

Series 12

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 Soft Drinks Tax Division. These regulations are designated Series XII of Chapter 11-19 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
STATE TAX COMMISSIONER

SOFT DRINKS TAX

RULES AND REGULATIONS

(Chapter 11, Article 19 of the Code)

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

Effective
July 1, 1964

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Tax Commissioner

Chapter 11-19
(1964)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Tax Commissioner

Chapter 11-19
Series XII
(1964)

Subject: General Operations of the Soft Drinks Tax Division.

Section 1. General

1.01. Scope.--These regulations establish general operating procedures in the office of the Soft Drinks Tax Division.

1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 19, Section 6.

1.03. Effective Date.--These regulations are promulgated on April 27, 1964, and become effective on 60 days thereafter.

1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on April 29, 1964.

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

Section 2. DEFINITIONS. Terms as used in the rules and regulations shall be defined as follows:

Bottled Soft Drinks shall include any and all non-alcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper, root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, or any other type of container, envelope, package, or bottle, whether manufactured with or without the use of any syrup. The term "bottled soft drinks" shall not

include fluid milk to which no flavoring has been added or natural and fruit juice or vegetable juice. See Section 19 of this regulation.

Soft Drink Syrups and Powders shall include the compound mixtures of the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make soft drinks, among such syrups being such products as coca-cola syrup, chero-cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool aid, oh boy drink, tip top, miracle aid and all other similar products. Concentrated natural frozen or unfrozen fruit juices or vegetable juices when used domestically are specifically excluded as such.

Simple Syrups shall mean the products resulting from the making, mixing, compounding or manufacturing by dissolving sugar and water or other mixture that will create syrup to which may or may not be added concentrate or extracts.

Crowns. The word "crowns" shall be construed to mean caps, lids, labels, containers or tax indicia.

Person shall mean and include an individual, firm, partnership, association or corporation.

Retail Dealer shall include every person, other than a wholesale dealer who makes, mixes, compounds or manufactures any drink from a soft drink

syrup, simple syrup, or powder base, and sells or otherwise dispenses the same to the ultimate consumer, and every person, other than a wholesale dealer, who sells or otherwise dispenses any bottled soft drink to the ultimate consumer.

Wholesale Dealer shall mean and include any person who sells bottled soft drinks, soft drink syrups, or powder bases for mixing, compounding, or making soft drinks to retail dealers for resale purposes.

Distributor shall mean any person who manufactures, bottles, compounds, mixes or purchases for sale to retail dealers any bottled soft drink, soft drinks syrup, or powder bases for mixing, making or compounding soft drinks.

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

Section 3. PERMITS. Application for a permit shall be made on forms prescribed and furnished by the commissioner.

The commissioner may suspend or, after a hearing, revoke any soft drinks permit whenever the holder thereof failed to comply with any of the provisions of Article 19, Chapter 11 of the Code, or any rules and regulations made and promulgated by the commissioner.

3.01. Wholesaler, Manufacturer and Distributor, -it shall be unlawful for any person to manufacture, bottle, import, distribute or sell in this State, any bottled soft drink or any soft drink syrups without first obtaining from the commissioner a soft drink permit. Each wholesale dealer, manufacturer and distributor shall each year on or before June 30, obtain from the commissioner a soft drink permit for each place of business owned or operated by him, and shall pay for each annual permit the sum of Ten Dollars (\$10.00).

Each out-of-state wholesaler, manufacturer, canner or packer or distributor doing business in this State shall likewise obtain a soft drinks permit for which he shall pay the sum of Ten Dollars (\$10.00).

3.02. Retail Dealer.---Each retail dealer manufacturing or purchasing unstamped syrups, or powders shall secure a soft drink permit each year for each place of business which he owns or operates on or before June 30, for which he shall pay a fee of Five Dollars (\$5.00) for each such permit.

Section 4. TAXATION RATE. An excise tax is levied and imposed on and after midnight of June 30, 1951, upon the sale, use, handling or distribution of all bottled soft drinks, all soft drinks syrups and items referred to in Section 2 of these regulations, and including amendments to the Soft Drink Law.

(a) The rate of tax on each bottled, or canned soft drinks is one cent (1¢) on each sixteen (16) fluid ounces, or fraction thereof.

(b) The rate of tax on each gallon of ready to use soft drink or simple syrup is eighty cents (80¢) and in like ratio on each part gallon thereof. The tax on each ounce of ready to use syrup or fractional part thereof is five-eighth cent.

(c) The soft drinks tax shall be assessed on dry mixtures as outlined under Section 15 of these regulations.

(d) Concentrated mixtures for compounding of soft drinks are subject to tax in proportion to the concentrates. Example: XX is a quadruple strength syrup. This concentrate represents four gallons of ready-to-use syrup. The wholesaler or distributor would affix four eighty cent stamps or stamps with a value of \$3.20.

The Dealer who first distributes, sells, uses, consumes, or handles bottled soft drinks, syrups and items subject to the soft drinks tax in West Virginia is liable for the tax.

Section 5. STAMPS, AFFIXATION AND CANCELLATION.

5.01. Evidence of Payment.--The person manufacturing or producing within this State any bottled soft drinks, soft drink syrup, or items subject to the soft drinks tax law shall pay the excise tax imposed. The distributor, wholesale dealer or retail dealer or any person who is the original consignee of any bottled soft drinks, soft drink syrup, or items subject to the soft drinks tax, manufactured or produced outside this State, or who brings such into this State, shall pay the excise tax.

The payment of the tax shall be evidenced by the affixing of tax crowns, tax imprinted cartons, tax imprinted lids on cans or soft drink tax stamps to the original containers, cans, or bottles in which any bottled soft drinks or syrups or taxable items is placed, received, stored or handled.

In the event that the powder for individual drinks is packaged in separate envelopes, the individual envelopes need not be stamped if the original carton containing such envelopes is stamped.

5.02. Availability.--The person electing to evidence payment of tax by use of stamps will be required to make payment in advance for the stamps. Sales of stamps will be made from the office of the State Tax Commissioner only.

5.03. Denominations.--Soft drinks tax stamps are issued in the following denominations:

One Cent	Forty-Eight Cents
Two Cents	Sixty Cents
Three Cents	Seventy-Two Cents
Four Cents	Eighty Cents
Ten Cents	Ninety-Six Cents
Fifteen cents	One Dollar Twenty Cents
Twenty Cents	One Dollar Ninety-Two Cents
Forty Cents	

The small denominations are intended primarily for bottled drinks with the larger stamps being applied to syrups and powder bases.

5.04. Discount Rate.--In the sale of stamps the commissioner shall allow the following discounts:

On the sale of less than \$25.00, no discount.

On the sale of \$25.00 or over and less than \$50.00, 5% discount.

On the sale of \$50.00 or over, 10% discount.

5.05. Position of Stamp.-- It is required that bottled soft drinks be stamped on the crown, lid or neck of the container. Syrups should have the stamp affixed on the lid or near the top of the container where it can readily be seen. Other items subject to the soft drinks tax must be stamped so as to evidence to the consumer public that the tax has been paid.

5.06. Cancellation and Removal of Stamps.--Any person subject to the tax imposed by Article 19, Chapter 11 of the Code of West Virginia;

(a) Who affixed a soft drink stamp to a container shall be required to immediately cancel the stamp by writing or marking initials thereon and the date upon which the stamp was affixed.

(b) When any container to which a stamp has been affixed is emptied, the person emptying the same or on whose behalf the same has been emptied shall be required to immediately remove or deface the stamp thereon.

Both the above requirements are covered by the penalties of the law, and any person violating them shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

Section 6. TAX PAID CROWNS. Any person using tax paid crowns as evidence of the payment of the soft drinks tax must comply with requirements outlined by the commissioner.

6.01. Their Usage and Specifications.--Agreements have or will be entered into by the commissioner with responsible crown manufacturers for the manufacture and sale of official crowns to soft drink manufacturers.

No soft drink tax crowns of any style can be sold to any soft drink manufacturer without an authorization from the commissioner. Authorization will be by the issuance of an official Soft Drinks Tax Crown Certificate. The certificate will entitle the soft drink manufacturer to receive from the crown manufacturer, the quantity of crowns as specified.

The details of the plan are as follows:

- (1) No crown manufacturer will be permitted to accept orders for the manufacture, sale of, or delivery of any crown bearing the official markings, or any other marking, indicating that the West Virginia Soft Drinks Tax has been paid, except by an authorization from the commissioner.
- (2) No soft drink manufacturer will be permitted to purchase official or special crowns, indicating that the West Virginia Soft Drinks Tax has been paid except on the approval of the commissioner.
- (3) No soft drink manufacturer will be permitted to buy official or special crowns unless he holds a permit from the commissioner to manufacture, bottle or sell soft drinks if marketed in the State.
- (4) The crown manufacturer will not be permitted to accept orders for and deliver official or special crowns or tax indicia to any soft drink manufacturer who is not in good standing with the commission.

at the time orders are given or delivery is made. Good standing shall be construed to mean that the monthly reports have been received in the commissioner's office by the fifteenth of each month; that no shortages in payments exists and that bond balance is sufficient to cover purchases.

- (5) No crowns can be manufactured, sold or purchased which do not conform to the standards prescribed by the commissioner.
- (6) The specifications for the tax paid crowns are: The outline of the State of West Virginia which may appear around the face of the crown at any place where, by reason of other display matter on the crown, this outline would not be obscure. Or, it should appear apart from other display matter in such a manner that it could be easily distinguished at a glance as evidence of tax payment. The overall dimensions of the outline map, State of West Virginia, shall be not less than one-quarter ($\frac{1}{4}$) of an inch, nor more than five-sixteenth ($\frac{5}{16}$) of an inch from the upper outside to the lower outside of the outline boundary, or from side to side, outside at the greatest width of the outline map. The lines of the outline boundary map shall not be less than one sixty-fourth ($\frac{1}{64}$) of an inch in width and shall be single lines. Every design for soft drink tax paid crowns shall be approved in writing by the commissioner before any such crowns shall be manufactured, sold or distributed.
- (7) The crown manufacturer shall be responsible for the safe keeping of all crowns manufactured for sale until such time as they are delivered to the purchaser in accordance with the certificate issued by the commissioner specifying the exact amount of crowns

authorized. Crowns cannot be sold or delivered in excess of the exact number specified by the certificate.

- (8) To secure delivery of crowns, soft drinks manufacturers are required to pay the tax in full, or have executed a bond twenty-five (25) per cent in excess of the tax involved, represented by the number of crowns desired or as provided by regulation and secure a certificate authorizing the crown manufacturer to make delivery of the number of crowns specified by the certificate. Nothing contained herein shall prevent soft drink manufacturers from purchasing crowns on both cash basis (Prepaid) and bond account at the same time. The crown company or soft drinks manufacturer will be liable for the tax value of the crowns delivered in excess of the number of crowns indicated by the certificate. Certificates authorizing the purchase of crowns can be secured only at the office of the commissioner.
- (9) Certificates will be issued by the commissioner upon application of soft drink manufacturers who hold necessary permits, indicating the number of crowns, the crown manufacturer and the denomination of crowns desired. If no bond has been executed and filed with the commissioner, the application shall be accompanied by a remittance representing the full tax less discount.
- (10) Five copies of crown certificates will be issued. The original will be mailed direct to the crown manufacturer with the first copy going to the purchaser and the second copy will be retained in the office of the commissioner. The other copies will be available where canners and packers are involved.

- (11) All crown manufacturers authorized by the commissioner to manufacture official or special crowns will be required to conform to such special regulations as may be issued governing the manufacture, safe keeping and delivery of such crowns. Crown manufacturers will be required to file monthly reports on forms prescribed and furnished by the commissioner. All records pertaining thereto are subject to examination by the commissioner or his authorized representative.
- (12) All soft drink manufacturers desiring to use crowns will be required to conform to the regulations of the commissioner with regard to such crowns. All records of the soft drinks manufacturer pertaining to the purchase and use of crowns are subject to examination by authorized representatives of the commissioner.
- (13) All soft drink manufacturers not operating on a bond or credit account are required to file a monthly report. These reports are due in the office of the commissioner on or before the fifteenth day of the month showing the transactions of the previous month. The reports will reflect the beginning inventory, the various purchases, the sales made, the stamps purchased and applied against sales, also closing inventories.
- (13a) All soft drink manufacturers who operate on both cash basis, hereinafter referred to as "Prepaid", and bond account are required to file a monthly report. These reports are due in the commissioner's office on or before the fifteenth day of the month showing the transactions of the previous month. The report will be prepared in the same manner as a prepaid account and after the net amount

of tax has been entered on the report, then the total of all prepayments made during the period covered by the report, will be deducted which will result in either a debit or credit balance; if, the result is a debit balance, then payment will accompany the report; if the result is a credit balance, then credit will be taken on the following monthly report.

(13b) The commissioner shall not authorize the purchase of crowns by any person who is in default in the filing of monthly reports and the tax due on the tax indicia.

(13c) Canning or Packing Plants: There are persons who perform only the work of canning or packing of soft drink items manufactured by others which are subject to the soft drink tax, and shipping or delivering such items into West Virginia or to the soft drinks manufacturers own trucks. In the event a manufacturer of soft drink items, subject to the West Virginia soft drinks tax, elects to arrange for a canner to bottle, can or pack his products, the following procedure will be followed:

The canner or packer will secure a Wholesalers Soft Drink Permit from the commissioner.

The canner or packer will apply to the commissioner for crown certificates and pay the applicable tax or furnish a surety bond as provided by the soft drinks law.

The commissioner will issue an original certificate with four copies for each purchase of crowns. The original of the certificate will be forwarded to the crown manufacturer, the first copy will be forwarded to the canner or packer and the second copy to the distributor. The other copies will be

retained in the office of the commissioner.

The certificate will indicate the name of the crown manufacturer and the name of the canner or packer and the quantity and denomination of the crowns.

The canner or packer will file monthly reports on forms prescribed by the commissioner. These reports are due in the office of the commissioner on or before the fifteenth day of the month showing the transactions of the previous month.

- (14) The soft drinks manufacturer shall obtain permission from the commissioner to return soft drinks tax crowns to the crown manufacturer. The crown manufacturer is prohibited from accepting any returns without written authorization from the commissioner.
- (15) The crown manufacturer may not reject any official or tax paid crowns from his inventory without written notice to the commissioner.
- (16) The exchanging, borrowing or purchasing of crowns between soft drink manufacturers is strictly prohibited.
- (17) Any crown for which credit is being claimed must be stored until the exact count is verified by the commissioner's representative after which credit may be taken in the crown inventory. There is no provision for a cash refund in the usage of crowns. The commissioner shall not authorize the purchase of crowns by any person who is in default in the payment of tax or who has not filed his monthly report as required. Any person who obtains credit shall file a report and remit the tax and such report and tax is due in the commissioner's office on or before the fifteenth day of

the month showing transactions for the preceding month.

6.02. Disposition of Unused Crowns:--Unused tax crowns or imprinted tax on cartons or containers upon which the tax imposed by Article 19, Chapter 11 of the Code, has not been paid and which the original purchaser has not used and does not intend to use, and which are fit for use, shall be disposed of in the following manner only:

- (a) By returning same to the manufacturer thereof and receiving from such manufacturer an affidavit which shall indicate the name of the persons returning the crowns, the date of return, and the number and denominations of crowns returned; or
- (b) By transferring such crowns to any person and receiving in exchange therefor a certificate issued by the commissioner authorizing the transferee to acquire such crowns; or
- (c) By destruction by or in the presence of an agent of the commissioner and a written statement by the agent in attest.

Upon receipt of either such affidavit, certificate or statement, the commissioner shall credit the account of the original purchaser in the amount indicated by the affidavit, certificate or statement.

6.03. Penalty for Violation.--In the event of the disposition of such crowns in a manner not authorized by this section, the original purchaser thereof or his estate, or any person (whether acting in an official capacity or otherwise) who shall make such unauthorized disposition shall be liable for the amount of tax which the crowns represent; and, in addition, shall be guilty of a misdemeanor, and conviction thereof shall be punished by a fine of Five Thousand Dollars and imprisonment in the county jail for not less than sixty days nor more than one year, in the discretion of the court.

6.04. Discount in Lieu of Losses:--The commissioner shall allow to each purchaser of tax crowns, whether for cash or credit, a discount of twelve and one-half per cent of the tax value of such tax crowns. Such discount, and the discount allowed on the sale of tax stamps, shall be in lieu of the allowance of any claim for refund by reason of the breakage or destruction of containers stamped or crowned as provided in Article 19, Chapter 11 of the Code, the spoilation of the soft drinks or syrups, or the loss or destruction of tax stamps or tax crowns.

Section 7. REPORTS. Any person subject to the Soft Drinks Tax Law and Rules and Regulations will be required to file a monthly report. This includes persons operating on a bond account as well as all persons who purchase soft drink tax stamps and persons who purchase non-tax paid items which are subject to the soft drinks tax law. This monthly report must be received in the office of the commissioner not later than the fifteenth day of each month, showing transactions for the preceding month. The monthly report will show all items which are necessary to complete an audit of the account and will include a record of the inventory of crowns at opening of business on the first day of each month, at close of business on the last day of each month, the sales or usage during the month covered by the report, a record of crowns or stamps purchased during each month and applied against sales and all other information as may be required to complete the audit and including the tax liability.

Section 8. BONDS. Whenever any person applies for an authorization to purchase tax paid crowns he may apply for an extension of credit on the tax due on such crowns. If a person has previously obtained a soft drinks permit and the bond is filed in the form prescribed by the commissioner

with satisfactory corporate surety, in the amount not less than twenty-five per cent more than the tax involved, the commissioner shall issue the necessary authorization.

8.01. Duration of Bond.--The West Virginia soft drinks tax crown purchase bond does not state in express terms that it is to endure for a definite period; however, the very purpose for which it is designed clearly implies that the bond is to continue in full force and effect so long as the principal remains subject to liability for said tax. It will not be necessary for principals and sureties to execute annual extensions for such bonds.

8.02. Cancellation of Bond.--Circumstances will arise which make it necessary to cancel the bond. If the bonded person or the bonding company elects to cancel the policy which has been approved by the Attorney General and Tax Commissioner, at least thirty days notice of intent shall be given the commissioner in writing. Should the commissioner elect to discontinue any further extension of credit and desire a cancellation of the contract, he can proceed with the dissolution upon written notice to both parties, thirty days prior to the termination date of the contract. The commissioner shall notify both parties of the dissolution by certified mail.

Section 9. WHOLESALE GROCERS. It shall be unlawful for any wholesale grocer stocking such items as syrups, orangeade, lemonade, chocolate syrup, powder bases for mixing, making or compounding soft drinks, and such related items subject to the soft drinks tax to sell or offer for sale without first having obtained a soft drinks permit from the commissioner.

The wholesale dealer will be required to evidence payment of the tax by affixing and cancelling stamps, unless such stamps have been previously affixed.

Stamps are available only at the office

of the commissioner. It will be necessary, therefore, that the dealer establish an account with the commissioner.

9.01. Truck Jobbers from Out of State.--It shall be unlawful for out-of-state jobbers or wholesalers, either companies or individuals to have on their trucks in this State, and without a West Virginia Soft Drinks Permit, any items subject to the soft drinks tax on which the required soft drinks tax stamps are not affixed, and in the event any items subject to the West Virginia soft drinks tax are found by agents of the commissioner, then the agents may seize such items in accordance with the provisions of the soft drinks tax law.

Section 10. DAIRIES. In the operation of dairies, a soft drinks permit must be obtained from the commissioner, otherwise it shall be unlawful for any person to manufacture, bottle, distribute, sell or offer for sale any fluid milk to which flavoring has been added. The soft drinks tax is applicable whether such products are closed and sealed in glass, can, paper or any other type container.

The payment of tax may be evidenced by the use of a tax paid crown, the imprinting of the tax indicia on the carton or can by the manufacturer or the affixing of hand stamps. The method used shall be determined by the persons concerned.

Any person electing to use tax paid crowns may apply for an extension of credit on the tax due if he files a bond as prescribed by the commissioner with satisfactory corporate surety. The complete bond requirements are outlined in Section 8 of these regulations.

Should those dairies using waxed or plastic containers or cans elect to have the tax imprinted on the carton or can by the manufacturer, they

can qualify for extension of credit in the same manner as those using tax paid crowns. They must execute a bond and their carton or can manufacturer must enter into a contract with the commissioner.

Those who do not wish to conform to either of the procedures outlined may purchase, cancel and affix hand stamps to the containers. There is no provision for extension of credit when stamps are used.

Each and every dairy selling items which are subject to the soft drinks tax will be required to file monthly reports. Those electing to apply for credit must have their return and remittance for the amount of tax due and payable after deducting the discount, in the office of the commissioner on or before the fifteenth day of the month covering the transactions of the previous month.

Merchandise must bear evidence of the tax paid. It is unlawful for any person to sell, use, handle or distribute any bottled soft drink or soft drink syrup to which tax stamps or tax crowns are not affixed. Anyone violating this provision shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than One Hundred Dollars or by imprisonment for not more than six months, or by both fine and imprisonment.

For the disposition of unused imprinted tax on cartons or containers, see Section 6.02 of these regulations.

Section 11. SALES OF SOFT DRINKS ON RAILWAYS AND BUSSES. Until further notice companies operating club or dining cars or other cars upon which sales of soft drinks are made shall file reports either monthly or quarterly covering their transactions. Such reports shall reflect the true and actual sales which shall be certified.

It is not deemed necessary to require such companies to purchase soft

drinks bearing tax paid crowns or to affix stamps since only a portion of the stock would be sold while passing through the State and to do so would place an undue burden on the vendor.

The companies will be required to remit the amount due the State with their monthly or quarterly report which is due in the office of the commissioner on the fifteenth day of the month which follows the period for which the report is filed. The form to be used in reporting will be prescribed and furnished by the commissioner.

Section 12. INTERSTATE SALES. Sales of articles subject to the West Virginia soft drinks tax which are shipped to out-of-state dealers are not taxable.

Two possibilities exist relative to handling and reporting out-of-state sales:

- (a) Interstate sales may be made from the stock of a dealer using non-tax crowns. If the manufacturer elects to use non-tax crowns for out-of-state sales, he will be required to furnish a detailed accounting of his crown stock.

Even though non-tax crowns are used for interstate sales, the manufacturer shall maintain a complete sales record. The record must show the purchaser, his address, the date of sale and the number of cases sold. Such sales records shall be open for inspection by agents of the commissioner at all times during regular office hours. It should be noted that the sale of any unstamped soft drinks in West Virginia subjects the manufacturer to a severe penalty.

Usage of non-tax crowns should be reported on the reverse side

of forms prescribed and furnished by the commissioner.

- (b) The soft drinks intended for interstate sales may be capped with tax paid crowns and credit taken when computing the tax payable to the commissioner.

The manufacturer or dealer proceeding on this basis will be required to indicate the date of sale, the consignee and the number of cases sold on forms as may be prescribed and furnished by the commissioner. This applies to soft drink manufacturers and dairies alike.

Section 13. MERCHANDISING. No manufacturer or his representatives may distribute bottled soft drinks for promotion purposes unless the West Virginia soft drinks tax has been paid.

Your attention is called to the fact that the Soft Drinks Tax Law provides no exemptions from the payment of the soft drinks tax.

Section 14. SIMPLE SYRUPS. It shall be unlawful for any retail dealer to produce simple syrups without having obtained a soft drinks permit from the commissioner. All retail dealers buying unstamped syrups or manufacturing syrup will be subject to a soft drinks permit at a cost of Five Dollars on a fiscal year basis.

Whenever any retailer elects to produce simple syrups for his own use, or for sale, he shall open a soft drinks account with the commissioner. It will be necessary for the producer to file a monthly report, which must be received in the office of the commissioner on or before the fifteenth of the month covering transactions of the previous month, listing the quantity of syrups manufactured and used or sold during that period.

It will be necessary that stamps be purchased, affixed and cancelled proportionate to the amount of syrup contained therein. Stamps in various denominations are available only at the commissioner's office.

Any dealer processing simple syrups must maintain a complete record covering all sugar purchases. He shall secure and retain invoices on all such purchases for at least two years. All records pertaining to the purchase of fountain syrups and the basic ingredients used in manufacturing syrups shall be subject to examination by the commissioner or his deputies at any time during regular business hours.

14.01. Base Products.--Base products such as hot chocolate flavored drink mix, flavored milk shake bases, concentrated products to which milk or other liquid is added to complete a soft drink, and all like items or products, will be taxed as syrups.

Section 15. POWDERS. Powders includes compressed powders, crystals, granules or tablets from which soft drinks can be made.

15.01 Powders Converted to Syrup.--Whenever a dry mixture is converted to a syrup, the tax per ounce of dry mixture will be computed in direct ratio to the quantity of ready-to-use syrup produced. An example is that of cocoa powder--generally, one pound of cocoa powder is used in the manufacture of a gallon of chocolate syrup. The tax on a gallon of syrup being eighty cents and since sixteen ounces of powder is required to produce one gallon of syrup, then the tax levied in this instance would be at the rate of five cents (5¢) per ounce of the dry mixture.

15.02. Powders Converted to Soft Drinks.--When a dry mixture is used to make a soft drink without being converted into a syrup, the rate of tax will be one cent (1¢) per ounce, or fraction thereof, of the dry mixture or powder weight.

Section 16. EXEMPTIONS. The following are exempt from the soft drinks tax:

- (a) Fruit juices, nectars and vegetable juices in their natural state which have not been diluted and to which nothing has been added, and frozen or unfrozen fruit concentrates.
- (b) Fluid milk to which no flavoring has been added.

Section 17. PROCEDURE FOR HAVING A PRODUCT DECLARED TAX EXEMPT. In the event a manufacturer, bottler, importer or distributor desires to submit petition for exemption of one of his products from the Soft Drinks Tax Law, the following information should be submitted in affidavit form to the Soft Drinks Tax Division, State Tax Commissioner, Charleston, West Virginia:

- (a) An analysis of the product for which exemption is sought, including:
 - 1. Viscosity.
 - 2. Stabilizer
- (b) Sample of physical, commercial package.
- (c) Other products of Company.
 - 1. Any products sold for fountain use, bottling or bottled drinks.
 - 2. Physical commercial package.
(Description giving content, weight, etc.)
- (d) Present use:
 - 1. Whether product is being presently bottled or manufactured on a commercial scale.
 - 2. State length of time it has been manufactured.

The Petitioner will be advised in writing by the Division of its ruling.

Section 18. REPRESENTATIVE LIST OF TAXABLE PRODUCTS. It is impossible to list all products which may fall within the scope of the soft drinks tax. It is recommended that any wholesale dealer, distributor or retail dealer selling a commodity which may come within the purview of the soft drinks tax, contact the Soft Drinks Tax Division for a formal ruling on the tax status of such items. The request for a ruling should include full information as to the product and label from the product should be enclosed. See Section 17 of these regulations. A formal ruling will enable the vendor to avoid the possibility of penalties for selling drinks without payment of the tax.

18.01. All those powder bases which are sometimes in the form of crystals, granules, powders, tablets and are prepared for the purpose of domestically mixing soft drinks, such as Kool Aid, Oh Boy Drink, Miracle Aid and similar products are taxed both domestically and commercially and the rate of tax on powders or dry mixtures will be one-cent (1¢) per ounce, or fraction thereof, by weight.

A representative sample of taxable powder bases includes:

Kroger Packaged Lemonade
Wyler's Mixes (all varieties)
Aunt Wick's Root Beer
Cheeri-Aid (assorted flavors)
Fizzie's Tablets
Fla-Vor-Aid (all flavors)
Kool Aid (all flavors)
Miracle Aid (all flavors)
Keen (all flavors)
Groveland Coconut Frosty

The following items are taxed when used commercially in drug stores, drive-inns, hospitals, restaurants, vending machines, state and federal institutions, schools, churches, etc., but are NOT TAXED for domestic use.

Baker's Instant Chocolate Flavored Mix
Borden's Instant Dutch Chocolate Mix
Borden's Instant Hot Chocolate
Borden's Instant Malted Milk
Carnation Flavored Instant Malted Milk
Carnation Instant Chocolate Milk Drink
Coco Whip
Cocomalt
Double Malted Chocolate Flavored - Canned
Dutch Chocolate Flavored Mix
Hemo (Baker's)
Hershey Instant Chocolate Mix
Horlick's Malted Mixes
Hot Chocolate Mixes--all brands, cans, jars, bags.
Instant Ovaltine, Plain or Chocolate
Kraft Instant Malted Milk Chocolate Flavor
Kraft Malted Milk
Kroger's Instant Chocolate Milk
Malted Milk - all brands
Nestle's Quik - all flavors
Nestle's Ever Ready Sweet Milk Cocoa
White House Instant Chocolate and all flavored drinks.

Items listed above and all like items are taxed at the rate of one cent (1¢) per ounce of dry mixture or fraction thereof, by weight.

When powders are packed in individual one-drink envelopes which contain not more than one ounce of powder or dry mixture, the tax will be one cent per package.

The preceding lists are not intended to be exclusive and the absence of any product on such list does not in any way indicate whether or not the product is subject to the Soft Drinks Tax.

18.02. REPRESENTATIVE LIST OF TAXABLE SYRUPS AND BASES.--The following are taxed when used commercially:

Bennett's Fix-a-Drink Syrup

Bennett's Fruit Punch Syrup

Bosco Choc. Flavor Milk Amplifier

Chocolate Syrups - all brands

Cocoa Marsh

Mrs. Filbert's Beverage Syrup

J. Hungerford Smith Syrup

Robert A. Johnson Syrup

Orange Flavored Syrup

Phillip's Orange Drink Base

Real Gold Syrups

Reymer's Blended Syrups

John Sexton's Beverage Base and Syrups

Tru-Ade Syrup....and all other syrups for making soft drinks, hot chocolate, milk shakes, etc., commercially. The syrup tax rate is eighty cents per gallon; 5/8¢ per ounce, or fraction thereof.

The preceding list is not intended to be exclusive and the absence of any product on such list does not in any way indicate whether or not the product is subject to the Soft Drinks Tax.

EXCEPTIONS: Cal-Lac Instant Drink (6 ounce bottle) tax is four cents.

Reymer's Blend Drink (liquid base - 12 ounce bottle) tax is eight cents.

18.03. Representative List of Punch, Ades and Soft Drinks.

The following are completed and finished soft drinks which may be consumed directly from the container and all are taxable items.

All Root Beer (finished drink)

Bev-Rich - assorted flavors

Cantrell & Cochrane Beverages - all flavors

B C Breakfast Delight

B D Grape-Apple Drink

Bubble Up

Calif. Fame Pineapple-Orange Drink

Canada Dry Drinks - all flavors

Chocolate Drink - Dairy companies

Chocolate Milk - Dairy companies

Cliquot Club - all varieties

All Colas

Cott Beverages - all varieties

Diet Right Cola

Dr. Pepper - all varieties

Egg Nog

Grape Drink

H D 4-in-1 Juice Drink

Hawaiian Punch - Reg. & Golden

HI-C Drinks - all flavors

HY-Grade Drinks - all flavors

Kool Punch

Kraft Grape Ade

Kraft Orange Ade
Libby's Tropical Fruit Punch
Life
Li'l Abner's Orangeade
Monarch Soft Drinks - all varieties
Mott's A.M. & P.M.
Nehi Beverages - all varieties
Nesbitts Orange Drink
Orange Drink
Orange Apricot Drink
Pabst Canned Beverages (including dietetic)
Par-T-Pak - all varieties
Pear-Pineapple Drink
Pineapple Orange Drink
Pineapple Grapefruit Drink
Pi-Li, Ping, Pong, etc.
REALEMON
 Apricot Drink
 Lemon-Lime Drink
 Mambo Punch
 Orange Drink
 Lemon-Orange Drink
Real Kool Punch
Red Rock - all varieties
Reymer's Blend - canned drinks
Seven-Up
Sparkling Water - all brands
Spur
Squirt

Sunshine Grape Drink
Upper Ten
Vess - all varieties, siphons
Vitality Orange Ade
Wagner's - all varieties, siphons
Welch Grape Drink
Whistle - all flavors
Wonder Orange
Yukon Club - all varieties
Westfield Fruit Treat Drinks
Circus Fruit Drinks - all flavors
Gingerale - all brands

The preceding list is not intended to be exclusive and the absence of any product on such list does not in any way indicate whether or not the product is subject to the Soft Drinks Tax.

SOFT DRINKS TAX RATE SCHEDULE

(applies to above list)

1 to 16 ounce container	-	one cent tax per container
17 to 32 ounce container	-	two cent tax per container
33 to 48 ounce container	-	three cent tax per container
49 to 64 ounce container	-	four cent tax per container, etc.

Section 19. SODA FOUNTAINS, SOFT DRINKS STANDS AND DAIRY STORES.

Fountain syrups are preparations for the mixing or compounding of soft drinks and as such are subject to the soft drinks tax at the rate of eighty cents per gallon. The statute makes no provision for the exemption of any fountain syrup or powder base from the tax.

Surveys disclose that many places of business dispensing soft drinks use frozen fruit juice concentrates in mixing, making or compounding the drinks. Whenever frozen fruit juice concentrates such as grape or orange are used in the preparation of drinks, such concentrates, although exempt for domestic use, are subject to the soft drinks tax when used commercially at the rate of eighty cents per gallon.

All syrups usable in the mixing of soft drinks are taxable.

The intent of the Legislature has been clearly outlined since all proposed exemptions were eliminated in the final draft of the bill. Henceforth, no exemptions or credits can be allowed on syrups even though they may have been diverted to purposes other than the making of drinks.

Section 20. DISPENSERS OF SOFT DRINKS USING FRESH FRUITS AND SYRUPS.

Experience has shown numerous types of soft drinks dispensers such as Dairy Queen, Tastee Freez, Dairy King and Dari-Delite stores use crushed fresh fruits as well as fountain syrups in the preparation of drinks. All such drinks are subject to the soft drinks tax.

The soft drinks law imposes tax on ready to use syrup at the rate of eighty cents per gallon. This tax can be levied on crushed fruits and soft drinks flavored by crushed fruits are subject to the tax the same as if syrup were used. The most equitable manner in determining

the tax is on a cup basis. The tax on a cup basis would be determined by the size of the container and its content as set forth in Section 18 of these regulations.

Any person paying the soft drinks tax on a cup basis will be charged with all cups used and will be credited by the amount of tax paid on syrups purchased. Occasionally tax paid bottled soft drinks are used in preparing "floats" and in such cases, credit for cups so used would be granted accordingly. All persons paying the tax on the cup basis must secure and retain invoices covering cup purchases for at least two years.

Dispensers of soft drinks using waxed or plastic containers who elect to have the tax imprinted on the carton by the manufacturer can qualify for extension of credit in the same manner as those using tax paid crowns. See Sections 6, 8 and 10 of these regulations.

Section 21. RECORDS AND AUDITS. Every dealer in bottled soft drinks or soft drinks syrups or other items subject to the soft drinks tax manufactured or imported, sold, used, consumed or distributed in this State shall maintain a complete record of all transactions. The records shall be kept for at least two years. They are subject to inspection by the commissioner at any time during regular business hours. All stocks of goods subject to the soft drinks tax shall be subject to inspection at any time during regular business hours.

The records shall include:

1. A monthly inventory of such stock taken at the close of business on the last business day of the month. Such inventory shall

reflect the stamped and unstamped stock. Reports and all records must be prepared on the calendar month rather than by periods due to the accounting process involved. Exceptions to this rule may be made upon written application and at the discretion of the commissioner.

2. Total purchases of such goods during the month from all sources supported by copies of invoices from each source of supply.
3. Total sales of items in West Virginia subject to the tax, tax paid or exempted by regulations, supported by sales slips, invoices or other records or methods as may be required by the commissioner to each customer.
4. Total of such sales to out-of-state dealer. Separate records are to be maintained for each state into which shipments are made. A stamp or crown account should be kept. It should reflect:

- (a) Crowns or stamps on hand at close of business on the last day of preceding month. If tax paid crowns and non-tax paid crowns are in stock on that date, then a definite accounting of each.
- (b) Crowns or stamps bought and received during the month.
- (c) Crowns or stamps used during the month.
- (d) Crowns or stamps on hand at close of business on last business day of the month.

It shall be the responsibility of the commissioner to make periodical audits of accounts of all soft drinks dealers in the State or out-of-state dealers doing business in the State at least once each year if practicable.

SPECIAL NOTE TO STAMP PURCHASERS:

The dealer's copy of the requisition for soft drinks tax stamps must be kept on file at all times.

Our requisition number for purchases of stamps and 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 your records on the exact day received, together with the amount of stamps received and the date.

SPECIAL NOTE TO TAX PAID CROWN USERS:

The dealer's copy of the crown authorization certificate must be kept on file at all times. It is suggested that the crown manufacturer's invoice be attached to the certificate. This procedure will enable you to determine quickly whether any crowns are outstanding and, if so, how many. It will assist in the audit of an account.

Section 22. USE OF NON-TAX CROWNS, CAPS OR CONTAINERS. It may be that a few dairies, bottlers or distributors will not find it practical to use tax imprinted caps, crowns or containers and will elect to evidence tax payments by the affixing of stamps. This plan is provided for by the statute. It is the recommendation of this office that any person being liable for the tax arrange for tax imprinted caps, crowns or containers as soon as the present supply of non-tax is exhausted.

Section 23. LIABILITY OF CARRIERS FOR CROWN TAX. Effective January 1, 1955, any public carrier will be liable for the tax whenever there is a loss or shortage in delivery of tax paid soft drinks crowns, caps, cans or cartons being transported to any concern in the State or out-of-

state doing business in West Virginia. The tax liability for crown loss will be \$1.26 per gross in the case of one-cent crowns and \$2.52 per gross when two-cent crowns are involved. Carriers having incurred a tax liability will be expected to remit the tax applicable by the twentieth of the following month.

Any bottler or dairy having a shortage or damage claim shall immediately notify the commissioner as to the quantity of tax imprints involved. The notification shall include the name of the carrier and his address. No claims of bottlers or dairies will be recognized if this procedure is not followed completely.

Section 24. PENALTIES.

24.01. General.--Any person who violates any of the provisions of this Article 19, Chapter 11 of the Code, or any lawful rule or regulation promulgated by the commissioner under authority of Article 19, Chapter 11 of the Code, for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

24.02. Soft Drinks.--The commissioner may suspend or, after a hearing, revoke any soft drinks permit whenever the holder thereof has failed to comply with any of the provisions of this law or any rules and regulations made and promulgated by him as provided.

24.03. Penalties for Late Filing of Reports, Inventories, and other Returns.--If any taxpayer fails to file a return or pay the proper amount of tax within the time specified herein, there shall be added to the unpaid tax the amount of the discount to which the taxpayer should

have been entitled, as a penalty for being delinquent for the first month, or a fraction thereof, and if the delinquency continues, there shall be a penalty of one per cent of the unpaid tax for each succeeding month, or fraction thereof, in addition to the penalty provided, the commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer.

24.04. Assessments: Collection by Action or Suit.--If the commissioner believes that the tax imposed by this law has been insufficiently returned, he shall proceed to investigate and determine the tax liability of any taxpayer and make an assessment thereof. Taxes and penalties due and unpaid may be collected by action in debt, including suit in a justice court.

Section 25. SEIZURE AND SALE OF SOFT DRINKS SYRUPS BY COMMISSIONER;
FORFEITURE; COLLECTION OF TAX.

Whenever the commissioner or any of his duly authorized agents shall discover any soft drinks syrups, subject to tax as provided by Article 19, Chapter 11 of the Code, and upon which the tax has not been paid as herein required, the commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such soft drinks syrups, which shall thereupon be deemed to be forfeited to the State, and the commissioner may within a reasonable time thereafter by a notice posted upon the premises where such seizure was made, or by publication in some newspaper having circulation in the county wherein such seizure is made, at least five days before the day of sale, sell such forfeited soft drinks syrups, and from the proceeds of such sale shall collect the tax due thereon together with a penalty of fifty percent thereof and the cost incurred in such proceedings, and pay the balance, if any to the person in whose

possession such soft drinks syrups were found. Provided, however, that such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale shall be made in the county where most convenient and economical. All moneys collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this law.

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 11-19, Series XII

Assessments, § 24.04

Audits, § 21

Authority, This Regulation § 1.02
Crown Manufacturers, § 6

Base Products, § 14.01

Bonds, § 8
Duration, § 8.01
Cancellation, § 8.02

Canning or Packing Plants, § 6.01 (13c)

Certificates, § 6

Certification, This Regulation, § 1.05

Crowns, § 6
Usage, § 6.01
Specifications, § 6.01 (6)
Disposition, § 6.02

Crown Manufacturers, § 6

Cup Basis, § 20

Dairies, § 10

Definitions, § 2

Discount, §§ 5.04, 6.04

Effective Date, This Regulation, § 1.03

Exemptions, §§ 16, 17

Filing Date, This Regulation, § 1.04

Fines, §§ 5.06, 6.03

Interstate Sales, § 12

Penalties, §§ 6.03, 24

FILING OF ADMINISTRATIVE REGULATIONS

References are to sections in W. Va. Adm. Reg. 11-19, Series XII

Permits, §§ 3, 6.01 (13c)
 Revocation, § 3

Powders, § 15

Railways, § 11

Records, § 21

Refunds, § 6.01 (17)

Reports, § 7

Representative Lists, § 18
 Powders, § 18.01
 Finished Drinks, § 18.03
 Syrups, § 18.02

Retail Dealers, § 3.02

Scope, § 1.01

Seizure, § 25

Simple Syrups, §§ 2, 14

Stamps, § 5
 Availability, § 5.02
 Denomination, § 5.03
 Discount, § 5.04
 Cancellation, § 5.06

Taxation Rate, § 4
 Powders, § 18.01
 Finished Drink, § 18.03
 Syrups, § 18.02

Wholesale Dealers, § 3.01

Wholesale Grocers, § 9