

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

FILED
Do Not Mark In this Box
JUL 24 2 35 PM '00
OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-10-5, 11-17-10, 60-9-5

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

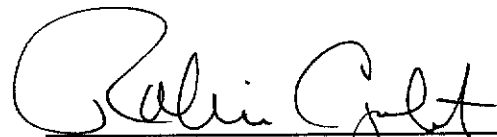
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Cigarette Excise Tax

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Robin C. Capchart, Secretary of Tax and Revenue

\$8.00

110 C.S.R. 17
CIGARETTE EXCISE TAX

SUMMARY OF RULE

West Virginia Code § 16-9B-2(j) states that the Tax Commissioner shall propose legislative rules as are necessary to ascertain the amount of excise tax paid on cigarettes. Additionally, West Virginia Code § 60-9-5 authorizes the Tax Commissioner to revoke or suspend the authorization to affix cigarette excise tax stamps for violation of any legislative rule related to West Virginia Code § 60-9-1 et seq.

In order to accomplish the foregoing, this rule defines the following terms: "business registration certificate"; "cigarette"; "cigarette wrappers"; "Tax Commissioner"; "consumer"; "excise tax"; "importer"; "manufacturer"; "non-tax paid tobacco"; "package"; "person"; "retail dealer"; "sale"; "sale at retail"; "sale by wholesaler"; "stamp"; "stamped cigarettes"; "sub-jobber"; "this State"; "tobacco products"; "unstamped cigarettes"; "vending machine operator"; and "wholesaler." The rule also discusses: licensing of cigarette dealers (wholesalers and sub-jobbers, retail dealers, and cigarette vending machine operators); cigarette tax paid stamps; affixing stamps; authority and permit for use of metering devices and heat applied stamp machines; sales of cigarettes on railways and buses; State institutions and the excise tax; metering machines; contractual obligations of meter users and stamp machine users; prohibitions; records and reports; imported cigarettes; audits; administrative sanctions; and general enforcement provisions.

110 C.S.R. 17
CIGARETTE EXCISE TAX

STATEMENT OF CIRCUMSTANCES

West Virginia Code § 16-9B-2(j) states that the Tax Commissioner shall propose legislative rules as are necessary to ascertain the amount of excise tax paid on cigarettes. Additionally, West Virginia Code § 60-9-5 authorizes the Tax Commissioner to revoke or suspend the authorization to affix cigarette excise tax stamps for violation of any legislative rule related to West Virginia Code § 60-9-1 et seq. This rule establishes the procedures for authorizing the use of cigarette excise tax stamps and the necessary means to enforce West Virginia Code §§ 60-9-1 et seq and 16-9B-1 et seq. as it relates to the use of those stamps.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Cigarette Excise Tax

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department
 Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The Tax Department does not anticipate any change in its expenditures.

Rule Title: Cigarette Excise Tax

3. Objectives of these rules:

The rule establishes the policies and operating procedures for administering the Cigarette Excise Tax.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This rule should not have an economic impact in State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

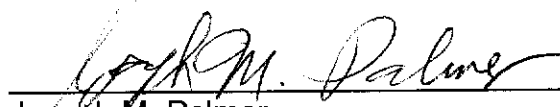
This rule should have no economic impact on political subdivisions, specific industries, or specific citizen groups.

C. Economic Impact on Citizens/Public at Large.

This rule should have no economic impact on the public at large.

Date: 7-19-00

Signature of Agency Head or Authorized Representative



Joseph M. Palmer
State Tax Commissioner

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Room W-301, Capital Bldg.,

Charleston, WV 25324

LEGISLATIVE RULE TITLE: Cigarette Excise Tax

1. Authorizing statute(s) citation W. Va. Code §§ 11-10-5, 11-17-10 and 60-9-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 16, 2000

b. What other notice, including advertising, did you give of the hearing?

Filed in State Register and on Department's web site

c. Date of Public Hearing(s) or Public Comment Period ended:

July 17, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John Montgomery, Attorney Supervisor, Legal Division

State Tax Department, P.O. Box 1005, Charleston, WV 25324-1005

Phone: 558-5330, FAX 558-8728, e-mail JMontgomery@tax.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

110 C.S.R. 17

**CIGARETTE EXCISE TAX
COMMENTS AND RESPONSES**

Following are the comments submitted by the public and responses by the Tax Department for 110 C.S.R. 17, Cigarette Excise Tax.

COMMENT: Section 4.4.3 authorizes a 4% discount when cigarette wholesalers purchase Cigarette Tax Paid stamps.

RESPONSE: West Virginia Code § 11-17-9 states that a "discount of four percent will be allowed on all tax due for persons affixing stamps, collecting and paying of tax as required and prescribed by this article." The discount is provided by statute and the rule merely reflects that statute.

COMMENT: Section 4.4.1 should not extend credit to cigarette wholesalers.

RESPONSE: West Virginia Code § 11-17-7 authorizes the delivery of Cigarette Tax Paid stamps on credit through the use of a bond in the form and amount prescribed by the Tax Commissioner. The rule merely reflects the statute.

COMMENT: Vending machine operators should file reports on a weekly basis.

RESPONSE: West Virginia Code § 11-17-12 requires vending machine operators to file by the fifteenth day of each month a report covering the business transacted in the previous month. Section 3.3.3 merely reflects the statute.

COMMENT: "The term "location" should be better defined. Are the grounds of The Greenbrier a location . . .?"

RESPONSE: The statute, West Virginia Code §11-12-3(b)(2), uses the term "location." That statutory provision reads as follows:

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

Emphasis added.

The Tax Department has found over a considerable span of that the general definitions or the term "location" are sufficient for administration of the registration and tax requirements of West Virginia law, as controlled and directed by the Tax Department.

The West Virginia Supreme Court has stated that: "Generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use." Keatley v. Mercer County Bd. of Educ., 200 W. Va. 487, 495, 490 S.E.2d 306, 314 (1997); Syl. pt. 3, Byrd v. Board of Education of Mercer Co., 196 W. Va. 1, 467 S.E.2d 142 (1995); Syl. Pt. 4, State v. General Daniel Morgan Post No. 548, V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959). See also, McComas v. Bd. Of Educ. of Fayette County, 197 W. Va. 188, 205, 475 S.E.2d 280, 297 (1996) ("when interpreting statutes we give credence to the normal usage of the word[.]"); Davis v. Hix, 140 W. Va. 398, 80 S.E.2d 404 (1954).

In the absence of a precise statutory definition, words employed in a legislative enactment are to be given their common, ordinary, and accepted usage. Syl. pt. 5, Daily Gazette Co., Inc. v. West Virginia Dev. Office, 198 W. Va. 563, 482 S.E.2d 180 (No. 25437 May 19, 1999) . "In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used." Syllabus point 1, McCoy v. VanKirk, 201 W. Va. 718, 500 S.E.2d 534 (1997).", Syllabus Point 1, Miners v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941), overruled on other grounds [by] Lee-Norse Co. v. Rutledge, 170 W. Va. 162, 291 S.E.2d 477 (1982).

With relation to the commentator's question " Are the grounds of The Greenbrier a location . . .?: Presumably this comment refers to the Greenbrier Hotel and Resort in White Sulphur Springs, West Virginia.

The law (quoted above) regarding issuance of a business registration certificate for locations where money operated vending or amusement machines are in operation, including cigarette vending machines, states that a separate registration certificate is not required for each vending machine.

Each vending machine company that has machines on the premises of the Greenbrier Hotel and Resort or any other hotel, resort, store, retail establishment, restaurant, inn, bar, tavern, sports facility, entertainment facility or any other business location or place of public accomodation is required to have one registration certificate for its machines located on those premises. Sections 3.3.2.a., 3.3.2.b., 3.3.2.c., 3.3.2.d., 3.3.2.e., and 3.3.2.f. specifically enumerate, in detail, the persons responsible for obtaining the business registration certificate relating to operation of a cigarette machine in particular circumstances regarding operation and control of the machine.

COMMENT: We also believe each machine should require its own license, not location. The owner of the machine should be responsible for the tax and reports. The system provided in the rule allows for no one to be in charge. A solution could be posting the name of the responsible party in 60 pt type on the front of the machine.

RESPONSE: With relation to the portion of the comment that states: "We also believe each machine should require its own license, not location":

The Tax Department is of the opinion that West Virginia Code § 11-12-3(b)(2) provides the correct requirement:

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

With relation to the portion of the comment that states: "The owner of the machine should be responsible for the tax and reports. The system provided in the rule allows for no one to be in charge":

The comment does not clearly state the tax and reports to which the commentator is referring.

(1) Business Registration Tax -- Given that the commentator discusses licensure in the prefatory sentence of the same paragraph, the commentator may be referring to the West Virginia business registration tax and business registration certificate. If the commentator is referring to the persons responsible for payment of the West Virginia business registration tax, and the filing of reports for purposes of the West Virginia business registration certificate, then the Tax Department disagrees with the comment. The system prescribed by the rule specifically enumerates persons who are responsible for the payment of tax and filing of returns, based, in essence, upon who controls and stocks the machine and collects the money.

These persons are enumerated in Chapter 11, Article 12 of the West Virginia Code. With reference to the filing of reports and payment of the business registration tax for cigarette vending machines, section 3.3 of the rule specifically enumerates the responsibilities of a cigarette vending machine operator, and sections 3.3.2.a., 3.3.2.b., 3.3.2.c., 3.3.2.d., 3.3.2.e., and 3.3.2.f. specifically enumerate, in detail, the persons responsible for obtaining the business registration certificate relating to operation of the machine, and responsible for payment of the business registration tax and the filing of related reports.

(2) Cigarette Excise Tax -- If the commentator is referring to the cigarette excise tax imposed under Chapter 11, Article 17 of the West Virginia Code (which is the subject of the rule), the persons responsible for payment of the tax and filing of reports are precisely enumerated in that statute.

(3) Consumers Sales and Service Tax -- If the commentator is referring to the persons responsible for the collection and remittance of the consumers sales and service tax on merchandise sold out of money operated machines, including cigarette vending machines, the persons responsible for fulfilling these requirements are

precisely enumerated in the Consumers Sales and Service Tax and Use Tax Rules, 110 C.S.R. 15, § 110-15-46.2.

With relation to the portion of the comment that states "A solution could be posting the name of the responsible party in 60 pt type on the front of the machine":

The Tax Department is of the opinion that the posting requirement for the West Virginia business registration certificate currently set forth in West Virginia Code §11-12-7 has proven sufficient for identification of the certificate holder. The Tax Department does not believe adoption of a posting requirement utilizing 60 point type and requiring affixation of the posted material on the cigarette vending machine, or any other vending or amusement machine, would significantly improve administration of the tax laws or registration laws of the State of West Virginia with relation to these machines and their operators.

COMMENTS: The public should be given access to the records of each person required to file a report under West Virginia Code § 11-17-1 et seq.

RESPONSE: In accordance with West Virginia Code § 11-17-22, each and every provision of the West Virginia Tax Procedure and Administration Act applies to West Virginia Code § 11-17-1 et seq. Under West Virginia Code § 11-10-5d, tax return information is confidential. West Virginia Code § 11-10-5d(b)(5) provides the following definition.

(5) Return information. The term "return information" means:

(A) A taxpayer's identity; the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the tax commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be

construed to require the disclosure of standards used or to be used for the selection of returns for examination or data used or to be used for determining such standards.

Public access to tax return information would violate West Virginia Code § 11-10-1 et seq. Therefore, the rule cannot be amended to allow unlawful release of tax information.

COMMENT: Any wholesaler or retailer that does not comply should be presumed to be out of compliance and should summarily be closed. A \$25.00 fine is quite lacking.

RESPONSE: The commentator does not appear to specify the particular non-compliant behavior to which the comment refers. The particular portion of the rule that specifies a \$25.00 penalty appears in section 12.2.7, relating to the late filing of reports.

The Due Process clauses of the United States Constitution and the West Virginia State Constitution place limits on the presumptions that can be applied with regard to summary actions, whether they be criminal or administrative in nature. West Virginia Code, Chapter 11, Articles 9 and 10, and Chapter 11, Article 17, Sections 19, 20 and 22, among others, prescribe the penalties and sanctions for failure to comply with the Cigarette Tax Act, along with certain Due Process requirements.

With particularity relating to section 12.2.7 of the rule and the late filing of reports, West Virginia Code § 11-17-19 prescribes the penalties that may be imposed for the late filing of reports. The rule reflects the statutes.

COMMENT: All contraband should be required to be seized.

RESPONSE: West Virginia Code § 11-17-20 states how the Tax Department is to handle contraband. The rule reflects the statute.

RECEIVED

JUL 18 2000

LEGAL DIVISION

THE SUSMAN GROUP, LLC

Public Relations - Governmental Affairs - Advertising

July 17, 2000

Jim Palmer, Commissioner
State Tax Department
Legal Division
Post Office Box 1005
Charleston, WV 25324-1005

RECEIVED
JUL 18 2000

Fax: 304-345-8111

Dear Commissioner:

I am contacting you in regard to the proposed Tax and Revenue Rule, Title 110, Series 17, Cigarette Excise Tax. I am the lobbyist for the Coalition for a Tobacco-Free West Virginia. We have several concerns with the proposed rule in its present form and ask that your Department meet with us. We would like the rationale for the changes and the current policies that lead to the weak rule being written.

This comment only deals with our major concerns. We will provide further comment to the tax department and legislative staff in the near future.

Our first major concern is section 4.4.3. This section provides that the state will subsidize wholesalers for the act of selling cigarettes. Why should the citizens of this state provide a 4% discount to companies that sell products that are known to cause cancer and other major cardiac problems.

Along the same line why are we extending credit to these same individuals as provided in section 4.4.1? The state should not be extending credit to tobacco wholesalers. If they need more stamps then they should make arrangements to purchase them. The United States Post Office does not extend credit for the purchase of stamps. Why should the state tax department extend credit for cigarette stamps? Also as I read the rule, the state does not receive interest on this transaction. Why not?

In terms of the vending machines, the reports should be filed on a weekly basis. We also believe the term "location" should be better defined. Are the grounds of The Greenbrier a location or just the Old White Club?

We also believe each machine should require its own license, not location. The owner of the machine should be responsible for the tax and the reports. The system provided in the rule allows for no one to be in charge. A solution could be posting the name of the responsible party in 60 pt type on the front of the machine.

In addition, the record section of the rule should be amended to provide for public access to records. Making available the number sold, the location of the machines, the owner of the machine and other information would allow public policy leaders to draft a comprehensive strategy to deal with tobacco.

We believe the enforcement section should be strengthened. Any wholesaler or retailer that does not comply should be presumed to be out of compliance and should summarily be closed. A \$25.00 fine is quite lacking.

Also, various sections of the rule provide your department with the power to seize contraband. It is our belief the "may" should be changed to "should". Why would the state allow a person to maintain contraband?

In conclusion, as stated above, we would ask that you review the rule and make the needed changes.

Sincerely yours,



Tom Susman, President
The Susman Group, LLC

FILED

AGENCY APPROVED

JUL 24 2 36 PM '00

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 17
CIGARETTE EXCISE TAX

§ 110-17-1. General

1.1. **Scope** - This rule establishes policies and operating procedures for administering the Cigarette Excise Tax.

1.2. **Authority** – W. Va. Code §§ 11-10-5, 11-17-10 and 60-9-5.

1.3. **Effective Date** -

1.4. **Filing Date** -

§ 110-17-2. Definitions. When used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein.

2.1. **“Business Registration Certificate”** means the West Virginia Business Registration Certificate required by West Virginia Code § 11-17-1 et seq.

2.2. **“Cigarette”** means:

2.2.1. Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which is made of paper or any substance or material, except tobacco.

2.2.2. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

2.3. **“Cigarette wrappers”** means paper, or any other material except tobacco, prepared for use or that is likely to be used by consumers to make cigarettes.

2.4. **“Commissioner”** or **“Tax Commissioner”** means the West Virginia Tax Commissioner, or his or her delegate.

State Tax Department
Title 110
Series 17

2.5. **"Consumer"** means a person who receives or in any way comes into possession of cigarettes for the purpose of consuming or giving them away or disposing of them in any way other than by sale, barter or exchange.

2.6. **"Excise tax"** or **"cigarette tax"** means the tax imposed by West Virginia Code § 11-17-1 et seq.

2.7. **"Importer"** means any person in the United States to whom non-tax paid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned;

2.7.1. Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and

2.7.2. Any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

2.8. **"Manufacturer"** means a person engaged in an activity where tangible personal property is transformed or converted by physical, chemical or other means into products subject to the excise tax.

2.9. **"Non-tax paid tobacco"** means tobacco upon which the excise tax has not been paid.

2.10. **"Package"** means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

2.11. **"Person"** means any individual, firm, association, company, partnership, corporation, limited liability company, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this State, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by West Virginia Code § 11-17-1 et seq., includes officers, directors, trustees or members of any firm, copartnership, association, corporation, limited liability company, trust or any other unit acting as a group.

2.12. **"Retail dealer"** means every person in this State, other than a wholesaler or sub-jobber, engaged in the business of selling cigarettes at retail to a consumer or to any person for any purpose other than resale.

2.13. **"Sale"** means selling, exchange, transfer of title, barter, gift, offer for sale or distribution or disposition of.

2.14. **"Sale at retail"** or **"retail sale"** means a sale to a consumer or to any person for any purpose other than resale.

2.15. **"Sale by wholesaler"** means any bona fide transfer of title to cigarettes by a wholesaler for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

2.16. **"Stamp"** means any cigarette stamp, whether applied by hand, meter or ink impression, or by heat, and authorized by the Tax Commissioner.

2.17. **"Stamped cigarettes"** means that the stamp as required by West Virginia Code § 11-17-1 et seq. has been affixed to the bottom of the package of cigarettes.

2.18. **"Sub-jobber"** means any person engaged in this State in the business of purchasing stamped cigarettes from another person who had purchased from the manufacturer when such other person is located in any state that levies an excise tax on cigarettes and who purchases such cigarettes solely for the purpose of bona fide resale to retail dealers.

2.19. **"This State"** means the State of West Virginia.

2.20. **"Tobacco products"** means cigarettes, cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco.

2.21. **"Unstamped cigarettes"** means that the stamp as required by West Virginia Code § 11-17-1 et seq. has not been affixed to the bottom of the package of cigarettes.

2.22. **"Vending machine operator"** means any person engaged in this State in the business of operating one or more cigarette vending machines.

2.23. **"Wholesaler"** means any person engaged in this State in the business of purchasing unstamped cigarettes directly from a manufacturer or importer for resale.

§ 110-17-3. Cigarette Dealer Requirements

3.1. **Wholesalers and Sub-jobbers** – Every wholesaler or sub-jobber, whether a resident or non-resident of this State, engaging in the business of selling cigarettes in this State is required to first apply for and obtain a Business Registration Certificate and

the license required by West Virginia Code § 11-12-4a for the purpose of selling cigarettes, other tobacco products and cigarette wrappers. Application for the Business Registration Certificate and license shall be made on the forms provided by the Tax Commissioner.

3.1.1. No wholesaler may sell cigarettes to any person in this State other than another wholesaler, a sub-jobber or a retail dealer, and no person in this State other than a wholesaler or sub-jobber may sell cigarettes to a retail dealer.

3.1.2. The use or application of any kind or type of stamp other than those authorized by the Tax Commissioner shall be considered a violation of this rule and subject to the penalties provided in West Virginia Code § 11-17-1 et seq.

3.1.3. Unless stamps have been previously affixed, they shall be affixed by each wholesaler in this State prior to delivery of any cigarettes to any person in this State.

3.2. **Retail Dealers** - No retail dealer may offer for sale or sell any cigarettes in West Virginia without first having applied for and obtained a Business Registration Certificate and the license required by West Virginia Code § 11-12-4a for the purpose of selling cigarettes, other tobacco products and cigarette wrappers. Application shall be made on forms prescribed and furnished by the Tax Commissioner.

3.3. **Cigarette Vending Machine operators** – Each vending machine operator shall apply for and obtain a Business Registration Certificate and the license required by West Virginia Code § 11-12-4a for the purpose of selling cigarettes, other tobacco products and cigarette wrappers before selling or offering for sale any cigarettes through a vending machine. Whenever any cigarette vending machine operator purchases cigarettes directly from the manufacturer, the operator shall be deemed to be a wholesaler and shall be liable for both the excise tax and affixing the required stamps.

3.3.1. Although cigarette vending machine operators, like wholesalers, purchase unstamped cigarettes directly from the manufacturer, the sale of cigarettes through vending machines is construed as a sale at retail. Therefore, vending machine operators shall also be classified as retail dealers.

3.3.2. It is the location of the vending machine and not the vending machine that is subject to Business Registration. The liability for obtaining the Business Registration Certificate for the operation of a cigarette vending machine shall be on the person responsible for stocking the machine and collecting the money from sales.

State Tax Department
Title 110
Series 17

3.3.2.a. If the vending machine is owned by a person who leases the machine to another who then places the machine at a business location and the lessee assures the machine is stocked and collects the money from the sales, the lessee is responsible for obtaining a Business Registration Certificate for the location.

3.3.2.b. If the vending machine is owned by a person who leases the machine to another who then leases the machines to a business establishment and the business establishment assures the machine is stocked and collects the money from the sales, the machine is covered by the business establishment's Business Registration Certificate.

3.3.2.c. If the vending machine is owned by a person who places it at a business location and assures the machine is stocked and collects the money from the sales, the owner of the machine is responsible for obtaining a Business Registration Certificate for the location.

3.3.2.d. If the vending machine is owned by a person who leases the machine to a business establishment, and the business establishment assures the machine is stocked and collects the money from the sales, the machine is covered by the business establishment's Business Registration Certificate.

3.3.2.e. If the vending machine is owned by the business establishment where it is situated, the machine is covered by the establishment's Business Registration Certificate.

3.3.2.f. If a person has more than one vending machine at a location, only one Business Registration Certificate is required for all of the machines at that location.

3.3.3. Each cigarette vending machine operator in this State shall for each shipment of cigarettes obtain an invoice showing the amount and value of the shipment, the date of receipt of the shipment, and the name of the shipper. The operator shall retain the invoice for a period of three years, and it shall be subject to the inspection of the Tax Commissioner. The operator shall file a monthly report showing total purchases, stamped or unstamped, and sales of cigarettes, and such other information as the Tax Commissioner may require on forms provided by the Tax Commissioner.

3.3.4. Records of cigarette vending machine operators will be subject to auditing by the Tax Commissioner and the vending machine operators shall make records available at any time during regular business hours.

3.3.5. If unstamped cigarettes are found in any vending machine, both the cigarettes and the vending machine shall be contraband goods and may be seized by the Tax Commissioner, or by any peace officer of the State at the direction of the Tax Commissioner, without a warrant.

3.3.6. No cigarette vending machines shall be placed in operation within this State that is not so constructed as to display at least one package of cigarettes in each column. All cigarettes shall be placed in the machines in such a manner that when they are displayed, the stamps affixed thereto shall be clearly visible.

§ 110-17-4. Cigarette Tax Paid Stamps – West Virginia Code § 11-17-1 et seq. authorizes the use of stamps to evidence payment of the excise tax. All stamps will conform to the contract entered into between the State of West Virginia and the manufacturer of the stamps.

4.1. Form and Description of Hand Applied Cigarette Tax Stamps - The stamps shall measure approximately one-half inch by five-eighths inch in size. The design of the stamps shall be as follows: Across the top part of the stamp shall be the words "State of West Virginia"; in the center part of the stamp will be an outline of the State of West Virginia; inside the outline of the map of West Virginia shall appear the numerals twenty (20) which will indicate that the tax has been paid on twenty (20) cigarettes or twenty-five (25) which will indicate that the tax has been paid on twenty-five (25) cigarettes; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp". The Commissioner may designate any other marks to be included in the design and layout of the stamps, and in the case of packaging not containing 20 or 25 cigarettes, the Tax Commissioner may prescribe such alternative designs as may be appropriate.

4.2. Form and Description of Cigarette Tax Paid Meter Impressions - The size of the meter impressions shall be approximately five-eighths inch by one and one-quarter inch, and rectangular in shape or design. The form of the meter impressions, made by a metering device, to be placed on the package of cigarettes, shall contain the words "West Virginia Tax Paid Cigarettes". In the center of the meter impression shall be the outline of the map of the State of West Virginia and on both sides of the outline of the map of West Virginia, shall appear numerals which will designate the meter which was used to make the impression. The Commissioner may designate any other marks to be included in the design and layout of the stamps and may prescribe such alternative designs as may be appropriate.

4.3. Form and Description of Cigarette Tax Paid Stamps Heat Applied by Machine - The stamps shall measure approximately one-half inch by one-half inch in size. The design of the heat applied stamps shall be as follows: Across the top part of the stamp shall be the words "State of West Virginia"; in the center part of the stamp will be an outline of the map of the State of West Virginia; inside the outline of the map of West Virginia shall appear the numerals (20) twenty which will indicate that the tax has been paid on twenty (20) cigarettes or (25) twenty-five, which will indicate that the tax has been paid on twenty-five; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp". The Commissioner may designate any other marks to be included in the design and layout of the stamps, and in the case of packaging not containing 20 or 25 cigarettes, the Tax Commissioner may prescribe such alternative designs as may be appropriate.

4.4. Purchase of Cigarette Tax Paid Stamps - Stamps can be purchased only from the Tax Commissioner. The sale of stamps is made only upon receipt of the requisition form prescribed by the Tax Commissioner, accompanied by the proper remittance unless the purchaser has secured a Cigarette Tax Credit Purchase Bond.

4.4.1. A continuous Cigarette Tax Credit Purchase Bond may be obtained by wholesalers to allow the purchase of cigarette stamps on credit. The terms of credit shall be payment on the third purchase or within thirty days (whichever comes first) with no more than two requisitions on credit simultaneously. The total amount of tax due on the two requisitions shall be no more than one-half (1/2) the amount of the total bond. After approval of the bond by the Attorney General, an annual notice of renewal is the only requirement. Any surety issuing a bond shall be released and discharged from all liability on such bond after the expiration of sixty days from the date the surety filed, by certified mail, with the Tax Commissioner a written request to cancel the bond. This cancellation does not relieve, release or discharge the surety from liability already accrued, or which accrues before the expiration of the sixty day period. The bond shall be conditioned upon compliance with the provisions of West Virginia Code § 11-17-1 et seq., including the filing of the returns and payment of all applicable taxes.

4.4.2. No stamps may be shipped prior to receipt of proper remittance if terms of credit are not followed.

4.4.3. West Virginia Code § 11-17-3 specifies a tax of seventeen cents for each twenty cigarettes or in like ratio on any part thereof. A discount of four per cent will be allowed for the purchase of stamps or meter impression as an allowance for affixing stamps and /or meter impression and prepaying the cigarette tax.

State Tax Department
Title 110
Series 17

4.4.4. Cigarette tax stamps are intended for the use of the authorized purchaser and are not transferable. If the wholesaler ceases business or stops stamping, any unused stamps may be returned to the Tax Commissioner for refund.

4.4.5. The Tax Commissioner will redeem any unused or mutilated, but identifiable, stamps that any registered wholesaler may present for redemption. The Tax Commissioner may either issue a credit or a refund for stamps destroyed by fire or flood, on written verified requests made by the purchaser or his representative. The credit or refund shall be ninety-five per cent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. Each request for redeeming or refunding shall be verified to the satisfaction of the Tax Commissioner.

4.4.6. In the event a retail dealer suffers loss of stamped cigarettes as a result of fire or flood, the retail dealer shall file a verified request for refund with the Tax Commissioner in order to obtain a refund. The verified request for refund shall contain the pertinent facts relating to the cause of the loss and the quantity of cigarette packages lost or packages damaged so as to be unsalable. A statement from an agent authorized by the Tax Commissioner may also be attached to the request for refund when the agent has declared certain packages of cigarettes to be unfit for use or sale. The amount of the refund shall be ninety-five per cent of the face value of the stamps, less any discounts allowed on the purchase of the stamps.

4.4.7. Stamps on cigarettes returned to the manufacturers shall be subject to either a credit or a refund upon the wholesaler filing an application and affidavit completed by the manufacturer that evidences the destruction of stamps or meter impressions. The amount of the refund shall be ninety-five per cent of the face value of the stamps, less any discounts allowed on the purchase of the stamps.

4.4.8. No refunds will be allowed to users of metering devices for loss of impressions.

§ 110-17-5. Affixing Stamps.

5.1. **Wholesalers** - Wholesalers shall affix stamps on each package of cigarettes prior to delivery of the cigarettes to any sub-jobber or retail dealer in this State. Except where the Tax Commissioner has issued a written waiver of the requirement, the stamps shall be affixed to the bottom of the package so that when the package is opened for consumption the stamp will not be destroyed but will evidence payment of the tax.

5.2. **Retail Dealers** – Retail dealers, unless also classified as a wholesaler, have no authority to affix stamps; therefore, retail dealers that are not classified as wholesalers may only purchase stamped cigarettes for resale. Whenever any package of cigarettes is found in the place of business of a retail dealer without the stamps affixed, there shall be a presumption that such cigarettes are kept therein in violation of West Virginia Code § 11-17-1 et seq.

§ 110-17-6. Authority And Permit For Use Of Metering devices And Heat Applied Stamp Machines.

6.1. **Authority and Permit for Use of Metering Devices** - Registered wholesalers may, upon application, secure authority from the Tax Commissioner for use of metering machines for the purpose of imprinting a stamp on each package of cigarettes. A wholesaler electing to use a metering device shall pay the excise tax in advance unless the wholesaler purchases stamps on credit as provided by West Virginia Code § 11-17-1 et seq. When these metering devices are used, no further cancellation will be required as evidence of payment of tax.

6.2. **Authority and Permit to Use Heat Applied Stamp Machine** - Registered wholesalers may, upon application, secure authority from the Tax Commissioner to use heat applied stamps and machines for applying the stamps. Forms for application for authority to use heat applied stamps and machines will be furnished by the Tax Commissioner. A wholesaler electing to use a heat applied stamp machine shall pay the excise tax in advance unless the wholesaler purchases stamps on credit as provided by West Virginia Code § 11-17-1 et seq. No further cancellation will be required where these heat-applied stamps are used as evidence of payment of tax.

§ 110-17-7. Sales Of Cigarettes On Railways And Buses. - Common carriers operating club or dining cars or other cars upon which cigarettes are sold will not be required to affix and cancel stamps on packages of cigarettes in stock, cigarettes that are exposed for sale or cigarettes that will be offered for sale or sold in the State of West Virginia. Monthly reports must be filed and payment made to the Tax Commissioner concerning the applicable excise tax for all sales made within the State of West Virginia. The reports and payments shall be filed and payment made within fifteen days after the end of each calendar month.

§ 110-17-8. State Institutions And The Excise Tax. – All cigarettes sold for use or resale in an institution operated by this State are required to have stamps affixed to the packages.

§ 110-17-9. Metering Machines. - Meter impressions must be clear and easily distinguished. The metering machine shall be maintained in a manner that assures clear stamp impressions are definitively identified.

10.1. Failure to produce legible impressions may cause the Tax Commissioner to deny the wholesaler authority to purchase additional metering units until such time as the condition has been satisfactorily corrected.

10.2. Continued failure to produce legible impressions may result in revocation of authority to use the metering machine.

§ 110-17-10. Contractual Obligations Of Meter Users And Stamp Machine Users. - While the Tax Commissioner is required to authorize the use of machines for affixing stamps to packages of cigarettes, neither the Tax Commissioner nor this State is a party to any contract for the purchase or lease of such a machine, nor does the Tax Commissioner or this State warrant or guarantee that the machine will function in the authorized manner.

§ 110-17-11. Prohibitions.

11.1. Except as otherwise authorized in writing by the Tax Commissioner, wholesalers are specifically prohibited from transferring unstamped cigarettes to another person or from stamping any cigarettes that they do not own. Wholesalers shall maintain a complete daily stamping record which shall be available for inspection by the Tax Commissioner.

11.2. Neither the wholesaler, the wholesaler's employees nor any other parties may remove unstamped cigarettes from stock or consume unstamped cigarettes. Each and every package of cigarettes disposed of must be accounted for by a record available for inspection.

11.3. No cigarettes may be sold or distributed to consumers in this State, or acquired, held, owned, possessed, imported or transported into this State for sale or distribution in this State if the package bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "for export only," "U.S. tax-exempt," "for use outside U.S." or similar wording.

11.4. No cigarettes may be sold or distributed to consumers in this State, or acquired, held, owned, possessed, imported or transported into this State for sale or distribution in this State if the package does not comply with requirements imposed by

State Tax Department
Title 110
Series 17

federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution, or use in the United States, including the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, and all federal trademark and copyright laws.

11.5. No cigarettes may be sold or distributed to consumers in this State, or acquired, held, owned, possessed, imported or transported into this State for sale or distribution in this State if any of the cigarettes were imported into the United States in violation of 26 U.S.C. 5754 or any other federal law or the implementing federal regulations.

11.6. No cigarettes may be sold or distributed to consumers in this State, or acquired, held, owned, possessed, imported or transported into this State for sale or distribution in this State by a person who knows or has reason to know the manufacturer does not intend for the cigarettes to be sold, distributed or used in the United States.

11.7. No cigarettes may be sold or distributed to consumers in this State, or acquired, held, owned, possessed, imported or transported into this State for sale or distribution in this State if there has not been submitted to the Secretary of the United States Department of Health and Human Services the list of the ingredients added to the tobacco in the manufacture of such cigarettes as required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1355a;

11.8. No package of any cigarettes may be altered prior to sale or distribution to the ultimate consumer so as to remove, conceal or obscure:

11.8.1. Any statement, label, stamp, sticker or notice described in Subsection 11.3 of this Section; or

11.8.2. Any health warning that is specified in or does conform with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333.

11.9. No stamp required by West Virginia Code § 11-17-1 et seq. may be affixed to any package of cigarettes described in Subsection 11.3 of this Section and no package of cigarettes may be altered in violation of Subsection 11.8 of this Section.

§ 110-17-12. Records And Reports.

12.1. **Records** - Each person required to file a report under West Virginia Code § 11-17-1 et seq. shall make and keep such records as prescribed by the Tax

State Tax Department
Title 110
Series 17

Commissioner that are necessary to substantiate the information on the returns, including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than three years.

12.1.1. Unless otherwise permitted in writing by the Tax Commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date of delivery, quantity, and price of the product. The tax must be set out separately, or the invoice must indicate that the tax is included in the total price. The ticket or invoice shall include such other reasonable information as the Tax Commissioner may require.

12.1.2. Each wholesaler, sub-jobber, retail dealer and vending machine operator in this State and each out-of-State wholesaler, sub-jobber and vending machine operator authorized to do business in this State shall obtain invoices showing the amount and value of each shipment received, the date of receipt, and the name of the shipper. All invoices shall be retained for a period of at least three years and are subject to inspection by the Tax Commissioner.

12.1.3. The manufacturers shall furnish information as required by the Tax Commissioner to aid in auditing of the cigarette tax returns. The wholesaler shall indicate the exact date the cigarettes were received into stock. Invoice shall reflect any shortage in the shipment in order to account for only those cigarettes of a salable nature.

12.1.4. All books, papers, invoices and records of any wholesaler, sub-jobber or retail dealer in this State, showing sales, receipts and purchases of cigarettes shall, at all times during the usual business hours of the day, be open for the inspection of the Tax Commissioner, and the Tax Commissioner shall have power to investigate and examine the stock of cigarettes in and upon any premises where the same are placed, stored or sold, for the purpose of determining compliance with West Virginia Code § 11-17-1 et seq. and these rules.

12.2. **Reports** - Each wholesaler, sub-jobber and vending machine operator in this State and each out-of-state wholesaler, sub-jobber and vending machine operator authorized to do business in this State shall each month file a Monthly Report For Distributors and/or Wholesalers of Cigarettes, including all required schedules and other information, with the Tax Commissioner. Additionally, the Tax Commissioner may require retail dealers to furnish similar reports. The report, which may from time to time be amended by the Tax commissioner so as to require additional information, shall disclose the following information:

State Tax Department
Title 110
Series 17

12.2.1. A monthly inventory taken at the close of business on the last business day of the reporting period of all stamped cigarettes and all unstamped cigarettes.

12.2.2. Total purchases of cigarettes from all sources, supported by copies of invoices from each source of supply.

12.2.3. Total sales of stamped and unstamped cigarettes supported by sales slips or invoices issued to each customer and or records of sales through vending machines.

12.2.4. Total sales of cigarettes outside West Virginia. Separate records are to be maintained for each state into which cigarettes are shipped. Complete records must be maintained for any sales or transactions for which tax exemption is to be claimed. A stamp or meter account shall be maintained. The record must show:

12.2.4.a. The number of stamps and meter impressions on hand the last day of the previous reporting period.

12.2.4.b. The number of stamps and meter impressions purchased during the reporting period.

12.2.4.c. The number of stamps and the total number of meter impressions affixed during the reporting period.

12.2.4.d. The number of stamps and meter impressions on hand at close of business on the last business day of the reporting period.

12.2.5. A complete record is to be maintained showing the date a requisition for stamps was submitted to the Commissioner, the serial numbers, the date and quantity of stamps received, and the quantity of stamps affixed daily.

12.2.6. Each dealer using a metering device shall maintain a complete record at all times, showing the exact usage of the machine. This record should be maintained daily and available at all times for inspection by the Tax Commissioner.

12.2.7. The report shall be filed with the Tax Commissioner on or before the fifteenth day of each month immediately following the reporting period. Incorrect or incomplete reports will be returned by the Tax Commissioner or an amended report will be requested. Whenever a dealer fails to file a report within fifteen days after formal

State Tax Department
Title 110
Series 17

notification by the Tax Commissioner or fails to submit additional evidence or records required by the Tax Commissioner, the dealer shall be classified as delinquent. A penalty of \$25.00 will be assessed for each month or part of a month that a return is late. In addition to the monetary penalty, the Tax Commissioner may deny the discount on stamp or meter impression purchases. The Tax Commissioner may suspend the Business Registration Certificate to deal in cigarettes following the second offense. Repeated infractions will result in a cancellation of the authorization to deal in cigarettes.

12.2.8. Because administration of the registration and tax administration functions of the Tax commissioner will be facilitated by the exchange of information with the Attorney General relating to trade, transport, possession, transfer and sales of cigarettes and tobacco products and related products in this State and elsewhere, and because there is a material interest of the Attorney General in the enforcement and administration of West Virginia Code § 16-9D-1 et seq, the Tax Commissioner is authorized to enter into an exchange of information agreement with the West Virginia Attorney General and provide to that Office any information the Tax Commissioner deems to be relevant relating to trade, transport, possession, transfer and sales of cigarette and tobacco products, and related products, including but not limited to cigarette tax returns and information. For this purpose, the term "cigarette" has the following meaning.

12.2.8.a. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as that term is herein described. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of the term "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual cigarette or the equivalent of one cigarette.

12.3. **Imported Cigarettes.** Each authorized Wholesaler/Distributor that affixes stamps to cigarettes imported into the United States shall file the following information

State Tax Department
Title 110
Series 17

with each Monthly Report For Distributors and/or Wholesalers of Cigarettes on or before the fifteenth day of each month covering the transactions of the preceding month.

12.3.1. A copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the importer importing the cigarettes into the United States and allowing the importer to import the cigarettes. A copy of the permit need only be filed once a year at the time determined by the Tax Commissioner, but the permit number shall be annotated on the Monthly Report.

12.3.2. A copy of the customs form containing, with respect to the imported cigarettes, the Internal Revenue Service tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms.

12.3.3. A statement, signed by an individual under penalty of perjury, that shall be treated as confidential tax information under West Virginia code § 11-10-5d, and exempt from disclosure under the Freedom of Information Act, West Virginia Code § 29B-1-1 et seq., identifying the brand and brand styles of all the imported cigarettes, the quantity of each brand style of the imported cigarettes, and the supplier of the imported cigarettes. This section shall not be construed to prohibit disclosure of such information to the Attorney general pursuant to section 12.2.8 of this rule.

12.3.4. A statement signed by the person under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, that separately identifies the brands and brand styles of the imported cigarettes; and

12.3.5. A statement signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to the imported cigarettes and certifying whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of West Virginia Code § 16-9B-1 et seq.

12.3.5.a. The manufacturer or importer is required to file the Federal Cigarette Labeling and Advertising Act compliance statement with the United States Department of Health and Human Services on an annual basis and when the ingredients of their cigarettes change or there is a change in the warning requirements. Additionally, cigarettes will not be released from the United States Customs Services without the appropriate labeling. Therefore, the statement need only be filed with the Tax Commissioner annually at a time established by the Tax Commissioner and at any other time the statement is required to be filed with the federal government.

State Tax Department
Title 110
Series 17

12.3.5.a.1. Any cigarettes found without either the appropriate stamps or labeling shall be contraband goods and may be seized by the Tax Commissioner, or by any peace officer of the State at the direction of the Tax Commissioner, without a warrant.

12.3.5.b. The provisions of West Virginia Code § 16-9B-1 et seq., impose on tobacco product manufacturers the requirement to be either a participating manufacturer and fulfill financial obligations under the master settlement agreement or place certain amounts of moneys in a qualified escrow fund. Because the status of the manufacturer must be monitored to assure satisfaction of financial obligations, the manufacturer or importer is required to include with its filings a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of that statute.

§ 110-17-13. Audits. - The Tax Commissioner may make periodic audits of accounts of all wholesalers, sub-jobbers, vending machine operators and retail dealers in this State and of out-of-state wholesalers, sub-jobbers and vending machine operators doing business in the State. All records shall be made available during the conduct of audits of the accounts.

13.1. Whenever an audit made by the Tax Commissioner reveals a material discrepancy, tax liability, underpayment or other amount due, an assessment will be made.

§ 110-17-14. Administrative Sanctions.

14.1. If a violation of West Virginia Code § 60-9-1 et seq. occurs, the State Tax Commissioner may revoke or suspend the violator's authorization to affix the tax stamps.

14.2. Cigarettes acquired, held, owned, possessed, transported, imported into, or sold or distributed in this State in violation of either West Virginia Code § 11-17-1 et seq. or West Virginia Code § 60-9-1 et seq. are considered contraband under West Virginia Code § 11-17-1 et seq., and are subject to seizure and forfeiture as provided therein. Such cigarettes are considered contraband whether the violation is knowing or otherwise.

14.3. The State Tax Commissioner may assess any tax, interest and penalty on any product acquired, possessed, sold, or offered for sale in violation of either West Virginia Code § 11-17-1 et seq. or West Virginia Code § 60-9-1 et seq.

State Tax Department
Title 110
Series 17

§ 110-17-15. General Enforcement Provisions.

15.1. In order to assist in the enforcement of the excise tax, the State Tax Commissioner may request information from any state agency, constitutional officer or local agency. Additionally, pursuant to the provisions of West Virginia Code § 11-10-5d, 11-10-5s or any other provisions of the West Virginia Code, the Tax Commissioner may enter into an exchange of information agreement with federal agencies, the District of Columbia, any other state or subdivision thereof, or agencies or governmental subdivisions of this State. Specifically, the Tax Commissioner is authorized to enter into an exchange of information agreement with the Alcohol Beverage Control Administration to facilitate the enforcement of West Virginia Code § 60-9-1 et seq.