

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX
email: tanders@mail.wvnet.edu



Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman

Debra A. Graham, Counsel
Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Asst.

September 11, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: John Montgomery
State Tax Commission
P.O. Box 1005
Charleston, WV 25324

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Cigarette Excise Tax, 110CSR17**

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA
SEP 13 11 31 AM '00
FILED

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
(a) as originally filed
(b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons
for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement
of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Cigarette Excise Tax, 110CSR17

PERTINENT DATES

Filed for public comment: June 16, 2000

Public comment period ended: July 17, 2000

Filed following public comment period: July 24, 2000

Filed LRMRC: July 24, 2000

Filed as emergency: June 16, 2000

Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 7 11 22 AM '00

FILED

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 requires every wholesaler and sub-jobber selling cigarettes in this state to first apply for and obtain a business registration certificate and license for the purpose of selling cigarettes, other tobacco products and tobacco wrappers. It provides that a wholesaler may not sell cigarettes to any person other than another wholesaler, sub-jobber or a retail dealer, and a person other than a wholesaler or sub-jobber may not sell cigarettes to a retail dealer. It also provides that unless stamps have been previously affixed, a wholesaler is required to affix stamps to cigarettes prior to delivery to any person in this state.

This section also requires retail dealers and cigarette vending machine operators to obtain a business registration certificate and license. It provides that it is the location of

the vending machine and not the vending machine that is subject to business registration and states that the liability for obtaining the business registration certificate is on the person responsible for stocking the machine and collecting the money from sales. It sets forth various examples of liability.

This section also requires cigarette vending machine operators to obtain an invoice for each shipment and to retain the invoice for three years. It requires the operator to file a monthly report showing total purchases and sales. It provides that if unstamped cigarettes are found in any vending machine that both the cigarettes and the vending machine are contraband goods and subject to seizure. It requires cigarettes be placed in the machine in such a manner that when they are displayed, the stamps affixed thereto are clearly visible.

Section 4 relates to cigarette tax paid stamps. It sets forth the form and description of hand applied cigarette tax stamps, cigarette tax paid meter impressions and cigarette tax paid stamps heat applied by machine. It provides that stamps only be purchased from the Tax Commissioner and requires remittance at the time of purchase unless the purchaser has secured a cigarette tax purchase credit bond. It allows wholesalers to obtain a continuous cigarette tax credit purchase bond in order to purchase cigarette stamps on credit.

This section provides that cigarette tax stamps are not transferrable and provides for the redemption of unused, mutilated or destroyed stamps.

Section 5 relates to the affixing of stamps. It requires wholesalers to affix stamps to the bottom of the package prior to delivery so that the stamp will not be destroyed upon consumption of the cigarettes, but will evidence payment of the tax. It also provides that retail dealers have no authority to affix stamps.

Section 6 relates to the authority and permit for use of metering devices and heat applied stamp machines. It allows registered wholesalers to apply to the Tax Commissioner for authority to use metering devices and heat applied stamp machines.

Section 7 relates to the sale of cigarettes on railways and buses. It states that common carriers operating club or dining cars upon which cigarettes are sold are not 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 this State. It requires the filing of monthly reports and the payment of the applicable excise tax.

Section 8 which relates to state institutions and the excise tax, requires all cigarettes sold for use for resale in a state institution to have stamps affixed to the package.

Section 9 relates to metering machines. It requires that meter impressions be clear and easily distinguished. If the impressions are not clear and easily distinguished, the Tax Commissioner may prohibit the wholesaler from purchasing additional meter units or revoke the wholesaler's authority to use the metering machine.

Section 10 relates to the contractual obligations of meter users and stamp machine users. It states that neither the Tax Commissioner nor the State is a party to any contract for the purchase or lease of the machine and that neither entity warrants the machine.

Section 11 relates to prohibitions. It prohibits wholesalers from transferring unstamped cigarettes to another person or stamping cigarettes that they do not own and requires them to maintain a complete daily stamping record. It prohibits wholesalers and their employees from removing unstamped cigarettes from stock or consuming unstamped cigarettes. This section also contains prohibitions regarding imported cigarettes.

Section 12 relates to records and reports. It requires persons required to report to the Tax Commissioner to maintain records for a period of three years. It requires the recording of each delivery ticket or invoice for each purchase or sale of cigarettes upon a serially numbered invoice containing certain specified information. It requires the tax be set out separately or that the invoice indicate the taxes included in the total price. It requires all entities to obtain invoices and to retain them for three years. It requires wholesaler, sub-jobbers and vending machine operators to file monthly reports and sets forth the information that must be contained in the report.

This section also allows the Tax Commissioner to exchange information with the Attorney General relating to trade, transport, possession, transfer and sales of cigarettes and tobacco products and related products to aid in the enforcement of the tobacco

settlement agreement. The term "cigarette" is defined for the purposes of this subdivision.

This section also sets forth information which a wholesales/distributor of imported cigarettes must submit with its monthly report.

Section 13 relates to audits and provides that the Tax Commissioner may make periodic audits of accounts of all wholesaler, sub-jobber, vending machine operators and retail dealers in this state and out-of-state wholesalers, sub-jobbers and vending machine operators doing business in this state.

Section 14 relates to administrative sanctions. It provides that if an import violation occurs, the Commissioner may revoke or suspend the violator's authorization to affix tax stamps. Cigarettes which are imported into, sold, etc. in this state in violation of the law are contraband and subject to seizure and forfeiture.

Section 15 relates to general enforcement provisions. It allows the Tax Commissioner to request information or enter into an exchange of information agreement with federal and state agencies.

AUTHORITY

Statutory authority: W.Va. Code, §11-10-5, which provides, in part, as follows:

...The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-nine-a of this code...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.