

STATE TAX COMMISSIONER
Charleston, West Virginia

April 29, 1964

Joe F. Burdett
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Dear Sir:

Enclosed are two copies of regulations issued by the State Tax Commissioner to establish general operating rules and procedures in the office of the Cigarette Tax Division. These regulations are designated Series XI of Chapter 11-17-18 of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by the State Tax Commissioner on April 29, 1964.

Very truly yours,

G. Thomas Battle

G. Thomas Battle
State Tax Commissioner

GTB/kc

Filed in Office of the Secretary of State
of West Virginia 4/29/64
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Series XI

CIGARETTE TAX

Filed in Office of the Secretary of State
of West Virginia 4/29/64
JOE F. BURDETT
SECRETARY OF STATE

G. Thomas Battle
State Tax Commissioner

Revised
Effective
July 1, 1964

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Tax Commissioner

Chapter 11-17-18
(1964)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-17-18
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 9.

1.03. Effective Date.--These regulations are promulgated on April 30, 1964, and become effective on sixty days thereafter.

1.04. Filing Date. These regulations were filed in the Office of the Secretary of State on April 30, 1964.

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

Section 2. Definitions. "Person" includes firms and corporations.

"Wholesale Dealer" shall mean and include any person who: (a) Purchases cigarettes directly from the manufacturer; or (b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or (c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes. Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesale dealer" and a "retail dealer" under the applicable provisions of this article.

"Retail Dealer" includes every person in this State, other than a wholesale dealer, engaged in the business of selling cigarettes irrespective of the quantity or amount or number of sales thereof.

"Vending Machine Operator" shall include every person who owns, operates or maintains one or more coin operated machines for the vending of cigarettes. The words "coin operated machine" shall include those machines designed to operate by using United States minted coins or currency, either notes or certificates of the United States Treasury.

"Sale" includes barter, gift, offer for sale, sale or distribution.

"Commissioner" means the state tax commissioner and where the meaning of the context requires, all deputies and employees duly authorized by him.

Section 3. Cigarette Dealer Requirements.

3.01. Wholesale Dealers. It shall be unlawful for any wholesale dealer in this state, or out-of-state wholesaler, 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.

All reports, inventories and other matters relating to such retail business must be kept separate and apart from the wholesale business. No wholesale dealer shall sell cigarettes to any person in this State other than a licensed wholesale or retail dealer, and no person in this State other than a licensed wholesale dealer shall sell cigarettes to a licensed retail dealer. A licensed retail dealer shall mean a retail dealer who has secured a current 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 considered 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.

3.02. 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.

3.03. 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 dealing in stamped cigarettes or is stamping his own. Provided, further, if the operator purchases cigarettes direct from the manufacturer, he shall have secured the licenses as required under provisions of Chapter 11, Article 12, Section 6-a of the Code of West Virginia. Provided further, that on or before May 31st and on or before November 30th of each year he shall submit a certified statement to the commissioner as to the number of cigarette machines owned and on location in West Virginia.

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, 17, 18 and Chapter 47, Article 13 of the Code of West Virginia.

Section 4. Cigarette Tax Paid Stamps. For the purpose of this regulation and Article 17 and 18 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 stamps or impressions by meter.

4.01. Purchase of hand applied Decalcomania 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 prior to receipt of payment for same.

Stamps are available in denomination of six cents. 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 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 canceling the revenue stamps. 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 transferable. 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.

4.02. RESERVED FOR LATER USE.

4.03. RESERVED FOR LATER USE.

4.04. RESERVED FOR LATER USE

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

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.

5.02. Retail Dealers.--Each retail dealer authorized to deal in unstamped cigarettes, who receives, brings or causes to be brought into this State unstamped cigarettes, shall immediately upon receipt of such unstamped cigarettes at his place of business, so affix such stamp to each package and shall cancel the same by writing the date of cancellation across the face thereof, or shall immediately mark in ink on each unopened box, carton or other container of such cigarettes the word "Received" and the month, day and hour of such receipt and shall affix his signature thereto. He shall in any event open such box, carton or container and affix such stamps to each package therein and cancel same within twenty-four hours after such receipt and prior to the sale of such cigarettes.

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.

Whenever any cigarettes are found in the place of business of such retail dealer without the stamps so affixed and cancelled or not so marked as having been received within the preceding twenty-four hours the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of the cigarette status.

The commissioner will redeem any unused or mutilated, but identifiable stamps, that any licensed retail 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 re-funding shall be verified to the satisfaction of the commissioner.

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

5.03. Cancellation.--Cigarette tax stamps must be cancelled by stamping or writing in ink, which is insoluble in water, across the face thereof, the name of the dealer and the cancellation number assigned by the commissioner, or by some other methods as may be prescribed by the commissioner.

Section 6. AUTHORITY AND PERMIT FOR USE OF METERING DEVICES, AND FUSON HEAT APPLIED STAMP MACHINES.

6.01. Authority and Permit for use of Metering Devices.--Licensed dealers 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 or retail 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 when prepayment

is made. No further cancellation will be required where these metering devices or heat applied stamps are used as evidence of payment of tax.

6.02. 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 7. DEALER'S RECORDS AND REPORTS.

7.01. Records.--From and after the first day of July, one thousand nine hundred forty-seven, and at the time of delivering cigarettes to any person, each wholesale dealer in this State or out-of-state wholesale dealer 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 and retail dealer and vending machine operator in this State and each out-of-state wholesale dealer 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 and chain store dealer 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 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 the provisions of the laws and rules and regulations are being obeyed.

7.02. Reports.--Each wholesale dealer, chain store and vending machine operator in this State and each out-of-state wholesale dealer 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 third offense. Repeated infractions will result in a cancellation of the license to deal in cigarettes.

7.03. Invoices.--Each wholesale dealer, retail dealer, chain store operator or 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 8. 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 9. SALES OF CIGARETTES ON RAILWAYS AND BUSES. Companies 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, but which are not exposed for sale or which will not 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 10. CIGARETTE VENDING MACHINES. On and after April 15, 1956, no cigarette vending machine 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 11. 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 12. RECORDS TO BE MAINTAINED BY WHOLESALE DEALERS, CHAIN STORES AND VENDING MACHINE OPERATORS. All wholesale dealers, chain stores or 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 fusion stamping device is used, on forms provided for that method.

Section 13. WHOLESALE DEALERS, CHAIN STORES, RETAIL DEALERS AND VENDING MACHINE OPERATORS, SALES RECORDS.

13.01. Wholesale Dealer.--Each wholesale dealer, 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.

13.02. Chain Store Dealer.--Each chain store dealer shall at the time of delivering cigarettes from his stock to his retail outlets make a true copy of the invoice showing the date of delivery, the amount and the 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.

13.03. 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 and stamp record, if kept accurately, should provide ready information as to the sales.

13.04. Vending Machine Operator.-- Monthly reports and schedules will be required for a vending machine operator as are required in Section 7 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 cigarette 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 14. 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 15. CONTRACTUAL OBLIGATIONS OF METER USERS AND STAMP MACHINE USERS.

15.01. 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.

15.02. 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 manufactured 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 16. 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.

Section 17. LIABILITY OF CARRIER FOR CIGARETTE TAX. Every person who shall transport cigarettes not stamped as required by this Article 17, Chapter 11 of the Code, upon the public highways, waterways, roads or streets of this State shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes

transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state tax, or the tax, if any, of the state or foreign country at the point of ultimate destination, provided that any common carrier which has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required by Article 17, Chapter 11 of the Code, shall be deemed to have complied with this law and the vehicle or vessel in which said cigarettes are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the cigarettes so transported, the vehicle, or vessel in which the cigarettes are being transported and any paraphernalia or devices used in connection with the unstamped cigarettes, are declared to be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the State when directed by the commissioner, his agents or employees so to do without a warrant.

The commissioner shall immediately thereafter institute a proceeding for the confiscation thereof in the Circuit Court within the jurisdiction of which the seizure is made. The court may proceed in a summary manner and may direct confiscation to the commissioner; provided, however, anything to the contrary notwithstanding that any person claiming to be the holder of a mortgage, conditional sales contract or other security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than such claimant, and if the said claimant acquired his security interest in good

faith and without knowledge that the vehicle or vessel was going to be so used, the court shall either waive forfeiture in favor of such claimant and order the vehicle or vessel returned or delivered to such claimant, or if it is found that the value thereof exceeds the amount of the claim, the court shall order payment of the amount of the claim out of the proceeds of the sale.

FILING OF ADMINISTRATIVE REGULATIONS

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

Agents for Metering, § 6

Audits, § 8

Authority, This Regulation, § 1.02

Cancellation, § 5.03

Certification, This Regulation, § 1.05

Common Carrier, §§ 9, 17

Contracts, § 15

Custody of stamps, § 4

Dealers

Records, § 7.01

Reports, § 7.02

Invoices, § 7.03

Definitions, § 2

Deputies, § 17

Effective Date, This Regulation, § 1.03

Filing Date, This Regulation, § 1.04

License Revocation, § 7.02

Metering, § 4

Agents, § 6

Inspection of Machines, § 11

Permits, § 6

Records, § 7

Dealer's §§§ 7.01, 12, 13

Refunds, § 5.02

Reports, § 7

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

Discounts, § 4

Metering in lieu of stamping, § 4

Mutilated or destroyed, § 5.02

State Institutions, § 16

Transportation of unstamped cigarettes, § 17

Vending Machine Operators, §§ 3.03, 10

Warrant, § 17

Wholesale Dealers, § 3.01

Records, § 7

Sales to licensed dealers, § 3.01