

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No.

211

(By Mr.

Hodges)



PASSED

March 9,

1935

In Effect

July 1st 1935

- Passage

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Senate Bill No. 211

(BY MR. HODGES, MR. PRESIDENT) (by request)

[Passed March 9, 1935; in effect July 1, 1935.]

AN ACT to continue the application of surtaxes on sales, privileges,
productions, business and incomes, and the general consumers
sales tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE I.

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 continued to provide funds essential to
5 the conduct of government.

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

Sec. 3. Every person taxable under subsections (a), (b), (c), (d) and (g) of section two, article thirteen, chapter eleven, code of West Virginia, 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 three-tenths of each tax imposed by subsections (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 any public service or utility business conducted wholly within the state by a corporation organized under the laws of this state with a capital stock of fifty thousand dollars or less and which does not generate its own current or any part thereof, nor on water companies or upon privileges taxed under subsection (c), except in case of wholesalers or jobbers.

Sec. 4. Each person taxable under sections two, three, four, 2 or five, article twelve-(a), chapter eleven, code of one thousand 3 nine hundred thirty-one, as amended by chapter thirty-three, 4 acts of the first extraordinary session, one thousand nine hun- 5 dred thirty-three, shall pay, in addition to that tax and all 6 other taxes, an additional emergency surtax of three-tenths of 7 the tax imposed by the above mentioned article.

Sec. 5. The taxes imposed by this title are for the privilege 2 of doing business within this state during the operation of this 3 act and shall be calculated for a period beginning July first, 4 one thousand nine hundred thirty-five, and ending June 5 thirtieth, one thousand nine hundred thirty-seven, in the same 6 manner as the taxes imposed by articles twelve-(a) and thirteen, 7 chapter eleven, code of one thousand nine hundred thirty-one, 8 as amended by chapter thirty-three, acts of the first extraordi- 9 nary session, one thousand nine hundred thirty-three.

Sec. 6. The taxes imposed by sections three and four, shall 2 be paid quarterly on the first of November, February, May 3 and August.

Sec. 7. Except as otherwise provided by this act, the pro- 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 extraordi-
5 nary 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 three of this
8 article.

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 extraordi-
5 nary 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 article.

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

ARTICLE II.

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 continued.

Sec. 2. For the purposes of this article :

1. "Person" shall mean any person, firm, partnership, association, corporation, guardian, or committee;
2. "Tax commissioner" shall mean the state tax commissioner;
3. "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";
4. "Sales at retail" shall mean any transaction by which the ownership of tangible personal property is transferred for a consideration, when the transfer is made in the ordinary

18 course of the transferor's business and is made to the trans-
19 feree for consumption or use or any other purpose, save re-
20 sale, without change or processing, in the form of tangible
21 personal property. "Sale at retail" includes conditional sales
22 and transactions under whatever name whereby title is ulti-
23 mately to pass, although possession is retained for security;

24 5. "Sale at retail" shall not include an isolated transaction
25 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
30 such owner or on his account by such representative;

31 6. "Retail dealer" shall mean a person engaged in the busi-
32 ness of sale at retail in this state, or one who furnishes services
33 taxed by this article;

34 7. "Wholesale dealer" shall mean a person engaged in this
35 state in the business of selling to a retail dealer in this state
36 for resale only, or of selling machinery, supplies and material,
37 in wholesale quantities, to contractors, or to persons engaged

38 in manufacturing in this state or in the production of natural
39 resources;

40 8. "Business" shall include all activities engaged in or
41 caused to be engaged in with the object of gain or economic
42 benefit, direct or indirect;

43 9. "Tax" shall include all taxes, interest or penalties levied
44 hereunder;

45 10. "Purchaser" shall mean a person who purchases tangible
46 personal property, or a service taxed by this article;

47 11. "Personal services" shall include those

48 (a) Compensated by the payment of wages in the ordinary
49 course of employment,

50 (b) Rendered to the person of an individual without, at
51 the same time, selling tangible personal property or the use of
52 such property, such as nursing, barbering, shoe shining, mani-
53 curing, and similar services;

54 12. "Taxpayer" shall mean a retail dealer.

Sec. 3. For the privilege of engaging in the business of
2 selling tangible personal property at retail, and of dispensing
3 certain selected services defined in section six of this article,
4 a retail dealer shall collect from a purchaser a tax of two

5 per cent of the gross proceeds of each separate transaction,
6 and shall pay the amount collected to the tax commissioner in
7 accordance with the provisions of this article.

8 A purchaser shall pay the amount of the tax to the retail
9 dealer. The retail dealer shall keep the tax paid by the pur-
10 chaser separate and apart from the proceeds of sale and shall
11 account to the state for all the tax paid by the purchaser.
12 There shall be no tax on sales where the monetary considera-
13 tion is five cents or less. On each sale where the monetary
14 consideration is from six cents to fifty cents, both inclusive, the
15 tax payable by the purchaser shall be one cent; on each sale
16 where the monetary consideration is from fifty-one cents to one
17 dollar, both inclusive, the tax payable by the purchaser shall
18 be two cents, and on each fifty cents of such monetary con-
19 sideration, or fractional part thereof, in excess of one dollar,
20 the tax payable by the purchaser shall be one cent.

21 No profit shall accrue to any person by virtue of the pro-
22 visions of this section, as a result of the collection of the tax
23 herein levied upon purchasers, notwithstanding that the total
24 amount of such taxes collected may be in excess of the amount
25 for which such person would be liable by the application of

26 the levy of two per cent to the gross proceeds of his sales,
27 and the total of all taxes collected by any such person shall
28 be returned and remitted to the tax commissioner as herein-
29 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
4 selling at retail any such product not otherwise exempted here-
5 in shall make returns of the gross proceeds of such retail sales
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
6 commission.

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

- 2 1. Sales of gasoline, taxable under article fourteen, chapter
3 eleven of the code of one thousand nine hundred thirty-one;
- 4 2. Sales of gas, steam and water delivered to consumers
5 through mains or pipes, and sales of electricity;
- 6 3. Sales of school books required to be used in any of the
7 schools of this state;
- 8 4. Sales by or to the state, its institutions or subdivisions,
9 and sales to the United States, including sales to agencies of
10 federal, state or local governments for distribution in public
11 welfare or relief work.
- 12 5. Sales on motor vehicles which are titled by the state road
13 commission.

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

Sec. 9. A person engaged in any business taxable here-
2 under shall not advertise or hold out to the public, in any

3 manner, directly or indirectly, that he will absorb all or any
4 part of the tax, or that the tax imposed by this article is not
5 to be considered an element in the price to the consumer. A
6 person who violates this provision shall be guilty of a mis-
7 demeanor and upon conviction shall be punishable by a fine
8 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
8 value of the separate items making up the total amount of the
9 sale. Such rules and regulations, if they do not involve price
10 fixing, shall not be deemed illegal as in restraint of trade or
11 commerce. The tax commissioner shall cooperate in formulat-
12 ing such rules and regulations, and, in the event appropriate
13 rules and regulations are not submitted to him within thirty

14 days after this act takes effect, or within a reasonable extended
15 period fixed by the tax commissioner, he shall himself formu-
16 late and promulgate appropriate rules and regulations to
17 effectuate the purpose of this section.

Sec. 11. A taxpayer doing business wholly or partly on a
2 credit basis shall require the purchaser to pay the full amount
3 of tax due upon a credit sale, at the time such sale is made, or
4 within thirty days thereafter. This section shall not operate
5 to relieve from the tax, credit business done during the opera-
6 tion of this title but realized on in money or money's worth
7 thereafter.

Sec. 12. Any person engaged in the business of making
2 sales at retail who is at the same time engaged in some other
3 kind of business, occupation, or profession, not taxable under
4 this title, shall keep books to show separately the transactions
5 used in determining the tax base herein taxed. In the event
6 of such person failing to keep such separate books, there
7 shall be levied upon him a tax based upon the entire gross
8 proceeds of both or all of his business.

Sec. 13. In determining gross proceeds of sales from one
2 to 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
6 commissioner shall prescribe uniform and equitable rules for
7 determining the amount upon which the tax shall be levied,
8 corresponding as nearly as possible to gross proceeds from
9 the sale of similar products of like quality or character where
10 no 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
6 month, make out and mail to the tax commissioner a return
7 for the preceding month, in the form prescribed by the tax
8 commissioner, showing (a) the total gross proceeds of his
9 business for that month; (b) the gross proceeds of his business
10 upon which the tax is computed; (c) the amount of the tax
11 for which he is liable; and (d) any further information neces-
12 sary in the computation and collection of the tax which the
13 tax commissioner may require. A remittance for the amount

14 of the tax shall accompany the return. A monthly return
15 shall be signed by the taxpayer or his duly authorized agent.
16 A taxpayer who fails to file his return and remit the tax as
17 prescribed in this section shall, in addition to all other penalties,
18 pay a penalty of six per cent of the amount of the tax collected
19 during the period reported. The tax commissioner shall in all
20 cases collect this penalty.

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

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

Sec. 17. On or before thirty days after the end of the tax
2 year, each person liable for the payment of a tax hereunder
3 shall make an annual return in such form as may be required
4 by the tax commissioner, showing total gross proceeds of his

5 business for the preceding tax year, gross proceeds upon
6 which the tax for that year was computed, and any other
7 information necessary in the computation or collection of the
8 tax that the tax commissioner may require. After deducting
9 the amount of prior payments during the tax year, the tax-
10 payer shall transmit the return with a remittance for any
11 remaining tax, payable by him during the preceding tax year,
12 to the tax commissioner. The taxpayer or his duly authorized
13 agent, shall verify the return under oath. The tax commis-
14 sioner for good cause shown, may, on written application of
15 a taxpayer, extend the time for making his annual return.

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

Sec. 19. A person liable for the tax imposed hereunder
2 shall keep the records, render under oath the statements,
3 make returns, and comply with the rules and regulations that
4 the tax commissioner may, from time to time, require. The
5 tax commissioner may require such records, statements or
6 returns, upon notice, from any person in order to determine

7 whether he is liable to the tax hereunder. The tax commis-
8 sioner may require preservation of records for not to exceed
9 five years, and may, at any time, through his authorized
10 agents, inspect all books and accounts of the taxpayer, in-
11 cluding banking accounts, which in any way enter into the
12 record of the business out of which the tax imposed herein
13 arises.

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

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

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

Sec. 23. All provisions of this article shall terminate and
2 cease to be of effect upon the thirtieth day of June, one
3 thousand nine hundred thirty-seven. The termination thereof

4 shall not affect the enforcement of any right, liability, or duty
5 arising during or out of the operation hereof.

ARTICLE III.

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

Sec. 2. Except for the promulgation of rules and regula-
2 tions, any power or duty conferred upon the tax commissioner
3 by this act may be exercised under his direction by his em-
4 ployees or appointees; but the tax commissioner shall be
5 responsible for their 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
4 a misdemeanor and upon conviction, shall be fined not less
5 than 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
4 be affected. If the application of the tax imposed by this act

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton L. Howard

Chairman Senate Committee

Arnold M. Vickers

Chairman House Committee

Originated in the

Senate

Takes effect

July 1st 1935 passage.

Pharm. M. L.

Clerk of the Senate

Pro Stall

Clerk of the House of Delegates

Clay Z. Hodges

President of the Senate

James P. R. R.

Speaker House of Delegates

The within

is approved this the *15th*

day of

March

, 1935.

H. S. Kemp

Governor

Filed in the office of the Secretary of State
of West Virginia. **MAR 15 1935**

Wm. S. O'BRIEN,
Secretary of State