Series 13

State of West Virginia

Charleston 25305

G. THOMAS BATTLE
STATE TAX COMMISSIONER

December 29, 1967

CHESTER P. TINSLEY, DIRECTOR
DIVISION OF
CIGARETTE, SOFT DRINKS, STORE
AND GENERAL LICENSE TAXES

The Hon. Robert D. Bailey
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia 25305

Dear Sir:

Having complied with the provisions of Code 29A-7-2, we enclose herewith two copies of regulations issued by the State Tax Commissioner to establish general operating rules and regulations in the Office of the General License Tax Division.

Numerous changes have been made and the new words are underlined on Pages 4, 5, 6, 7 and 9. From a practical standpoint these regulations are being submitted in their entirety so that cross reference to previous regulations will be unnecessary.

I hereby certify that the attached regulations are true and accurate copies of the amendments adopted by the State Tax Commissioner to become effective on January 31, 1968.

Very truly yours,

G. Thomas Battle

G. Thomas Battle
State Tax Commissioner

GTB:M
Enclosures

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 12/29/67

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

GENERAL LICENSE

(Chapter 11, Article 12 of the Code)

SERIES XIII

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Effective January 31, 1968

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-12
(1968)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-12
Series XIII
(1968)

Subject: Rules and Regulations for General License.

Section 1. GENERAL.

1.01. Scope.--These regulations establish general operating rules and procedures in the office of the General License Division.

1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 12.

1.03. Effective Date.--These regulations are promulgated on December 30, 1967 and become effective on January 31, 1968.

1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on December 30, 1967.

1.05. Certification.--These regulations are certified authentic by the State Tax Commissioner.

Section 2. DEFINITIONS. The term "person" shall mean and include natural persons, partnerships, associations, corporations, and all other organizations or groups by which any of the specified businesses, activities, trades or employments are engaged in or prosecuted.

The term "commissioner" shall mean the State Tax Commissioner.

The term "machine" shall mean vending or coin-operated devices.

The term "vending machine operators", "operator" or "operators" shall mean all persons owning and operating coin-operated merchandise, service, music and amusement devices or vending machines.

Section 3. APPLICATION FOR AND ISSUANCE OF LICENSES; EVIDENCE OF LICENSES; FEE. The licenses provided for in this article shall be issued in the form of a certificate by the tax commissioner to any person making proper application therefor on forms to be prescribed and furnished by the tax commissioner and tendering the license tax and a filing tax fee of fifty cents for each license certificate requested. The tax commissioner shall collect in full the proper taxes and fees and determine to his satisfaction that all the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license.

Section 4. OWNING AND OPERATING COIN-OPERATED MERCHANDISE, SERVICE, MUSIC AND AMUSEMENT DEVICES, OR VENDING MACHINES. Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section on or before July one of each year.

The liability for the license to operate any type of coin-operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the applicable county clerk's office or the office of Secretary of State. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees. Licensed machines may not be sold or ownership transferred without notification to the commissioner listing the name and address of new owner.

The Attorney General has ruled that the person who removes the money from the machine is liable for the consumers sales and gross sales tax but this does not release the owner of the machines of the responsibility of securing the license for the machine.

Situations exist whereby a vending machine operator will make arrangements to sell machines to a place of business by reducing the percentage of commission or by the owner of the place of business making certain monthly payments until the selling price agreed upon has been paid. This type of an arrangement does not relieve the owner or seller of a machine from the liability for securing the proper license until title has legally passed to new owner. Operators who sell machines on any kind of terms to a place of business should explain to the purchaser that the purchaser will be liable for the licensing of the machine only after title has passed as above outlined and the operator should also explain to the purchaser that his ownership of a vending machine makes the purchaser liable for the securing of a General Store License. The law provides that neither soft drinks, cigarettes nor tobacco products shall be sold over the counter nor through a vending machine owned by the place of business unless the place of business has secured a General Store License.

4.01. License Fee. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

Where operators find it expedient to have one machine on top of a counter or other place which makes the machine available to the public and also desires to have one or more machines in reserve and sometimes stored under a counter or in a back room or other place of storage, it is required that ALL machines on the same premises and same street address and location, shall have the required identification label attached to each machine as herein specified.

The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

4.02. OWNERSHIP OF MULTIPLE OPERATIONS. Each application for licenses under this section will be reviewed by the commissioner and where one owner applies for licenses under two or more names, the owner will be required to furnish evidence to the commissioner that such applications are not submitted in order to reduce the license tax liability of the owner by applying for licenses in two classes under different names when the owner operates two or more vending machine businesses at the same place of business.

4.03. LICENSE TAX LIABILITY FOR MULTIPLE COIN-OPERATED MACHINES. The mere joinder of several devices capable of independent functioning does not constitute them one machine and shall be treated as separate devices.

Where each unit comprising a battery of vending machines has its own kind of slot and receptacle for receiving the coin(s) and delivery of the merchandise, thus being independent of the other units insofar as the actual machine function is concerned, each unit is a separate "machine" or "device" within the contemplation of Section 3, Article 12, Chapter 11, of the Code, as set forth above and is to be licensed accordingly. For example: a cigarette vending machine with a coin operated match dispenser shall be counted as two separate devices.

If the functioning of a machine is dependent upon some function of other parts of the machine, the interplay of forces would be such as to constitute the entire device a single machine. There are numerous types of these "machines or devices" which are best exemplified by cigarette vending and candy machines with a single coin slot, but with a device permitting the vendee to indicate his choice of merchandise, which he may or may not, receive from the machine.

4.04. LEASES AND CONDITIONAL SALES CONTRACTS. It is a frequent occurrence that various types of vending machines are leased or sold on a conditional basis. Perhaps the best examples are cigarette and soft drink machines. No license will be issued to any person for a vending machine or device until the ownership has been definitely established to the satisfaction of the commissioner. Ownership can not be merely delegated for the purpose of licensing and the payment of taxes. Bona fide ownership must be clearly established as outlined in Section 4.

Section 5. HAWKERS AND PEDDLERS. Chapter 11, Article 12, Section 8 of the West Virginia Code:

A hawker's and peddler's license must be obtained for each vehicle operated, since the license tax is determined by the capacity of the vehicle involved.

Section 6. JUNK DEALERS AND THEIR AGENTS. Inasmuch as there are restrictions as to who can qualify for a license to engage in the junk business, the affidavit application form provided by the commissioner must be completed in its entirety. Failure to use the official application or to supply all required information will only serve to delay issuance of the license.

In applying for a Junk Dealer's license the complete address must be shown and the applicant must indicate on his application whether or not his place of business is located WITHIN or OUTSIDE the corporate limits of municipality. If inside, the name of the municipality must be stated. Applications for salvage yards located outside municipalities should be sent to the State Road Commission in care of Outdoor Advertising Division.

Every resident, except salaried employees of a duly licensed junk dealer, who buys or sells junk for or on behalf of one who is a junk dealer and does not otherwise buy or sell junk, is required to secure a junk dealer's agent's license.

Every resident who gathers junk, free from cost, as distinguished from one who buys or sells junk, by means of a cart or vehicle, and who has no fixed place of business, is required to secure an itinerant junk collector's license.

It is understood that a resident who buys or sells junk on his own behalf or for or on behalf of one other than a junk dealer duly licensed by the commissioner and in addition buys or sells junk for or on behalf of a junk dealer so licensed, is required to secure a junk dealer's license.

Any resident junk dealer with an established place of business within the corporate limits of any town engaging in sales or parts or items from his inventory to the public is also liable for a "special" store license.

Reference to Other Statutes.--Article 23, Chapter 17 of the Code of West Virginia, as amended, relating to salvage yards provides that salvage yards located OUTSIDE the corporate limits of municipalities are exempt from the provisions of Chapter 11, Article 12, Section 7 (General License Law) and Chapter 11, Article 13-A (Store License Law) of the Code.

General License Law, Chapter 11, Article 12 of the Code, was not amended or changed in any manner by the 1963 Legislature, however, Chapter 17, Article 23 of the Code (State Road Commission) was amended and relates to salvage yards. As a matter of general information the State Road Commission will administer Chapter 17, Article 23 of the Code, which relates ONLY to salvage yards located OUTSIDE the corporate limits of municipalities and the SRC will issue licenses at the rate of $50.00 each and the license period will be on a calendar year basis from the first day of January to the thirty-first day of December of each year.

Junk Dealers, Junk Dealer's Agent's, Itinerant Junk Collectors, Non-Resident Junk Dealers or Non-Resident Junk Dealer's Agent's will continue to be licensed under the General License Law regardless of their location. Junk Dealers, Junk or Salvage Yards located WITHIN the corporate limits of any municipality will also continue to be licensed under the General License Law. No change has been made in the license fee for any of the above classifications under the General License Law.

Section 7. FORTUNE TELLING. Chapter 11, Article 12, Secion 6 or the West Virginia Code.

A fortune telling license is not valid unless it bears the name of the person. Trade names will not be acceptable--the license certificate shall show the real name and the trade name as:

MATILDS ROXBORO - DBA MADAM ROSETTA

but not just Madam Rosetta.

The person designated by the license certificate is the only one who is legally authorized to act as a fortune teller.

Section 8. EMPLOYMENT AGENT. Any person desiring to be licensed as an employment agent shall first present his application to the Commissioner of the West Virginia Department of Labor for approval. The Commissioner of Labor shall determine the eligibility of all applicants for an employment agent's license and shall notify the tax commissioner as to those qualifying to be duly licensed. The tax commissioner shall then issue the license upon receipt of the proper payment of the required license fee.

Section 9. COIN-OPERATED LAUNDRIES AND COIN-OPERATED AUTO WASH DEVICES. Coin-operated merchandise, service, amusement or music devices, on location in the same place of business as a laundromat or car wash, such as cigarette, candy, soft drink, snacks, hair dryers, music, amusement, etc., require license be obtained by the owner of said devices to operate as provided by Chapter 11, Article 12, Section 3 of the Code.

Section 10. PHOTOGRAPHY. Photographers having no fixed place of business and traveling about from place to place selling photographs enclosed in picture frames to the public generally and making deliveries at the time sales are made are required to have a hawker's and peddler's license.

A photographer operating a stand or concession at carnivals or other shows will be required to pay the same fee as other concessionaires.

Coin operated photograph machines will be subject to licenses as provided in Chapter 11, Article 12, Section 3 of the Code of West Virginia.

Section 11. COIN-OPERATED RADIOS AND TELEVISION SETS. Coin operated radios and television sets will be licensed under Chapter 11, Article 12, Section 3 of the Code of West Virginia, relating to coin operated devices. The statute contemplates no exemption, therefore these devices shall be licensed under Section 4 of these Rules and Regulations.

Section 12. COIN-OPERATED POOL TABLES. When the coin-operated pool table is owned by a vending machine operator, then he is required to include the coin device in the total number of devices licensed each fiscal year BUT, the proprietor of the place of business where the pool table is located is liable for the license for the pool table. As a matter of information to proprietors who have pool tables, coin-operated or otherwise operated or played on in their place of business, there is a State Law (Chapter 11, Article 12, Section 14) which prohibits persons under the age of eighteen years to play, remain or loiter in the room where pool tables are located and the proprietor of a business which includes the use of operation of a pool table has the responsibility of not violating the law.

Two licenses may be required for coin-operated pool tables. One license for the coin device and one for the pool table. When the proprietor of a properly licensed business owns a coin-operated pool table, he is liable for the license for the pool table but he is only required to affix his identification label on the coin device.

A General Store License is required for a store in which soft drinks or tobacco products are sold or purchased; or when the proprietor owns and operates a coin operated device.

Section 13. LICENSING OF VENDING STANDS SET UP BY THE DEPARTMENT OF VOCATIONAL REHABILITATION AND OPERATED BY BLIND PERSONS. Vending Stands established and operated by blind persons under the direction or supervision of the Director of Public Assistance are not subject to state license taxes.

Section 14. EFFECT OF STATE LICENSE. Payment for and the issuance of a license certificate shall not be deemed as legalizing any act which may be in violation of law, nor exempting any person from any penalty prescribed for such violation.

The commissioner and his deputies are not required to pass upon the merits of a case as to whether or not a game, device or activity for which a license is issued is legal under the criminal statutes of the State. This is a responsibility reposing with the law enforcing agencies. The commissioner shall not be liable for any refunds arising out of such circumstances.

Section 15. PENALTIES WHEN BUSINESS IS TRANSACTED WITHOUT LICENSE. A delinquent taxpayer shall, in addition to all other penalties, be liable to the payment of all back taxes and penalties for a period not exceeding five years which shall be construed to mean the current fiscal year plus the immediate past four fiscal years.

Section 16. UNPAID CHECKS COVERING LICENSE FEES AND PENALTIES. This regulation is promulgated in order to clarify situations where non-certified checks have been received with applications for license and the license has been issued and, at a later date, the checks are returned unpaid by the banks because of insufficient funds. Such a situation results in a person having a current license in his possession but the commissioner has not received the license tax.

Under these conditions, the commissioner will consider the license tax and fees as unpaid and deliquent as of the date the bad check was received after having been returned unpaid by its bank and will add the penalties as provided for in the General License Law.

The purpose of this regulation is to give the commissioner authority to suspend or revoke or to repossess the unpaid-for license. The commissioner may, in his discretion, invoke injunction proceedings.

Section 17. REFUNDS. The general license statute does not make any specific provision for refunds. It shall be the policy to recognize erroneous payments for licenses and make proper refunds. It is to be understood that, if and when refunds are recommended to the State Auditor, that the amount will reflect only the license tax but any fees paid will be forfeited. The fees will not be refunded since they constitute payment for services rendered. Even though the license may have been issued in error the issuing agent has performed the service for which the fee was paid, therefore, the fee(s) will not be included in the reimbursements.