



Series 14

State of West Virginia

Charleston 25305

December 29, 1967

G. THOMAS BATTLE
STATE TAX COMMISSIONER

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 Store License Tax Division.

-This is an original promulgation of rules and regulations pertaining to Store License Tax as was authorized by Acts of the Legislature, 1965 session, passed March 13, 1965, effective July 1, 1965, Chapter 11, Article 12, Section 3.

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
SECRETARY OF STATE
DATE 12/29/67

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

STORE LICENSE

(Chapter 11, Article 13-A of the Code)

SERIES XIV

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Effective January 31, 1968

FILED IN THE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 1/29/68

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-13A
(1968)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-13A
Series XIV
(1968)

Subject: Rules and Regulations for Store License.

Section 1. GENERAL.

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

1.02 Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 13-A.

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 "special store" shall be construed to mean and include any store or stores or any mercantile establishment or establishments in which goods, wares, or merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin-operated device or devices, owned and operated by the store proprietor.

The term "general store" shall be construed to mean and include any store or stores or any mercantile establishment or establishments,

in which goods, wares, or merchandise of any kind are purchased, ordered, sold or offered for sale at retail or wholesale.

"Person" or "persons" shall include any individual, committee, partnership, association, firm or corporation, either domestic or foreign.

"Commissioner" shall mean the State Tax Commissioner.

Section 3. LICENSE REQUIRED. It shall be unlawful for any person to establish, operate or maintain any store in this State without first having obtained a license from the commissioner.

Section 4. APPLICATION FORM. The Tax Commissioner will endeavor to mail an application form to the last known address of previous year licensees, however, the non-receipt of the form will not relieve any person from the liability of obtaining the proper store license.

Section 5. LICENSE PERIOD. On or before July 1 of each year, every person having a license shall apply to the commissioner for a renewal for the ensuing year. Any person who has ceased to operate a store or who does not propose to continue operation of the store during the ensuing year, shall notify the tax commissioner prior to the first day of July.

Each and every license issued prior to January 1 of any year shall be charged at the full rate, and each and every license issued on and after January 1 shall be charged at one-half of the full rate.

The cost of a license for a special store as of July 1 is five dollars, plus a filing fee of fifty cents. If a license is issued after January 1 then the cost would be three dollars.

The general store license will cost fifteen dollars, plus a filing fee of fifty cents. If a license is issued after January 1 the cost would become eight dollars.

Section 6. 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 and it is highly important that the ownership be definitely established. It is realized that there will be attempts to circumvent the intent of the license tax liability by employing leases and conditional sales contracts. The policy which will be adhered to is that 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 tax commissioner. Ownership can not be merely delegated for the purpose of licensing and the payment of taxes. Ownership must be irrevocably vested with the buyer, otherwise the seller shall be liable for all taxes applicable thereto. Thus, conditional sales contracts will not be recognized as such in the administration of the license tax program, unless recorded in the applicable County Court, or in the office of Secretary of State, and whenever a lessee-lessor situation exists, the lessor shall be liable for licenses.

Section 7. COIN-OPERATED DEVICES OWNED BY THE PROPRIETOR. Persons operating a store and owning and servicing coin operated devices located therein shall be exempt from a license for the device or devices provided that any person so exempt shall affix thereto an identification label to indicate the name, address and store license number. Servicing of devices shall mean that the proprietor purchases the merchandise and places it in the device for sale.

Section 8. EXEMPTIONS. No store license is required for the following:

Businesses owned and operated by the United States of America,
the State of West Virginia and its political subdivisions.

Religious and charitable organizations.

A store selling only agricultural products produced by the seller.

Vending stands established by the Department of Vocational

Rehabilitation, and operated by blind persons.

Christmas tree lots.

Section 9. EXAMPLES OF A FEW SITUATIONS IN WHICH A STORE LICENSE IS
REQUIRED.

Schools. If merchandise such as books, pencils, candy, etc. is
placed in some fixed location in the school and sold in that
location, the person responsible for the selling of the merchandise
is required to procure a store license.

Factories. Factories or industrial plants that sell safety
shoes, goggles, gloves and such to their employees must obtain
a license annually, regardless of whether a profit is derived
from the sale or not.

Photographers. Having a fixed place of business.

Manufacturers. Such as bakeries, dairies, bottlers, creameries,
canneries, etc., who maintain a room or rooms from which sales
are made at wholesale or retail. If outlets are maintained they
will be subject to the same requirements.

Restaurants. Which have for sale merchandise or goods of any kind.

Bulk Plants and Filling Stations. Must secure store licenses annually.

Leased Departments. Persons who operate leased departments in stores
cannot operate under the lessor's store license, but must obtain
their own licenses.

Undertakers. Who keep or offer for sale merchandise such as caskets, wreathes, books, cards, clothes and flowers.

Wholesale Dealers. Wholesale dealers who operate from a fixed place of business are required to obtain a store license and shall be classified on the same basis as retail establishments.

Sales Agents. When a sales agent maintains a stock of merchandise in his home or some other fixed location and makes sales or offers for sale at that location, he is required to procure a store license.

Roadside Stands, etc. Persons who operate roadside stands at a permanent location in which they sell any commodities other than what they produce themselves. If business is temporary, then it is subject to a Hawker and Peddler license. Section 8, Article 12, Chapter 11.

Monuments. Persons who sell or offer for sale monuments at a fixed situs shall be subject to a store license.

Section 10. SITUATIONS REQUIRING GENERAL STORE LICENSE. Any person who purchases soft drink items or cigarettes which are sold or to be sold through a vending machine on the premises of the operator of the store becomes liable for a general store license, notwithstanding the fact that the vending machine is owned and licensed by a vending machine operator.

Section 11. TRANSFERS. A store license is not assignable nor can it be transferred to another person.

A store license can be altered so as to permit removal of the store from one location to another. Whenever there is a change in the location,

the license shall be returned with a filing fee of fifty cents to the tax commissioner promptly accompanied by information as to the new address.

A new license will be issued for the new location.

Section 12. PENALTIES. Any person who establishes, operates or maintains a store without obtaining a license shall in addition to paying the license tax, be subject to a penalty of ten percent each month or part thereof during which he has been delinquent or in default. Furthermore, he shall be liable to the payment of all license 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 13. REFUNDS. A filing fee of fifty cents is provided by statute which represents payment for the services of issuing the license. If a license is issued unlawfully and a refund is necessitated the amount to be remitted to the licensee shall be the amount of his payment less the filing fee.

Section 14. SUSPENSION OR REVOCATION OF LICENSE. The State Tax Commissioner may suspend or, after a hearing, revoke any license issued under this article whenever the holder thereof has failed to comply with any of the provisions of this article or any rules or regulations made and promulgated by him as provided herein.

Section 15. 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 returned unpaid by the banks because of insufficient funds. Such a situation results in the store owner having a current license in his possession but the tax

commissioner has not received the license tax.

Under these conditions, the commissioner will consider the license tax and fees as unpaid and delinquent as of the date the bad check was received and will add the penalties as provided for in the Store License Law. The purpose of this regulation is to give the commissioner authority to suspend or revoke or to repossess the unpaid for license and he may, in his discretion, invoke injunction proceedings.