from the manufacturer or any other person, the vending machine
94 operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed
95 by this article and the affixing of the required stamps.

96 ~~(24)~~ “Wholesale price” means the gross invoice price, including all federal excise taxes, at
97 which the manufacturer of the tobacco product sells the tobacco product to unaffiliated
98 distributors, excluding all trade discounts and other reductions in the manufacturer's price. If the
99 taxpayer buys from other than a manufacturer, “wholesale price” means the gross invoice price,
100 including all federal excise taxes and excluding all trade discounts and other similar reductions in
101 price.

102 ~~(25)~~ “Wholesaler” or “wholesale dealer” includes any person in this state who purchases
103 tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be
104 approved by the Tax Commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer
105 or any other person that imports or transports tax-not-paid tobacco products into this state, or that
106 causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler
107 liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for
108 affixing tax indicia in accordance with the requirements of this article. No wholesaler or other
109 person may purchase tax-not-paid tobacco products from any seller not approved by the Tax
110 Commissioner.

§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, July 1, 2022, the excise tax rate levied and imposed on*
7 *the sale of cigarettes is ~~\$1.20~~ \$2.70 on each 20 cigarettes or in like ratio on any part thereof. Only*
8 *one sale of the same article shall be used in computing the amount of tax due under this*
9 *subsection.*

10 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise

11 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
 12 equal to seven percent of the wholesale price of each article or item of tobacco products other
 13 than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if
 14 not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and
 15 after ~~July 1, 2016~~, July 1, 2022, the excise tax rate levied and imposed on the sales or use of
 16 tobacco products other than cigarettes is at the rate equal to ~~twelve percent~~ 51 percent of the
 17 wholesale price of each article or item of tobacco products other than cigarettes sold by the
 18 wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same
 19 rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in
 20 computing the amount of tax due under this subsection.

21 Ten percent of the revenue collected under this section shall be dedicated to the West
 22 Virginia Division of Tobacco Prevention.

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

27 (e) Effective date of amendments. — Amendments to this section enacted in the year 2022
 28 apply in determining tax imposed under this article effective on and after July 1, 2022.

§11-17-4a. No tobacco products tax by municipalities or other government subdivisions.

1 [Repealed.]

**§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 [Repealed.]

§11-17-7. Form of stamps; custody; discounts; security for payments.

1 The commissioner shall design and procure stamps to be used as herein provided for,
 2 affixed, and attached to containers, packages or receptacle of whatever kind that may be used

3 for containing cigarettes. In the preparing of said stamp or stamps the same shall have printed or
 4 impressed thereon the words "State of West Virginia -- Cigarette Tax Stamp" and such other
 5 words and figures as the commissioner may ~~deem~~ consider proper. He or she shall also prescribe
 6 the form of impression to be placed upon any package or container of cigarettes by any metering
 7 device. The Tax Commissioner shall collect the taxes provided for by this article.

8 ~~Such~~ The stamps shall be kept in the custody of the Tax Commissioner or such deputies
 9 as he or she may designate to sell the same. ~~Such~~ The stamps shall be sold and accounted for
 10 at the tax value thereof. ~~except that the Tax Commissioner may authorize sale thereof, or sell to~~
 11 ~~wholesalers in this state, or to wholesalers outside of this state such stamps at a discount of four~~
 12 ~~percent of the tax value of such stamps, the same to be allowed as a commission for affixing the~~
 13 ~~stamps and prepaying the cigarette tax; and excepting further that the~~ The Tax Commissioner
 14 may, by like regulation so certified, authorize the delivery of stamps, to wholesalers in this state,
 15 or to wholesalers outside of this state, ~~on credit, allowing the same discount as when sold for~~
 16 ~~cash,~~ if and when the purchaser ~~shall file~~ files with the Tax Commissioner a bond made payable
 17 to the State of West Virginia, in such form and amount as the commissioner shall prescribe, and
 18 with surety or sureties to the satisfaction of the commissioner, conditioned as he or she may
 19 require, to guarantee payment within 30 days for stamps so delivered within such period of time
 20 and by making of such reports and settlement as the commissioner may require. The
 21 commissioner may, by further regulations, provide for canceling, renewing, or increasing ~~such~~ the
 22 bond or for the substitution of the surety thereon.

23 For the purposes of this article "tax value" ~~shall mean~~ means the tax value of each stamp
 24 or meter impression, as imposed by this article.

§11-17-9. Discounts.

1 [Repealed]

NOTE: The purpose of this bill is to amend the Tobacco Products Excise Tax Act; repeal discounts on tax stamps; add a definition of "Electronic smoking device"; increase taxes on tobacco products; provide that 10 percent of the revenue collected be dedicated to the

West Virginia Division of Tobacco Prevention; and repeal §11-17-4a and §11-17-4b.

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