



WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
FREDRIC L. WOOTON, COMMISSIONER

August 20, 2024

VIA EMAIL

Michael Cashin, Partner
Womble Bond Dickinson (US) LLP
One West Fourth Street
Winston-Salem, NC 27101
Email: Michael.Cashin@wbdl-us.com

Re: Proposed Rule 175 CSR 9

Dear Mr. Cashin:

The WVABCA received your comments on July 23, 2024, regarding the tax paid for electronic smoking devices being conducted by an invoice method and not a tax stamp method. The WVABCA confirmed with the WV Tax Division and your statements are correct.

Being that the purpose of the rule is to prevent access of minors (under 21 years of age) to “cigarettes in vending machines” in a private club setting and the passage of HB 5084 clearly addressing “Tobacco Products”, the Commissioner has determined to rename the rule Tobacco Products in Vending Machines and revise 175 CSR 9 §4.2.

Sincerely,

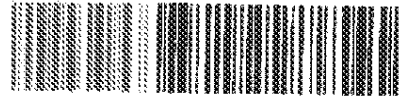
Anoop Bhasin
WVABCA General Counsel

23 JUL 2024 1:23

Certified Article Number

9414 7266 9904 2213 1607 36

STATISTICAL PRECISION



9590 9266 9904 2213 1607 39



WOMBLE
BOND
DICKINSON

July 19, 2024

Anoop Bhassin
900 Pennsylvania Ave, 4th Floor
Charleston, WV 25302

Womble Bond Dickinson (US) LLP

One West Fourth Street
Winston-Salem, NC 27101

T: 336.721.3600
F: 336.721.3650

Re: **Edits related to amendments to legislative rule
concerning cigarette vending machine**

Michael Cashin
Partner
Direct Dial: 336-721-3696
Direct Fax: 336-726-8088
E-mail: Michael.Cashin@wbd-us.com

Dear Mr. Bhasin:

On behalf of RAI Services Company, Inc., I would like to bring to your attention a technical issue that was identified in the proposed amendment to West Virginia Code of State Rules Title 175, Alcohol Beverage Control Commissioner, Series 9, Cigarette Vending Machines, which was e-filed on June 28, 2024. Specifically, Section 175-9-4.2, as amended by the proposed amendment, would provide as follows:

4.2. No cigarette, electronic smoking devices, or tobacco products sold in a vending machine shall be placed in operation within this State that is not so constructed as to display at least one package of the cigarettes, electronic smoking devices, or tobacco products in each column. All cigarettes-cigarettes, electronic smoking devices, or tobacco products shall be placed in the machines in such a manner that the stamps affixed thereto shall be clearly visible.

As provided in West Virginia Code Section 11-17-5, the tax imposed on cigarettes in West Virginia is paid by the purchase of stamps, while the tax imposed on tobacco products other than cigarettes is paid using an invoice method prescribed by the tax commissioner.

Similarly, per West Virginia Code Section 11-17-4b(c)(1), the tax imposed on e-cigarette liquid is paid using an invoice method prescribed by the tax commissioner. Because there are no stamps affixed to electronic smoking devices or tobacco products other than cigarettes, it



would not be possible to place those products in a vending machine in a manner such that stamps thereto would be clearly visible. Furthermore, RAI Services Company, Inc. would be opposed to any proposal to require tax stamps be affixed to electronic smoking devices and tobacco products other than cigarettes, given that those products present lower health risks than combustible products, like cigarettes, for users. Accordingly, electronic smoking devices and tobacco products other than cigarettes should be more affordable in order to promote switching from smoking to those lower risk products.

In light of the foregoing, RAI Services Company, Inc. respectfully requests a change to the proposed amendment, such that Section 175-9-4.2 reads as follows:

4.2. No cigarette, electronic smoking devices, or tobacco products sold in a vending machine shall be placed in operation within this State that is not so constructed as to display at least one package of the cigarettes, electronic smoking devices, or tobacco products in each column. All cigarettes shall be placed in the machines in such a manner that the stamps affixed thereto shall be clearly visible.

Should you have any questions regarding this requested change to the proposed amendment, please contact me directly.

Best regards,

Womble Bond Dickinson (US) LLP

Michael Cashin
Partner