

— Rec., Mar. 24, 1934 —

ENROLLED BILL
(SECOND EXTRAORDINARY SESSION, 1933)

House Bill No. 365

(By Mr. Norton)

Passed March 23, 1934

In Effect April 1, 1934 Passage

Originating in the House of Delegates Takes effect April 1, 1934 Passage
W. D. S. S. S. Clerk. Woodstock Clerk House of Delegates.

CORRECTLY ENROLLED

James L. Smith Chairman House Committee. W. E. H. H. Chairman Senate Committee.

ENROLLED BILL

(H. B. No. 365)

[Passed March 23, 1934; effective April 1, 1934.]

AN ACT to provide revenue to meet the present fiscal emergency of the state by the imposition of surtaxes on sales, privileges, productions, business and incomes, and by the imposition of a general consumers sales tax.

Be it enacted by the Legislature of West Virginia:

TITLE I

Emergency Surtaxes

Section 1. Because the enabling legislation under the "Tax
2 Limitation Amendment" has required adjustments which have
3 greatly reduced the revenue of the state, it is necessary that
4 emergency surtaxes be imposed to provide funds essential to the
5 conduct of government.

CORRECTLY ENROLLED

Hazel O. Kye

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Sec. 2. This act may be cited as "The Supplemental (Emergency) Revenue Act of one thousand nine hundred thirty-four."

Sec. 3. Every person taxable under sub-sections (a), (b), (c), (d) and (g) of section two, article thirteen, chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, shall pay, in addition to the taxes imposed by that act, and in addition to all other taxes, an additional emergency surtax of one-half of each tax imposed by sub-sections (a), (b), (c), (d), and (g), section two, article thirteen chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, but there shall be no additional tax on water companies or upon privileges taxed under sub-section (c), except in case of wholesalers or jobbers.

Sec. 4. Each person taxable under sections two, three, four, or five, article twelve-(a), chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session one thousand nine hundred thirty-three, shall pay, in addition to that tax and all other taxes, an ad-

CORRECTLY ENROLLED

Hazel C. Hyde

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 365]

3

ditional emergency surtax of one-half of the tax imposed by the
above mentioned article, except that there shall be no additional
tax on telephone corporations.

Sec. 5. The taxes imposed by this title are for the privilege of
doing business within this state during the operation of this act
and shall be calculated for a period beginning July first, one
thousand nine hundred thirty-three, and ending June thirtieth,
one thousand nine hundred thirty-five, in the same manner as
the taxes imposed by articles twelve-(a) and thirteen, chapter
eleven, code of one thousand nine hundred thirty-one, as amend-
ed by chapter thirty-three, acts of the first extraordinary ses-
sion one thousand nine hundred thirty-three.

Sec. 6. The taxes imposed by sections three and four, shall
be paid quarterly on the first of November, February, May and
August, except that an amount calculated upon the first two
quarters of the fiscal year July first, one thousand nine hun-
dred thirty-three, to June thirtieth, one thousand nine hun-
dred thirty-four, shall be due and payable on April first, the
third quarter May fifteenth, and the fourth quarter August
first, one thousand nine hundred thirty-four.

Sec. 7. Except as otherwise provided by this act, the pro-

CORRECTLY ENROLLED

Wagel C. Kyea
Chairman Senate Committee.

James L. Smith
Chairman House Committee.

2 visions for the administration, collection, and enforcement of
3 taxes imposed by article thirteen, chapter eleven of the code
4 as amended by chapter thirty-three, acts of the first extraor-
5 dinary session, one thousand nine hundred thirty-three shall
6 apply, so far as applicable, to the administration, collection
7 and enforcement of the taxes imposed by section three of this
8 title.

Sec. 8. Except as otherwise provided by this act, the pro-
2 visions for the administration, collection and enforcement of
3 taxes imposed by article twelve-(a), chapter eleven of the code,
4 as amended by chapter thirty-three, acts of the first extraor-
5 dinary session, one thousand nine hundred thirty-three, shall
6 apply so far as applicable to the administration, collection and
7 enforcement of the taxes imposed by section four of this title.

Sec. 9. The proceeds of the taxes imposed by this title shall
2 be paid into the state fund, general revenue, and be expended
3 in such manner as may be provided by law.

Sec. 10. All provisions of this title shall terminate and cease
2 to be of effect upon the thirtieth day of June, one thousand nine
3 hundred thirty-five. The termination of this title shall not
4 affect the enforcement of any right, liability, or duty arising

CORRECTLY ENROLLED

Hazel C. Hyde

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 365]

5

5 during or out of the operation thereof.

TITLE II

General Consumers Sales Tax

Section 1. In order to meet the fiscal needs created by shifting the base of taxation from general property, it is declared essential that a general consumers sales tax be imposed for a limited period.

Sec. 2. For the purposes of this title :

2 *First*, "Persons" shall mean any person, firm, partnership, association or corporation ;

4 *Second*, "Tax commissioner" shall mean the state tax commissioner ;

6 *Third*, "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales at retail within this state, without deduction on account of the cost of the property sold, amounts paid for interest or discounts, or other expenses whatsoever. Losses shall not be deducted, but deductions may be made to the amount of credits or refunds for returned goods and of the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in "gross proceeds";

CORRECTLY ENROLLED

Hazel C. Kyle

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

15 *Fourth*, "Sale at retail" shall mean any transaction by which
 16 the ownership of tangible personal property is transferred for a
 17 consideration, when the transfer is made in the ordinary course
 18 of the transferor's business and is made to the transferee for
 19 consumption or use or any other purpose save resale in the form
 20 of tangible personal property. "Sale at retail" includes condi-
 21 tional sales and transactions under whatever name whereby
 22 title is ultimately to pass, although possession is retained for
 23 security;

24 *Fifth*, "Sale at retail" shall not include an isolated transac-
 25 tion in which any tangible personal property is sold, transferred,
 26 offered for sale, or delivered by the owner thereof, or by his
 27 representative for the owner's account, such sale, transfer, offer
 28 for sale or delivery not being made in the ordinary course of
 29 repeated and successive transactions of a like character by such
 30 owner or on his account by such representative;

31 *Sixth*, "Retail dealer" shall mean a person engaged in the
 32 business of sale at retail in this state;

33 *Seventh*, "Wholesale dealer" shall mean a person engaged in
 34 this state in the business of selling to a retail dealer in this state
 35 for resale only;

CORRECTLY ENROLLED

Hazel O. Kye
Chairman Senate Committee.

James L. Smith
Chairman House Committee.

Enrolled H. B. No. 365]

7

36 *Eighth*, "Business" shall include all activities engaged in or
37 caused to be engaged in with the object of gain or economic
38 benefit, direct or indirect;

39 *Ninth*, "Taypayer" shall mean any person liable for any tax
40 hereunder;

41 *Tenth*, "Tax" shall include all taxes, interest or penalties
42 levied hereunder.

Sec. 3. For the privilege of engaging in the business of selling
2 tangible personal property at retail, and of dispensing certain
3 selected services defined in section six of this title, every person
4 shall pay a tax of two percent of the gross proceeds of the busi-
5 ness done during the period from the date of the passage of this
6 act until the thirtieth day of June, one thousand nine hundred
7 thirty-five. The retail dealer shall keep the tax paid by the pur-
8 chaser separate and apart from the proceeds of sale and shall
9 account to the state for all the tax paid by the purchaser.
10 There shall be no tax on sales where the monetary consider-
11 ation is five cents or less. On each sale where the monetary
12 consideration is from six cents to fifty cents, both inclusive,
13 the tax payable by the purchaser shall be one cent; on each
14 sale where the monetary consideration is from fifty-one cents

CORRECTLY ENROLLED

Hazel C. Kyrle

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

15 to one dollar, both inclusive, the tax payable by the purchaser
16 shall be two cents, and on each fifty cents of such monetary
17 consideration, or fractional part thereof, in excess of one
18 dollar, the tax payable by the purchaser shall be one cent.
19 *Provided, however,* That no registration license shall be issued
20 by the state road commission for the operation of any auto-
21 motive vehicle in this state other than for those vehicles which
22 are licensed at the time of the effective date of this act, or
23 which may have hitherto been licensed and the applicant for
24 license is the same person in whose name license had previously
25 been issued, unless and until the tax upon such vehicle, as
26 provided by this section, has been paid: *And, provided further,*
27 That no transfer of title for the operation of any automotive
28 vehicle in this state shall be issued by the state road commis-
29 sioner unless and until the tax upon such vehicle, as provided
30 in this section, has been paid: *And provided further,* That
31 the provisions of the above two provisos shall not apply to
32 automotive vehicles engaged in interstate commerce under
33 classes H and I; and, the state road commissioner shall have
34 authority, and it shall be his duty to promulgate such rules
35 and regulations as may be necessary for the proper certification

CORRECTLY ENROLLED

Hazel C. Kye

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 365]

9

36 to the state road commission that such tax has been paid.
37 No profit shall accrue to any person by virtue of the pro-
38 visions of this section, as a result of the collection of the tax
39 herein levied upon purchasers, notwithstanding that the total
40 amount of such taxes collected may be in excess of the amount
41 for which such person would be liable by the application of the
42 levy of two percent to the gross proceeds of his sales, and
43 the total of all taxes collected by any such person shall
44 be returned and remitted to the tax commissioner as herein-
45 after provided.

Sec. 4. The burden of proving that a sale was not at retail
2 shall be upon the seller, unless he takes from the purchaser a
3 certificate signed by and bearing the address of the purchaser
4 to the effect that the property was purchased for resale. To
5 prevent evasion, it shall be presumed that all proceeds are
6 subject to the tax until the contrary is clearly established.

Sec. 5. A person exercising the privilege of producing for
2 sale, profit or commercial use, any natural resources, product
3 or manufactured product, and engaging in the business of sell-
4 ing at retail any such product not otherwise exempted herein
5 shall make returns of the gross proceeds of such retail sales

CORRECTLY ENROLLED

Hazel C. Kyle

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

6 and pay the tax imposed by this title.

Sec. 6. The provisions of this title shall apply not only to
2 selling tangible personal property, but also to the furnishing
3 of all services except professional and personal services and
4 except those services furnished by corporations subject to the
5 control of the public service commission and the state road com-
6 mission.

Sec. 7. The provisions of this title shall not apply to:

2 *First*, Sales of gasoline, taxable under article fourteen, chap-
3 ter eleven of the code of one thousand nine hundred thirty-
4 one;

5 *Second*, Sales of gas, steam and water delivered to consumers
6 through mains or pipes, and sales of electricity;

7 *Third*, Sales of public school books regularly adopted pur-
8 suant to section ten, article two, chapter eighteen of the code
9 of one thousand nine hundred thirty-one;

10 *Fourth*, Sales to the state, its institutions or sub-divisions,
11 and sales to the United States, including sales to agencies of
12 federal, state or local governments for distribution in public
13 welfare or relief work, or sales not taxable by this state by
14 reason of the federal constitution or otherwise.

CORRECTLY ENROLLED

Hazel C. Keyser
Chairman Senate Committee.

James L. Smith
Chairman House Committee.

Enrolled H. B. No. 365]

11

Sec. 8. It is the intent of this title that the tax levied here-
2 under shall be passed on to the consumer. The amount of the
3 tax shall be added to the sales price, and shall constitute a part
4 of that price and be collectible as such.

Sec. 9. A person engaged in the business of selling tangible
2 personal property at retail shall not advertise or hold out to
3 the public, in any manner, directly or indirectly, that he will
4 absorb all or any part of the tax or that the tax imposed by this
5 title is not to be considered an element in the price to the con-
6 sumer. A person who violates this provision shall be guilty
7 of a misdemeanor and upon conviction shall be punishable by
8 a fine of not less than fifty nor more than one thousand dollars,
9 or imprisonment in the county jail for not exceeding one year,
10 or both in the discretion of the court.

Sec. 10. To provide uniform methods of adding the average
2 equivalent of the tax to the selling price in each sale or trans-
3 action subject to the tax, appropriate rules and regulations,
4 except as otherwise herein provided, may be agreed upon or
5 adopted by competing taxpayers or associations of taxpayers.
6 except that all collections shall be made on the basis of the
7 total transaction at the time of sale, without regard to the

CORRECTLY ENROLLED

Hazel C. Kypre

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

8 value of the separate items making up the total amount of
9 the sale. Such rules and regulations, if they do not involve
10 price fixing, shall not be deemed illegal as in restraint of
11 trade or commerce. It shall be the duty of the tax commis-
12 sioner to cooperate in formulating such rules and regulations,
13 and, in the event appropriate rules and regulations are not
14 submitted to him within thirty days after this act takes effect,
15 or within a reasonable extended period fixed by the tax com-
16 missioner, he shall himself formulate and promulgate appro-
17 priate rules and regulations to effectuate the purpose of this
18 section.

Sec. 11. The tax commissioner may authorize a taxpayer
2 doing business, wholly or partly on a credit basis, to make re-
3 turns on the basis of cash actually received. Thereafter, the
4 taxpayer shall make return and pay taxes on that basis until
5 further order of the tax commissioner. This section shall not
6 operate to relieve from the tax, credit business done during the
7 operation of this title but realized upon in money or money's
8 worth thereafter.

Sec. 12. Any person engaged in the business of making sales
2 at retail who is at the same time engaged in some other kind of

Hazel C. Hyde

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

3 business, occupation, or profession, not taxable under this title,
4 shall keep books to show separately the transactions used in
5 determining the tax base herein taxed. In the event of such
6 person failing to keep such separate books, there shall be levied
7 upon him a tax based upon the entire gross proceeds of both or
8 all of his businesses.

Sec. 13. In determining gross proceeds of sales from one to
2 another of affiliated companies or persons, or under other
3 circumstances where the relation between the buyer and the
4 seller is such that gross proceeds from a sale are not indicative
5 of the true value of the subject matter of the sale, the tax com-
6 missioner shall prescribe uniform and equitable rules for de-
7 termining the amount upon which the tax shall be levied, cor-
8 responding as nearly as possible to gross proceeds from the sale
9 of similar products of like quality or character where no
10 common interest exists between the parties.

Sec. 14. The taxes levied hereunder shall be a personal
2 obligation of the taxpayer and shall be due and payable in
3 monthly installments, on or before the fifteenth day of the
4 month next succeeding the month in which the tax accrued.
5 The taxpayer shall, on or before the fifteenth day of each month,

CORRECTLY ENROLLED

Hazel O. Kypre

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

6 make out and mail to the tax commissioner a return for the
7 preceding month, in the form prescribed by the tax commis-
8 sioner, showing (a) the total gross proceeds of his business for
9 that month; (b) the gross proceeds of his business upon which
10 the tax is computed; (c) the amount of the tax for which he is
11 liable; and (d) any further information necessary in the com-
12 putation and collection of the tax which the tax commisioner
13 may require. A remittance for the amount of the tax shall
14 accompany the return. A monthly return shall be signed by the
15 taxpayer or his duly authorized agent.

Sec. 15. The tax commissioner may, upon written request,
2 authorize a taxpayer whose books and records are not kept on
3 a monthly basis to file returns at other times than those specified
4 in the preceding section, but in no event shall a taxpayer make
5 less than one return a calendar month, except as provided by
6 section sixteen.

Sec. 16. When the total tax for which a person is liable does
2 not exceed ten dollars for any month, he may make quarterly
3 return on or before the fifteenth day of the first month in the
4 next succeeding quarter in lieu of monthly returns.

Sec. 17. On or before thirty days after the end of the tax

CORRECTLY ENROLLED

Hazel O. Kypre

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

Enrolled H. B. No. 365]

15

2 year, each person liable for the payment of a tax hereunder shall
3 make an annual return in such form as may be required by the
4 tax commissioner, showing total gross proceeds of his business
5 for the preceding tax year, gross proceeds upon which the tax
6 for that year was computed, and any other information neces-
7 sary in the computation or collection of the tax that the tax com-
8 missioner may require. After deducting the amount of prior
9 payments during the tax year, the taxpayer shall transmit the
10 return with a remittance for any remaining tax, payable by him
11 during the preceding tax year, to the tax commissioner. The
12 taxpayer or his duly authorized agent, shall verify the return
13 under oath. The tax commissioner for good cause shown, may,
14 on written application of a taxpayer, extend the time for making
15 his annual return.

Sec. 18. A person engaging in two or more places in the
2 same business or businesses of like character, taxable hereunder,
3 shall file consolidated returns covering all such business activities
4 engaged in within this state.

Sec. 19. A person liable for the tax imposed hereunder shall
2 keep the records, render under oath the statements, make re-
3 turns, and comply with the rules and regulations that the tax

Nazel C. Hyde

Chairman Senate Committee.

James L. Smith

Chairman House Committee.

4 commissioner may, from time to time, require. The tax com-
5 missioner may require such records, statements or returns, upon
6 notice, from any person in order to determine whether he is
7 liable to the tax hereunder. The tax commissioner may require
8 preservation of records for not to exceed five years.

Sec. 20. The tax commissioner shall keep full and accurate
2 records of all moneys received by him. He shall preserve all re-
3 turns filed with him hereunder for five years.

Sec. 21. Unless, in compliance with a judicial order, or as
2 may be required by the proper administration hereof, the tax
3 commissioner, his agents and employees and former tax com-
4 missioners, agents and employees shall not divulge facts or
5 information obtained in the administration hereof.

Sec. 22. The proceeds of the tax imposed by this title shall
2 be devoted to the support of the free schools, and be expended
3 in such manner as may be provided by law.

Sec. 23. All provisions of this title shall terminate and cease
2 to be of effect upon the thirtieth day of June, one thousand nine
3 hundred thirty-five. The termination thereof shall not affect
4 the enforcement of any right, liability, or duty arising during
5 or out of the operation hereof.

CORRECTLY ENROLLED

James L. Smith
Hazel O. Kye

Chairman House Committee.

Chairman Senate Committee.

Enrolled H. B. No. 365]

17

TITLE III

General Provisions

Section 1. The tax commissioner shall have the authority to
2 promulgate and enforce reasonable rules and regulations neces-
3 sary to the administration and enforcement of the provisions
4 of this act.

Sec. 2. Except for the promulgation of rules and regulations,
2 any power or duty conferred upon the tax commissioner by this
3 act may be exercised under his direction by his employees or ap-
4 pointees; but the tax commissioner shall be responsible for their
5 acts.

Sec. 3. Except as herein otherwise provided a person who
2 wilfully violates any of the provisions of this act, or any lawful
3 rule or regulation promulgated under it, shall be guilty of a
4 misdemeanor and upon conviction, shall be fined not less than
5 fifty nor more than five thousand dollars.

Sec. 4. The provisions of this act shall be construed as
2 severable and if any part is held to be unconstitutional, or for
3 any other reason invalid, the remaining provisions shall not be
4 affected. If the application of the tax imposed by this act to

CORRECTLY ENROLLED

James L. Smith

Chairman House Committee.

Hazel C. Kephre

Chairman Senate Committee.

5 any particular taxpayer or to any period of time is held to be
6 invalid, its application to other taxpayers and to other periods
7 of time shall not be affected thereby.

Hazel E. Stym
Chairman Senate Committee.

B. M. Hiner
Speaker of the House of Delegates

Geo. Stace
Clerk of the House of Delegates

R. H. Matthews
President of the Senate

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.

James A. ...
Clerk of the Senate

The within is *approved*

this *24th* day of *March*, 1934.

H. S. K...
Governor

Filed in the office of the Secretary of State
of West Virginia **MAR 26 1934**
Wm. S. O'BRIEN,
Secretary of State