

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 11-17-18, Series XI

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FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 2/8/67

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Series XI

Series 11

CIGARETTE TAX

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 11/27/67

G. Thomas Battle
State Tax Commissioner

Revised
Effective February 15, 1967
Revised
Effective January 1, 1968

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Tax Department

Chapter 11-12 and 17
(1967)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT

Chapter 11-12 and 17
Series XI

(1964)

Subject: General Operations in the Office of the Cigarette Tax
Division

Section 1. General.

1.01 Scope. These regulations establish general rules and operating procedures in the offices of the Cigarette Tax Division.

1.02 Authority. These regulations are issued under authority of West Virginia Code, Chapter 11, Article 17, Section 10.

1.03 Effective Date. These regulations are promulgated on November 15, 1967 and become effective on January 1, 1968.

1.04 Filing Date. These regulations were filed in the Office of the Secretary of State on December 1, 1967.

1.05 Certification. These regulations are certified authentic by the State Tax Commissioner by certification number _____.

Section 2. Cigarette Dealer Requirements.

2.01 Wholesale Dealers and Sub-Jobbers. It shall be unlawful for any wholesale dealer or sub-jobber in this state, or out-of-state wholesaler or sub-jobber, doing business in this State, to engage in the business of selling cigarettes without first having obtained a license from the commissioner, as provided for in Chapter 11, Article 12, Section 6-a of the Code of West Virginia. Application shall be made on the form or forms as

prescribed and furnished by the commissioner. This license is required in addition to the store license as provided by Chapter 11, Article 13-a of the Code of West Virginia.

No wholesale dealer shall sell cigarettes to any person in this State other than a licensed wholesaler, sub-jobber or retail dealer, and no person in this State other than a licensed wholesale dealer or sub-jobber shall sell cigarettes to a licensed retail dealer. A licensed retail dealer shall mean a retail dealer who has secured a current retail cigarette dealers license.

For the purpose of these regulations, the words "stamp or stamps" shall be construed to mean decalcomania stamps which are applied by hand after being submerged in water and not machine applied, or meter impressions as applied by Pitney-Bowes metering and ink transfer devices, or heat applied stamps such as are manufactured by The Meyercord Company of Chicago and applied by a machine furnished by The Meyercord Company or heat applied stamps manufactured or furnished by The American Decalcomania Company of Chicago and applied by a machine furnished by The American Decalcomania Company or by a machine furnished by The Meyercord Company.

The use or application of any other kind or type of stamp or stamps or meter impressions other than those outlined above is expressly forbidden and such use or application will be con-

sidered as a violation of these regulations and the person or persons who violates these regulations shall be subject to the penalties as provided in the laws of West Virginia.

Unless stamps have been previously affixed, they shall be so affixed by each wholesale dealer in this State prior to delivery of any cigarettes to any person in this State. Any exception to the sale of unstamped cigarettes shall be approved in writing by the commissioner.

No wholesale dealer may sell unstamped cigarettes to another wholesale or retail dealer except in interstate commerce. When a wholesaler shall sell unstamped cigarettes to a retail or wholesale dealer in a state other than West Virginia, and who is properly licensed in the state in which the cigarettes are being delivered, the seller shall make complete records of all details, including name of purchaser and his full address, also names of brands, quantity, date shipped and file such record each month with the commissioner in addition to filing his regular cigarette dealers monthly report to the commissioner. A wholesale dealer is privileged to make sales of stamped cigarettes to other wholesale dealers. Whenever a wholesale dealer is serving an area as a distributor for a particular brand of cigarettes, he will be permitted to make sales of unstamped cigarettes; however, it is to be definitely understood that this is not to be construed as

sanctioning any other unstamped sales. Such sales are to be reported to the commissioner on Schedule A.

2.02 Retail Dealers. No retail dealer of cigarettes shall sell or offer for sale cigarettes in West Virginia without first having obtained a Cigarette Retail Dealers License, at no charge, from the commissioner. Application shall be made on forms prescribed and furnished by the commissioner. This license is in addition to the store license as provided by Chapter 11, Article 13-a of the Code of West Virginia.

2.03 Cigarette Vending Machine Operators. Any person or persons, partnership, corporation, or association who keeps, maintains, operates or owns one or more cigarette vending machines will be classified as a vending machine operator. He shall obtain a license as a vending machine operator from the commissioner before selling or offering for sale cigarettes regardless of whether he is purchasing stamped cigarettes or is purchasing unstamped cigarettes direct from the manufacturer. Provided, further, if the operator purchases cigarettes direct from the manufacturer, he shall have secured a wholesaler license as required under provisions of Chapter 11, Article 12, Section 6-a of the Code of West Virginia.

It is clear from the definition of "wholesaler" that the purpose and object of requiring a Cigarette Vending Machine Operator, who purchases unstamped cigarettes directly from the

manufacturer, to secure a "Wholesaler" License is to establish control, accountability and tax liability covering unstamped cigarettes being brought or transported into West Virginia, even though, for the purposes of this article, the sale of cigarettes through vending machines is construed as sale at retail.

It being intended that the ultimate incidence for the liability of the license for the operation of a cigarette vending machine shall be on the owner of the machine and 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. The leasing of cigarette vending machines will not be considered as a transfer of ownership of the machines and where a lessor-lessee situation exists, the lessor will be liable for the applicable license and fees.

Each cigarette vending machine operator in this State shall procure duplicate invoices showing the amount and value of each shipment of cigarettes received by him after the first day of July, one thousand nine hundred sixty-three, the date thereof, and the name of the shipper and shall retain one copy of said invoice for a period of two years subject to the use and inspection of the commissioner and shall file one copy of said invoice, or a complete list of all invoices, with the office of the commissioner together with a monthly report showing total purchases,

stamped or unstamped, and sales of cigarettes on forms provided by the commissioner, and such other information as the commissioner may require.

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

If unstamped cigarettes be found in any vending machine, both the cigarettes and the vending machine shall be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the State at the direction of the commissioner, his agents or employees, without a warrant.

In addition to these Rules and Regulations, all cigarette vending machine operators are subject to all other applicable laws and rules and regulations as provided for in the Cigarette Excise Tax Laws and including Chapter 11, Articles 12, 13-a and 17 of the Code of West Virginia.

Section 3. Cigarette Tax Paid Stamps. For the purpose of this regulation and Article 17 of Chapter 11, the words "Cigarette Tax Paid Stamps" will hereinafter be referred to only as "Stamps". The Cigarette Tax Law provides two methods of evidencing the payment of the tax, affixing authorized stamps or, by ink impressing onto packages of cigarettes the authorized cigarette tax indicia by a metering device.

3.01 Form and Description of Hand Applied Cigarette Tax Paid 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; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp".

When stamps are ordered from the manufacturer, the colors to be used will be specified by the State Tax Commissioner.

The manufacturer shall copyright the design of the stamps and the design remains the exclusive property of the State.

The face of the stamp shall contain a secret mark known only to the manufacturer and to the State Tax Commissioner, and to such other persons as the proper officials may designate.

The stamps shall be made on first grade decalcomania paper and the paper stock shall contain safety protection features which shall safeguard against counterfeiting.

The inks used in the printing of the stamps shall contain chemicals to aid in detecting counterfeit stamps.

No deviation from the above form or description shall be allowed without the expressed written consent of the State Tax Commissioner.

3.02 Form and Description of Cigarette Tax Paid Meter

Impressions. For the purpose of this regulation and Article 17 the words "Cigarette Tax Paid Meter Impressions" will hereinafter be referred to as "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 design and lay-out of the meter impressions made by the metering device upon each package of cigarettes, shall be in accordance with the specifications furnished by the manufacturer of the metering device to the State Tax Commissioner.

Each metering device shall have certain symbols, numbers, ink numbers and other markings as are designated by the manufacturer of the meter to identify the authenticity and genuineness of the impression. Each meter shall bear a meter number. A code number for each meter shall also be designated by the manufacturer of the meter.

All of the information pertaining to the symbols, numbers, markings, ink numbers, meter numbers and code numbers, together with a lay-out representing the impressions which each meter will impress upon ten packages of cigarettes within a carton when affixed according to code, shall be filed in the Office of the State Tax Commissioner.

The meter impressions shall be made upon the bottom of each package of cigarettes and, as near as possible, the outside lines of the impression shall be equidistant from the outside edges of the bottom of the package.

Each metering device shall have ten dies furnished by the manufacturer and the use of any dies or ink in the metering device other than those furnished by the manufacturer shall constitute a violation of Article 17 and shall be considered as counterfeiting the Cigarette Tax Paid Meter Impression.

3.03 Form and Description of Cigarette Tax Paid Stamps Heat Applied by Machine. For the purpose of this regulation and Article 17, the words "Cigarette Tax Paid Stamps Heat Applied by Machine" will hereinafter be referred to as "heat applied stamps". 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; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp".

When stamps are ordered from the manufacturer, the colors to be used will be specified by the State Tax Commissioner.

The manufacturer shall copyright the design of the stamps and the design remains the exclusive property of the State.

The heat applied stamps will consist of four impressions or layers including safety tint lettering and must be produced by the intaglio process. All stamps and paper must contain proven protective features to guarantee against illegal reproduction. Bidder shall submit a separate confidential detailed statement to the State Tax Commissioner, explaining fully his system for the protection of the State against unlawful reproduction, and his method by which such reproduction can be detected by inspectors of the State of West Virginia. No deviation from the above form or description shall be allowed without the expressed written consent of the State Tax Commissioner.

Heat applied stamps are only sold in complete rolls with each roll containing 30,000 stamps. Dealers may purchase hand applied stamps to be affixed on special brands of cigarettes and

will be allowed the four per cent discount when hand applied stamps are purchased in multiples of one hundred.

Each licensed cigarette dealer who desires to use the heat applied stamps will secure authority, prior to ordering a machine to affix the stamps, and the individual machine to be used will be registered with the State Tax Commissioner and the dealer will not remove the machine from his premises nor dispose of the machine, unless the dealer has secured prior written approval from the Tax Commissioner.

3.04 Purchase of Cigarette Tax Paid Stamps. Stamps can be purchased only from the Commissioner's Office or his duly authorized deputy. The sale of stamps is made upon receipt of the requisition form prescribed by the Commissioner and accompanied by the proper remittance. No stamps will be shipped nor meters set prior to receipt of payment for same.

The stamp will bear the following inscription "State of West Virginia - Cigarette Tax Stamp".

The law specifies a tax of three cents for each ten cigarettes or fraction thereof; therefore, the tax for a package of twenty (20) cigarettes will be six (6) cents on and after July 1, 1961. Hand applied stamps will be sold in multiples of one hundred only. A commission of four per cent will be allowed in the purchase of stamps whenever they are purchased in lots of ten thousand or more, as an allowance for affixing and prepaying the

cigarette tax. Provided further, that dealers using a meter, or Fuson machine or machine for applying heat applied stamps, may purchase stamps to be applied by hand on special brands of cigarettes and will be allowed the four per cent discount when hand stamps are purchased in multiples of one hundred.

Cigarette tax stamps are for the use of the person to whom the stamps are shipped or sold and are not transferrable. In case a dealer ceases business or stops stamping, any unused stamps may be returned to the commissioner for refund as provided for in Article 17 of Chapter 11 of the Code of West Virginia.

Section 4. AFFIXING AND CANCELING STAMPS.

4.01 Wholesale Dealers. Wholesale dealers shall affix and cancel stamps or print meter impressions on each package of cigarettes prior to delivery of the cigarettes to any sub-jobber or retail dealer in this State. The stamp or 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.

The commissioner will redeem any unused or mutilated, but identifiable stamps, that any licensed wholesale dealer may present for redemption, or may refund for stamps destroyed by fire or flood, on written verified requests made by the purchaser, his adminis-

trators, executors, successors, or assigns, and refund ninety-five per cent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. Such requests for redeeming or refunding shall be verified to the satisfaction of the commissioner.

In the event a retail dealer suffers loss of cigarette stamps as a result of fire or flood, the retailer will file a verified request for refund with the wholesaler or sub-jobber from whom the retail dealer had purchased the stamped cigarettes. 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 of the State Health Department may also be attached to the request for refund when the agent has declared certain packages of cigarettes as unfit for use or sale.

A refund can only be made to the person who has paid taxes to the State; therefore, the retailer must secure his refund through the wholesaler who originally paid the tax.

Stamps or meter impressions on cigarettes returned to the manufacturers will be subject to refund upon the filing of an affidavit in duplicate issued by the manufacturer evidencing the destruction of stamps or meter impressions. Refunds will be on the basis of the procedure outlined in the preceding paragraph.

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

Wholesale dealers are specifically prohibited from stamping any cigarettes to which they have not established ownership.

4.02 Retail Dealers. Whenever any packages of cigarettes are found in the place of business of a retail dealer without the stamps affixed the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of the cigarette statute.

Section 5. AUTHORITY AND PERMIT FOR USE OF METERING DEVICES, AND FUSON HEAT APPLIED STAMP MACHINES.

5.01 Authority and Permit for Use of Metering Devices.

Licensed wholesalers may, upon application, secure authority for use of Pitney Bowes metering machines for the purpose of imprinting a stamp on each package of cigarettes as evidence of payment of the tax. Such device is to be sealed by the commissioner or a deputy, or agent authorized by the commissioner before being used, and which device shall be used only in accordance with regulations prescribed by the commissioner. Use of heat applied or Fuson Decalcomania stamps has also been approved by the commissioner.

A wholesale dealer electing to use a metering device shall be required to pay the tax in advance unless the dealer purchases stamps on credit as provided by Section 11, Article 17, Chapter 11

of the Code. Such dealer shall deliver the metering device to the commissioner, or his agent authorized for this purpose, who shall seal the meter in accordance with the prepayment made, or the appropriate charge is made to his bond account. A discount of four per cent of the purchased meter setting will be allowed as a commission for affixing stamps by impression with such metering device. No further cancellation will be required where these metering devices or heat applied stamps are used as evidence of payment of tax.

5.02 Authority and Permit to Use Fuson Heat Applied Stamp Machine. Licensed dealers may, upon application, secure authority from the commissioner to use Fuson heat applied stamps and machines for applying the stamps. Forms for application for authority to use Fuson heat applied stamps and machines will be furnished by the Commissioner.

Section 6. DEALER'S RECORDS AND REPORTS.

6.01 Records. From and after the first day of July, one thousand nine hundred sixty-three, and at the time of delivering cigarettes to any person, each wholesale dealer and sub-jobber in this State or out of State wholesale dealer or sub-jobber authorized to do business in this State, shall make a true copy of each invoice showing the date of delivery, the amount and value of each shipment of cigarettes delivered and the name of the purchaser to whom delivery is made and retain the same for a period of at

least two years, subject to the use and inspection of the commissioner.

Each wholesale dealer, sub-jobber, retail dealer and vending machine operator in this State and each out-of-State wholesale dealer, sub-jobber and vending machine operator authorized to do business in this State shall procure and retain invoices showing the amount and value of each shipment received by him after the first day of July, one thousand nine hundred forty-seven, the date thereof and the name of the shipper and shall retain the same for a period of at least two years subject to the use and inspection of the commissioner.

It is required that each wholesale dealer, sub-jobber and vending machine operator file duplicate invoices covering all purchases with the monthly report as substantiating evidence of the purchase total for the month. This plan will assist in the elimination of errors in the report as well as facilitate the auditing program. It has been established that whenever the exact purchase total is known many discrepancies have been found in otherwise correct reports. The manufacturers have indicated to the commissioner that they are willing to furnish the duplicate copies that are necessary in aiding all interested parties in the State cigarette tax program. Be sure to indicate the exact date the cigarettes were received into stock. The invoice shall also

reflect any shortage in the shipment so that there would be an accounting for only those cigarettes of a salable nature.

All books, papers, invoices and records of any wholesale dealer, sub-jobber or retail dealer in this State, showing his 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 commissioner, or his authorized agent; and the commissioner or a deputy 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 whether or not each dealer is complying with the provisions of the cigarette laws and rules and regulations.

6.02 Reports. Each wholesale dealer, sub-jobber and vending machine operator in this State and each out-of-State wholesale dealer, sub-jobber and vending machine operator authorized to do business in this State shall make monthly reports, attaching thereto copies of invoices of all purchases of cigarettes covered by each monthly report, to the commissioner, and in the discretion of the commissioner, retail dealers may be required to furnish similar reports. Such reports shall reflect the quantity of cigarettes on hand the first day of the month, the purchases of unstamped and stamped cigarettes, the quantity of stamps affixed, the quantity of cigarettes sold or otherwise disposed of, and the closing inventory of cigarettes and stamps.

The report shall be filed with the commissioner on or before the fifteenth day of each month. Incorrect or incomplete reports will be returned by the commissioner or an amended report will be requested. Whenever a dealer shall fail to file a return within ten days after formal notification by the commissioner or shall fail to submit additional evidence or records required by the commissioner, he shall be adjudged as being delinquent. No penalty will be invoked for the first such offense, but the second such offense will cause the commissioner to deny a discount on stamp or meter impression purchases. The commissioner may suspend the license to deal in cigarettes following the second offense. Repeated infractions will result in a cancellation of the license to deal in cigarettes.

6.03 Invoices. Each wholesale dealer, sub-jobber, retail dealer and vending machine operator in this State and each out-of-State dealer and vending machine operator authorized to do business in this State must keep all invoices covering purchases separate and apart from other invoices.

Invoices must be plainly marked on the front showing the exact date that the shipment of cigarettes was received from the manufacturer or other source. The invoice should reflect the shortage in the shipment, if any, also the quantity of cigarettes, if any, refused.

Section 7. AUDITS. It shall be the responsibility of the commissioner to make periodical audits of accounts of all cigarette dealers in the State and out-of-state dealers doing business in the State, once each year if practicable. In the conduct of audits of cigarette accounts, every person subject to the provisions of this article shall be required to make his records available for inspection.

Section 8. 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, which are exposed for sale or which will be offered for sale or sold in the State of West Virginia. Monthly or quarterly reports must be filed and payment made to the commissioner concerning the applicable cigarette 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 or within fifteen days following the end of each quarter.

Section 9. CIGARETTE VENDING MACHINES. On and after April 15, 1956, no cigarette vending machines shall be placed in operation within this State which 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 the West

Virginia cigarette tax stamps or meter impressions affixed thereto shall be clearly visible.

Operators of machines placed in operation prior to April 15, 1956, which are of the closed type, that is, none of the packages of cigarettes are visible, are required at the oral request of the commissioner, without additional notice, to make an employee available during business hours to accompany the commissioner's representatives and open any and all such machines as they may desire to inspect.

No cigarette vending machines should be purchased for operation in West Virginia after April 15, 1956, before they have been determined as acceptable by the commissioner. Adherence to this policy will eliminate licensing difficulties and the possibility of having the machines declared unsatisfactory, conceivably resulting in complete loss of the capital invested. The commissioner shall issue certifications for those machines which are acceptable. These certifications will serve as instructions to the various licensing agents that they are authorized to process the necessary licenses.

Section 10. METERING MACHINES, THEIR INSPECTION AND SETTING.

Meter impressions must be clear and easily distinguished. It is necessary that the metering machine be kept clean at all times to insure clear impressions by which the dealer and his cigarettes may be definitely identified.

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

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

Section 11. RECORDS TO BE MAINTAINED BY WHOLESALE DEALERS, SUB-JOBBER AND VENDING MACHINE OPERATORS. All wholesale dealers, sub-jobbers and vending machine operators shall maintain a ledger record, receiving record or its equivalent of all cigarette transactions. This record must disclose:

1. A monthly inventory, taken at the beginning of business on the first business day of each month or the close of business on the last business day of each month, preferably the latter, of all cigarettes, stamped and/or unstamped.
2. Total purchases of cigarettes daily, weekly or monthly, from all sources, supported by copies of invoices from each source of supply.
3. Total sales of cigarettes daily, weekly or monthly, stamped and unstamped, in West Virginia, supported by sales slips or invoices to each customer or records of sales through vending machines.

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, or both, shall be kept in the same book. The record must show:

- (a) Stamps or meter impressions, or both, on hand the last day of the previous month.
- (b) * Stamps or meter impressions, or both, bought subsequently.
- (c) Total stamps or meter impressions, or both, affixed during the month.
- (d) Stamps or meter impressions, or both, on hand at close of business on the last business day of the month or at the beginning of business on the first business day of the month.

* The dealer's copy of the requisition for cigarette tax stamps and the dealer's record of meter settings must be kept on file at all times.

- (aa) Our requisition number for purchases of stamps, the date of requisition and the number from "the acknowledgment of receipt of stamps" form which you are

required to return to the commissioner are to be entered in the record book on the exact day received, together with the amount of stamps received and the date.

A complete record must be maintained showing the quantity of stamps used daily.

- (bb) Each dealer using a metering device shall maintain a complete record at all times, showing the exact usage of units on each occasion of the use of the machine. This record should be kept daily and available at all times for inspection by the commissioner. Pitney-Bowes Form No. 3110 should be used if Pitney-Bowes metering device is used, or if heat applied or fuson stamping device is used, on forms provided for that method.

Section 12. WHOLESALE DEALERS, SUB-JOBBER, RETAIL DEALERS AND VENDING MACHINE OPERATORS. SALES RECORDS.

12.01 Wholesale Dealer. Each wholesale dealer and sub-jobber, at the time of delivering cigarettes to any person regardless of whether stamped or unstamped, shall make a true copy of the invoice showing the date of delivery, the purchaser and the quantity. Such records shall be maintained for a period of at least two years, subject to the use and inspection of the commissioner.

Whenever a wholesale dealer claims tax exemption by virtue of sales outside the State, the propriety of such exemption shall be determined by evidence submitted on Form CT-10-B, indicating the date, purchaser and quantity of cigarettes. Allowance of the claimed exemption will subsequently be determined by an examination of the dealer's and purchaser's records by the commissioner.

12.02 Sub-Jobber Dealer. Each sub-jobber dealer shall at the time of delivering cigarettes from his stock to retail outlets make a true copy of the invoice showing the date of delivery, the amount and the retail outlet to which stock was released. Such records are to be maintained for a period of at least two years, subject to the use and inspection of the commissioner.

12.03 Retail Dealer. It is suggested that the retail dealer maintain a sales record for his own protection. It would appear practical to keep a record of sales on a weekly rather than daily basis. The purchase invoices, if kept accurately, should provide ready information as to the sales.

12.04 Vending Machine Operator. Monthly reports and schedules will be required for a vending machine operator as are required in Section 6 of these regulations and in such manner as may be prescribed by the commissioner.

Special attention is called to the matter of purchases. A detailed record is to be kept of all stamped and unstamped ciga-

rette purchases. This is required in order to provide a complete record of the cigarette transactions.

Neither the dealer, his employees nor other parties may remove from stock or consume unstamped cigarettes without entering such transaction on a record which must be kept. Each and every package of cigarettes disposed of must be accounted for by a record available for inspection.

Whenever an audit made by a representative from the commissioner's office reveals a discrepancy, a finding of fact will be made.

Section 13. METERING CIGARETTES FOR OTHERS PROHIBITED. Each Pitney-Bowes metering machine user, or any other tax stamp applying device user, will impress or stamp only those cigarettes to which he has established ownership and shall maintain a complete daily record of his stamping, which shall be available for inspection by the commissioner or his agents at any time. Any violation of this regulation shall be considered a violation of law and subject to penalties provided therefor.

Section 14. CONTRACTUAL OBLIGATIONS OF METER USERS AND STAMP MACHINE USERS.

14.01 Contractual Obligations of Meter Users. The commissioner has authorized the use of Pitney-Bowes metering machines for the purpose of impressing or printing the stamp on each package of cigarettes as evidence of payment of tax.

Rental contracts for meters are contractual between Pitney-Bowes, Inc. and the cigarette dealer. These contracts are not submitted to the commissioner for approval, but his granting permission for the use of the machine does in effect approve the agreement of the two parties as to the usage and care of the machine. The contract specifically provides:

"The user agrees to exercise care in the handling and operation of the meter to keep the stamping dies clean so as to produce legible stamps at all times; to run the meter only at its normal rate of speed; to employ no special attachments, printing plates, or other devices, unless approved by the company; and to use the approved stamping inks and standard supplies offered by, or meeting the specifications of the company."

The use of any inks other than those approved by Pitney-Bowes will abrogate the agreement between the commissioner and the user of a metering device, authorizing the use of such a device.

14.02 Contractual Obligations of Users of Fuson Heat Applied Stamp Machines. The commissioner has authorized the use of Fuson heat applied stamps and use of hand operated and automatic machines for the application of Fuson stamps as manufac-

tured by The Meyercord Company for the purpose of evidencing the payment of the West Virginia Cigarette Excise Tax. Rental or lease contracts and agreements are contractual between The Meyercord Company and the licensed cigarette dealer.

Application by each dealer must be made to the commissioner requesting approval for use of the Fuson machine and the dealer agrees not to relinquish nor to transfer ownership or permit any other dealer to use the machine without prior written approval of the commissioner.

Section 15. STATE INSTITUTIONS AND THE CIGARETTE TAX. Wholesale dealers or manufacturers should give careful consideration to the following facts before considering the sale of unstamped cigarettes to State institutions:

- (a) Since a manufacturer is neither a wholesaler or retailer as defined by the cigarette tax statute, the tax could not be imposed on him.
- (b) The State cannot properly levy a tax upon itself.
- (c) The cigarette tax law contains a use tax section which applies to the consumer or individual who is a recipient of the cigarettes. The use tax section of the statute make it mandatory that any person receiving cigarettes on which the tax has not been paid previously must file a report and remit the applicable tax to the commissioner.

State institutions are not eligible to receive cigarettes for inmates' or employees' consumption tax free.

FILING OF ADMINISTRATIVE REGULATIONS

References are to Sections in W. Va. Adm. Reg. 11-12 and 17,
Series XI

Agents for Metering, § 5

Audits, § 7

Authority, This Regulation, § 1.02

Certification, This Regulation, § 1.05

Common Carrier, § 8

Contracts, § 14

Custody of Stamps, § 3

Dealers, § 6

 Records, § 6.01

 Reports, § 6.02

 Invoices, § 6.03

Effective Date, this Regulation, § 1.03

Filing Date, This Regulation, § 1.04

License Revocation, § 6.02

Metering, § 3

 Agents, § 5

 Inspection of Machines, § 10

Permits, § 5

Records, § 6

 Dealer's §§ 6.01, 11, 12

Refunds, § 4.01

Reports, § 6

FILING OF ADMINISTRATIVE REGULATIONS

References are to Sections in W. Va. Adm. Reg. 11-12 and 17,
Series XI

Retail Dealers, § 2.02

Scope, § 1.01

Stamps, § 3

 Affixing, § 4

 Cancellation, § 4

 Description of Hand Applied Cigarette Tax Paid Stamps,
 § 3.01

 Description of Cigarette Tax Paid Meter Impressions,
 § 3.02

 Description of Cigarette Tax Paid Stamps Heat Applied
 by Machine, § 3.03

 Discounts, § 3

 Metering in Lieu of Stamping, § 3

 Mutilated or Destroyed, § 4.01

 Purchase of Cigarette Tax Paid Stamps, § 3.04

State Institutions, § 15

Vending Machine Operators, §§ 2.03, 9

Wholesale Dealers and Sub-Jobbers § 2.01

 Records, § 6

 Sales to Licensed Dealers, § 2.01



State of West Virginia

Charleston 25305

February 6, 1967

G. THOMAS BATTLE
STATE TAX COMMISSIONER

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

(Amendments)

Series 11

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

Dear Sir:

Having complied with the provisions of Code 29A-7-2, we enclose herewith two copies of new pages of regulations issued by the State Tax Commissioner to establish general operating rules and procedures in the Office of the Cigarette Excise Tax Division. These new pages are designated as pages 6, 6a, 6b, 6c, 6d and 7 of Series XI of Chapter 11, Article 17, of the West Virginia Administrative Regulations.

Also enclosed is amended page 1 of the index section of said regulations which replaces the present page 1 of the index section. Page 2 of the references has been amended to date.

I hereby certify that the attached seven pages, numbered 1, 6, 6a, 6b, 6c, 6d and 7, and reference page 2 are true and accurate copies of the amendment adopted by the State Tax Commissioner to become effective on February 15, 1967.

Very truly yours,

G. Thomas Battle
State Tax Commissioner

GTB:M
Enclosures

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
FILED DATE 2/8/67

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Series XI

CIGARETTE TAX

G. Thomas Battle
State Tax Commissioner

Revised
Effective February 15, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
FEB 21 1967

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Tax Commissioner

Chapter 11-17-18
(1967)

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- 1.01. Scope
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- 1.03. Effective Date.
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- 4.04. Purchase of Cigarette Tax Paid Stamps

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ROBERT D. GALEY
SECRETARY OF STATE
FEB 28 1967

Section 4. Cigarette Tax Paid Stamps. For the purpose of this regulation and Article 17 of Chapter 11, the words "Cigarette Tax Paid Stamps" will hereinafter be referred to only as "Stamps". The Cigarette Tax Law provides two methods of evidencing the payment of the tax, affixing authorized stamps or, by ink impressing onto packages of cigarettes the authorized cigarette tax indicia by a metering device.

4.01 - Form and Description of Hand Applied Cigarette Tax Paid 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; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp".

When stamps are ordered from the manufacturer, the colors to be used will be specified by the State Tax Commissioner.

The manufacturer shall copyright the design of the stamps and the design remains the exclusive property of the State.

The face of the stamp shall contain a secret mark known only to the manufacturer and to the State Tax Commissioner and to such other persons as the proper officials may designate.

The stamps shall be made on first grade decalcomania paper and the paper stock shall contain safety protection features which shall safeguard against counterfeiting.

The inks used in the printing of the stamps shall contain chemicals to aid in detecting counterfeit stamps.

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SECRETARY OF STATE
THIS DATE 2/8/67

No deviation from the above form or description shall be allowed without the expressed written consent of the State Tax Commissioner.

4.02 - Form and Description of Cigarette Tax Paid Meter Impressions.

For the purpose of this regulation and Article 17 the words "Cigarette Tax Paid Meter Impressions" will hereinafter be referred to as "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 design and lay-out of the meter impressions made by the metering device upon each package of cigarettes, shall be in accordance with the specifications furnished by the manufacturer of the metering device to the State Tax Commissioner.

Each metering device shall have certain symbols, numbers, ink numbers and other markings as are designated by the manufacturer of the meter to identify the authenticity and genuineness of the impression. Each meter shall bear a meter number. A code number for each meter shall also be designated by the manufacturer of the meter.

All of the information pertaining to the symbols, numbers, markings, ink numbers, meter numbers and code numbers, together with a lay-out representing the impressions which each meter will impress upon ten packages of cigarettes within a carton when affixed according to code, shall be filed in

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SECRETARY OF STATE
THIS DATE 2/8/67

the Office of the State Tax Commissioner.

The meter impressions shall be made upon the bottom of each package of cigarettes and, as near as possible, the outside lines of the impression shall be equidistant from the outside edges of the bottom of the package.

Each metering device shall have ten dies furnished by the manufacturer and the use of any dies or inks in the metering device other than those furnished by the manufacturer shall constitute a violation of Article 17 and shall be considered as counterfeiting the Cigarette Tax Paid Meter Impression.

4.03 Form and Description of Cigarette Tax Paid Stamps Heat Applied by Machine. For the purpose of this regulation and Article 17, the words "Cigarette Tax Paid Stamps Heat Applied by Machine" will hereinafter be referred to as "heat applied stamps". 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; and on the lower part of the stamp shall appear the words "Cigarette Tax Stamp".

When stamps are ordered from the manufacturer, the colors to be used will be specified by the State Tax Commissioner.

The manufacturer shall copyright the design of the stamps and the design remains the exclusive property of the State.

The heat applied stamps will consist of four impressions or layers including safety tint lettering and must be produced by the intaglio process. All stamps and paper must contain proven protective features to guarantee against

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7/8/67

illegal reproduction. Bidder shall submit a separate confidential detailed statement to the State Tax Commissioner, explaining fully his system for the protection of the State against unlawful reproduction, and his method by which such reproduction can be detected by inspectors of the State of West Virginia. No deviation from the above form or description shall be allowed without the expressed written consent of the State Tax Commissioner.

Heat applied stamps are only sold in complete rolls with each roll containing 30,000 stamps. Dealers may purchase hand applied stamps to be affixed on special brands of cigarettes and will be allowed the four percent discount when hand applied stamps are purchased in multiples of one hundred.

Each licensed cigarette dealer who desires to use the heat applied stamps will secure authority, prior to ordering a machine to affix the stamps, and the individual machine to be used will be registered with the State Tax Commissioner and the dealer will not remove the machine from his premises nor dispose of the machine, unless the dealer has secured prior written approval from the Tax Commissioner.

4.04 Purchase of Cigarette Tax Paid Stamps. Stamps can be purchased only from the Commissioner's office or his duly authorized deputy. The sale of stamps is made upon receipt of the requisition form prescribed by the commissioner and accompanied by the proper remittance. No stamps will be shipped nor meters set prior to receipt of payment for same.

The stamp will bear the following inscription "State of West Virginia - Cigarette Tax Stamp".

The law specifies a tax of three cents for each ten cigarettes or fraction thereof; therefore, the tax for a package of twenty (20) cigarettes will be six (6) cents on and after July 1, 1961. Stamps will be sold in multiples

of one hundred only. A commission of four percent will be allowed in the purchase of stamps whenever they are purchased in lots of ten thousand or more, as an allowance for affixing and prepaying the cigarette tax. Provided further, that dealers using a meter, or Fuson machine or machine for applying heat applied stamps, may purchase stamps to be applied by hand on special brands of cigarettes and will be allowed the four percent discount when hand stamps are purchased in multiples of one hundred.

Cigarette tax stamps are for the use of the person to whom the stamps are shipped or sold and are not transferrable. In case a dealer ceases business or stops stamping, any unused stamps may be returned to the commissioner for refund as provided for in Article 17 of Chapter 11 of the Code of West Virginia.

WEST VIRGINIA
TAX DEPARTMENT
2/9/67

Section 5. AFFIXING AND CANCELING STAMPS.

5.01. Wholesale Dealers. Wholesale dealers shall affix and cancel stamps or print meter impressions on each package of cigarettes prior to delivery of the cigarettes to any retail dealer in this State. The stamp or 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.

The commissioner will redeem any unused or mutilated, but identifiable stamps, that any licensed wholesale dealer may present for redemption, or may refund for stamps destroyed by fire or flood, on written verified requests made by the purchaser, his administrators, executors, successors, or assigns, and refund ninety-five per cent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. Such requests for redeeming or refunding shall be verified to the satisfaction of the commissioner.

Stamps or meter impressions on cigarettes returned to the manufacturers will be subject to refund upon the filing of an affidavit in duplicate issued

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 11-17-18, Series XI

Retail Dealers, § 3.02

Scope, § 1.01

Seizure and Sale of Cigarettes, § 17

Stamps, § 4

 Affixing, § 5

 Cancellation, § 5

 Description of Hand Applied Cigarette Tax Paid Stamps, § 4.01

 Description of Cigarette Tax Paid Meter Impressions, § 4.02

 Description of Cigarette Tax Paid Stamps Heat Applied by
 Machine, § 4.03

 Discounts, § 4

 Metering in lieu of stamping, § 4

 Mutilated or destroyed, § 5.02

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State Institutions, § 16

Transportation of unstamped cigarettes, § 17

Vending Machine Operators, §§ 3.03, 10

Warrant, § 17

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 Records, § 7

 Sales to licensed dealers, § 3.01

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