

WEST VIRGINIA STATE TAX DEPARTMENT
Administrative Notice 2001-17

SUBJECT: SELLERS OF CIGARETTES, TOBACCO PRODUCTS OR CIGARETTE WRAPPERS LICENSING REQUIREMENTS AND CIGARETTES PRODUCED FOR EXPORT/IMPORTED CIGARETTES; UNFAIR TRADE PRACTICES FOR CIGARETTES -- State Tax Commissioner's policy statement concerning licensing requirements; prohibitions and requirements for cigarettes produced for export and/or imported cigarettes and unfair trade practices, WV Code § 11-12-4a; 60-9 (Senate Bill No. 475 passed March 11, 2000, in effect June 9, 2000 (ninety days from passage)).

This notice will discuss the requirements and prohibitions of wholesalers/distributors and/or importers regarding licensing, cigarettes produced for export and imported cigarettes and unfair trade practices as relates to cigarettes.

DISCUSSION

Sellers of cigarettes, tobacco products or cigarette wrappers required to be licensed; business registration certificate is license; criminal penalties (WV Code § 11-12-4a, Business Registration Tax) -

- (a) Beginning on or after July 1, 2000, each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail must apply for and receive a license to sell cigarettes or other tobacco products or cigarette wrappers. The cigarette license will be a part of the business registration certificate application for the renewal application for a business registration certificate.
- (b) The license will be printed on the Business Registration Certificate or certificates issued under the provisions of subsection (a), section four of this article.
- (c) Any person who sells cigarettes or other tobacco products or cigarette wrappers at wholesale or retail after July 1, 2000, without obtaining the license, is guilty of a misdemeanor and, upon conviction thereof, will be fined not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00).

Cigarettes produced for export - prohibitions (WV Code § 60-9-2) - (a) It is unlawful for any person:

(1) To sell or distribute to consumers in this state, to acquire, hold, own, possess or transport, for sale or distribution in this state, or to import, or cause to be imported, into this state for sale or distribution in this state:

(A) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "for export only," "U.S. Tax-exempt," "for use outside U.S." or similar wording; or

(ii) Does not comply with:

(I) All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(II) All federal trademark and copyright laws;

(B) Any cigarettes imported into the United States in violation of 26 U.S.C 5754 or any other federal law or the implementing federal regulations;

(C) Any cigarettes that the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(D) Any cigarettes for which there has not been submitted to the secretary of the United States department of health and human services, the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(A) Any statement, label, stamp, sticker or notice described in subparagraph (i), paragraph (A), subdivision (1), subsection (a) of this section; or

(B) Any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C 1333; or

(3) To affix any stamp required pursuant to WV Code § 11-17 to the package of any cigarettes described in subdivision (1), subsection (a) of this section or altered in violation of subdivision (2), subsection (a) of this section.

Imported Cigarettes - - requirements (WV Code § 60-9-3) - Each wholesaler/distributor and/or importer is required to file monthly, for all cigarettes imported into the United States to which the person the person has affixed the tax stamp in the preceding month, the following:

(1) A copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. 5713, to the person importing the cigarettes into the United States allowing such person to import the cigarettes; and

(2) A copy of the customs form containing, with respect to the cigarettes, the Internal Revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms; and

(3) A statement, signed by the person under penalty of perjury, which shall be treated as confidential by the commissioner and exempt from disclosure under the freedom of information act, WV Code § 29b-1, identifying the brand and brand styles of all the cigarettes, the quantity of each brand style of such cigarettes, the

supplier of the cigarettes and the person or person, if any, to whom the cigarettes have been conveyed for resale; and a separate statement signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of the cigarettes; and

(4) A statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:

(A) The package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to the cigarettes; and

(B) The provisions of WV Code § 16-9d, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of that statute.

Administrative sanctions (WV Code § 60-9-5) -- (a) The State Tax Commissioner may revoke or suspend the authorization to affix the tax stamp of any person for a violation of this article or any legislative rule related to this article that is promulgated by the Commissioner pursuant to chapter twenty-nine of this code and in conjunction, the Alcohol Beverage Control commissioner may impose on the person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or five thousand dollars, upon finding a violation by such person of this enactment, or the rules promulgated by the Commissioner. (b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into or sold or distributed in this State in violation of this article are considered contraband under WV Code § 11-17 and are subject to seizure and forfeiture as provided therein. Such cigarettes are considered contraband whether the violation of this article is knowing or otherwise. (c) The State Tax Commissioner may assess tax due, penalty, and interest on any product acquired, possessed, sold, or offered for sale in violation of this article.

Unfair trade practices (WV Code § 60-9-6) -- A violation of section two or section three of this article constitutes an unlawful trade practice as provided in WV Code 47-11a, in addition to any remedies or penalties set forth in this article, is subject to any remedies or penalties for a violation of that article.

The alcohol beverage control commissioner shall enforce each and every provision of the unfair trade practices act set forth in WV Code § 47-11a with respect to packages of cigarettes with like effect as if said article were set forth in extenso herein.

Unfair cigarette sales (WV Code § 60-9-7) - For purposes of this article, cigarettes imported or re-imported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

General enforcement provisions (WV Code § 60-9-8 (b)) -- A person that acquires, holds, owns, possesses, transports in or imports into this state cigarettes that are subject to this article shall, with respect to the cigarettes, maintain and keep all records required pursuant to WV Code § 11-17.

Applicability (WV Code § 60-9-9) - - This article does not apply to cigarettes allowed to be imported or brought into the United States for personal use, and cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations: Provided, That this article does apply to any cigarettes that are brought back into the customs territory for resale within the customs territory. The penalties provided in this article are in addition to any other penalties imposed under other law.

Beginning with the Monthly Report for Distributors and/or Wholesalers of Cigarettes, period ending June 30, 2000, due July 15, 2000, each person who is required by this statute must submit the required documentation for all cigarettes imported into the United States to which the person has affixed the tax stamp.

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