WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

FILED

2001 NOV 13 A 11:49

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

November 13, 2001

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

TO: Joe Manchin, Secretary of State, State Register

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

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Tobacco Products Excise Tax, 110CSR17**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached. ______

The Committee moved to amend the rule on page 12, by striking out all of subdivision 4.7.4 and inserting in lieu thereof a new subdivision 4.7.4 to read as follows:

> 4.7.4 Every taxpayer that pays excise tax on tobacco products shall be allowed a discount of 4% on all tax due.

The Committee determined that all tobacco products should be treated as the same.

DAG

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Tobacco Products Excise Tax, 110CSR17

PERTINENT DATES

Filed for public comment: May 25, 2001
Public comment period ended: June 30, 2001
Filed following public comment period: July 23, 2001
Filed LRMRC: July 23, 2001
Filed as emergency:

FILED
2001 AUG 20 A 10:35
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Fiscal Impact: $8,000 increase in cost

ABSTRACT

The proposed rule is being amended to reflect Committee Substitute for Senate Bill No. 115, which was enacted during the 2001 Legislative Session. That bill places an excise tax on tobacco products other than cigarettes. The proposed rule has been amended throughout to reflect those provisions that now apply not only to cigarettes but also other tobacco products. The following is a synopsis of the substantive amendments.

Section 2 which defines terms has had definitions added for the following terms: "authorized wholesaler", "counterfeit stamp", "other tobacco products", "place of business", "tax-not-paid tobacco product", "tax-paid tobacco products", "tobacco grower", "transporter" and "wholesale price".

Section 3 relates to tobacco products dealer requirements. A new Subsection 3.4 has been added which states that a tobacco grower is not considered to be a manufacturer, wholesaler, sub-jobber, retailer or vending machine operator and is not subject to licensing unless the tobacco grower is performing those types of activities.

Section 4 relates to cigarette tax-paid stamps and taxing other tobacco products.

Subsection 4.6 is new. It provides that the excise tax imposed on other tobacco products is to be paid by the invoice method. It allows the Tax Commissioner to seize other tobacco products for which tax has not been paid as contraband goods.

Subsection 4.7 is new. It states that the effective date for the imposition of the excise tax on other tobacco products is January 1, 2002. It provides that all tobacco products on hand or in inventory on the effective date of the change of the new tax rate are considered to have been purchased or received on that effective date. The wholesaler, sub-jobber, sub-jobber dealer, retail dealer and vending machine operator is required to take a physical inventory and file the required report with payment of any additional tax due.

AUTHORITY

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

> The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. 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: **Provided,** That all rules and regulations of the tax commissioner presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.

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.