

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937

ENROLLED

HOUSE BILL No. 60
Committee on
(By Mr. Taxation and Finance)

PASSED *February 11,* 1937

In Effect *July 1, 1937.* Passage

Filed in the office of the Secretary of State
of West Virginia. **FEB 15 1937**
Wm. S. O'BRIEN,
Secretary of State

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 60

(Originating in the Committee on Taxation and Finance)

[Passed February 11, 1937; in effect July 1, 1937.]

AN ACT to provide general revenue by amending chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by inserting section five-a in article twelve-a, and section three-a in article thirteen, relating to surtaxes, and by adding article fifteen, relating to a general consumers sales tax.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be further amended by adding section five-a to article twelve-a, by adding section three-a to article thirteen, and by adding article fifteen to said chapter, all to read as follows:

Article 12-A.

Section 5-a. *Surtaxes.* Every person taxable under sections two, three, four or five of this article shall pay, in addition to that tax and all other taxes, an additional surtax of three-tenths of the tax imposed by such sections.

Article 13.

Section 3-a. *Surtaxes.* Every person taxable under sections two-(a), two-(b), two-(c), two-(d) and two-(g) of this article shall pay, in addition to that tax, and all other taxes, an additional surtax of three-tenths of each tax imposed by such sections.

The surtax imposed by this section shall not apply to:

1. A public service or utility business conducted wholly within this state by a corporation organized under the laws of this state with a capital stock not in excess of fifty thousand dollars and which does not generate its own current, or any part thereof.
2. Water companies.
3. Privileges taxed under section two-(c) except in the case of wholesalers or jobbers.

Article 15. Consumers Sales Tax.

Section 1. The purpose of this article is to impose a general consumers sales tax.

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 sold, if the full sale price of the new article is included in "gross proceeds";

4. "Sale 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 course of the transferor's business and is made to the trans-

19 fereed 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
22 sales and transactions under whatever name whereby title is
23 ultimately to pass, although possession is retained for se-
24 curity;

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

33 6. "Retail dealer" shall mean a person engaged in the
34 business of sale at retail in this state, or one who furnishes
35 services taxed by this article;

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

40 engaged in manufacturing in this state or in the production
41 of natural resources;

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

45 9. "Tax" shall include all taxes, interest or penalties
46 levied hereunder;

47 10. "Purchaser" shall mean a person who purchases
48 tangible personal property, or a service taxed by this ar-
49 ticle;

50 11. "Personal service" shall include those:

51 (a) Compensated by the payment of wages in the ordi-
52 nary course of employment;

53 (b) Rendered to the person of an individual without, at
54 the same time, selling tangible personal property or the
55 use of such property, such as nursing, barbering, shoe shin-
56 ing, manicuring, and similar services;

57 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 seven of this

4 article, a retail dealer shall collect from a purchaser a tax
5 of two per cent of the gross proceeds of each separate trans-
6 action, and shall pay the amount collected to the tax com-
7 missioner in accordance with the provisions of this article.

8 There shall be no tax on sales where the monetary con-
9 sideration is five cents or less. The amount of the tax payable
10 by the purchaser shall be computed as follows:

11 (1) On each sale, where the monetary consideration is from
12 six cents to fifty cents, both inclusive, one cent.

13 (2) On each sale where the monetary consideration is from
14 fifty-one cents to one dollar, both inclusive, two cents.

15 (3) On each fifty cents of monetary consideration or frac-
16 tion thereof in excess of one dollar, one cent.

Sec. 4. A purchaser shall pay the amount of the tax levied
2 by this article to the retail dealer. The retail dealer shall
3 keep the tax paid by the purchaser separate and apart from
4 the proceeds of sale, unless the tax commissioner authorizes
5 the retail dealer to record the amount of the tax in a different
6 manner. Where such authorization is given, the state's claim
7 shall be enforceable against and shall take precedence over

8 all other claims against the moneys comingled. The retail
9 dealer shall account to the state for all the tax paid by the
10 purchaser.

Sec. 5. No profit shall accrue to any person as a result of
2 the collection of the tax levied by this article notwithstanding
3 the total amount of such taxes collected may be in excess of
4 the amount for which such person would be liable by the
5 application of the levy of two per cent to the gross proceeds
6 of his sales and the total of all taxes collected by any such
7 person shall be returned and remitted to the tax commis-
8 sioner as hereinafter provided.

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

Sec. 7. 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
5 herein shall make returns of the gross proceeds of such re-
6 tail sales and pay the tax imposed by this article.

Sec. 8. The provisions of this article shall apply not only
2 to selling tangible personal property, but also to the furnish-
3 ing of all services, except professional and personal services,
4 and except those services furnished by corporations subject
5 to the control of the public service commission and the state
6 road commission.

Sec. 9. The provisions of this article shall not apply to:

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

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

7 3. Sales of school books required to be used in any of the
8 schools of this state;

9 4. Sales to the state, its institutions or subdivisions, and
10 sales to the United States, including sales to agencies of fed-
11 eral, state or local governments for distribution in public
12 welfare or relief work;

13 5. Sales on motor vehicles which are titled by the state
14 road commission.

Sec. 10. It is the intent of this article that the tax levied
2 hereunder shall be passed on to and be paid by the con-
3 sumer. The amount of the tax shall be added to the sales
4 price, and shall constitute a part of that price and be col-
5 lectible as such.

Sec. 11. 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.
6 A person who violates this provision shall be guilty of a
7 misdemeanor and upon conviction shall be punishable by a
8 fine of not less than fifty, nor more than one thousand dol-
9 lars, or imprisonment in the county jail for not exceeding
10 one year, or both, in the discretion of the court.

Sec. 12. To provide uniform methods of adding the aver-
2 age equivalent of the tax to the selling price in each sale or
3 transaction subject to the tax, appropriate rules and regula-
4 tions, except as otherwise herein provided, may be agreed

5 upon or adopted by competing taxpayers or associations of
6 taxpayers, except that all collections shall be made on the
7 basis of the total transaction at the time of sale, without re-
8 gard to the value of the separate items making up the total
9 amount of the sale. Such rules and regulations, if they do
10 not involve price fixing, shall not be deemed illegal as in
11 restraint of trade or commerce. The tax commissioner shall
12 cooperate in formulating such rules and regulations, and, in
13 the event appropriate rules and regulations are not submit-
14 ted to him within thirty days after this act takes effect, or
15 within a reasonable extended period fixed by the tax commis-
16 sioner, he shall himself formulate and promulgate appropriate
17 rules and regulations to effectuate the purpose of this sec-
18 tion.

Sec. 13. A taxpayer doing business wholly or partly on
2 a credit basis shall require the purchaser to pay the full
3 amount of tax due upon a credit sale, at the time such sale
4 is made, or within thirty days thereafter.

Sec. 14. 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 article, shall keep books to show separately the transac-
 5 tions used in determining the tax base herein taxed. In the
 6 event of such person failing to keep such separate books,
 7 or records, there shall be levied upon him a tax based upon
 8 the entire gross proceeds of both or all of his businesses.

4 Sec. 15. 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 the gross proceeds from a sale are not indic-
 5 ative of the true value of the subject matter of the sale, the
 6 tax commissioner shall prescribe uniform and equitable rules
 7 for determining the amount upon which the tax shall be
 8 levied, corresponding as nearly as possible to gross proceeds
 9 from the sale of similar products of like quality or character
 10 where no common interest exists between the parties.

4 Sec. 16. The taxes levied by this article shall be due and
 2 payable in monthly installments, on or before the fifteenth
 3 day of the month next succeeding the month in which the tax
 4 accrued. The taxpayer shall, on or before the fifteenth day
 5 of each month, make out and mail to the tax commissioner
 6 a return for the preceding month, in the form prescribed

7 by the tax commissioner, showing (a) the total gross pro-
8 ceeds of his business for that month; (b) the gross proceeds
9 of his business upon which the tax is computed; (c) the
10 amount of the tax for which he is liable; and (d) any fur-
11 ther information necessary in the computation and collec-
12 tion of the tax which the tax commissioner may require. A
13 remittance for the amount of the tax shall accompany the
14 return. A monthly return shall be signed by the taxpayer or
15 his duly authorized agent.

Sec. 17. A tax due and unpaid under this article shall be
2 a debt due the state. It shall be a personal obligation of the
3 taxpayer and shall be a lien upon all of the property of the
4 taxpayer. The lien shall have priority over all other liens and
5 obligations except those due the United States.

6 A taxpayer who fails to file his return and remit the tax
7 at the time required by this article shall, in addition to all
8 other penalties, pay a penalty of six per cent of the amount
9 of the tax collected during the period reported. For each
10 succeeding thirty days elapsing before payment there shall
11 be added an additional penalty of one per cent. If the tax-
12 payer is an association, or corporation, the officers thereof

13 whose duty it is to make the return and pay the tax shall be
14 personally liable, jointly and severally, for any default on
15 the part of the corporation.

Sec. 18. A lien for taxes under this article shall attach
2 when the obligation to pay the tax to the tax commissioner
3 accrues. The lien shall be enforceable by the tax commis-
4 sioner as any other lien against the property of a debtor.

Sec. 19. 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, ex-
6 cept as provided by section sixteen.

Sec. 20. When the total tax for which a person is liable
2 does not exceed ten dollars for any month, he may make
3 quarterly return on or before the fifteenth day of the first
4 month in the next succeeding quarter in lieu of monthly re-
5 turns.

Sec. 21. 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 in-
7 formation 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 author-
13 ized agent, shall verify the return under oath. The tax com-
14 missioner for good cause shown, may, on written applica-
15 tion of a taxpayer, extend the time for making any return
16 required by the provisions of this article.

Sec. 22. 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 busi-
4 ness activities engaged in within this state.

Sec. 23. 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, prescribe. 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. 24. If the tax commissioner has reason to believe
2 that the tax imposed by this article is insufficiently returned
3 by a taxpayer, either because the taxpayer has failed or re-
4 fused to make a return, or has made an incomplete return, or
5 has made a return which is deficient or otherwise erroneous,
6 he may proceed to determine the amount of the tax for which
7 the taxpayer is liable. The tax commissioner may make such
8 audits and investigations, and take such evidence and testi-
9 mony as may be necessary for the purpose of his investiga-
10 tion.

11 As a result of his investigation, the tax commissioner may
12 assess the amount of the tax which he finds to be due. After

13 ten days' notice in writing to the person assessed, he may
14 proceed to collect the tax.

Sec. 25. A non-resident person or foreign corporation
2 engaged in a business within this state in the conduct of
3 which the tax levied by this article becomes due, shall keep
4 within this state adequate records concerning the operation
5 of the business, and all taxes collected in the course of the
6 business. The amount of the tax collected shall not be trans-
7 mitted outside of this state without the written consent of,
8 and in accordance with the conditions prescribed by the tax
9 commissioner.

Sec. 26. The tax commissioner shall keep full and accu-
2 rate records of all moneys received by him. He shall pre-
3 serve all returns filed with him hereunder for five years.

Sec. 27. 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. 28. The tax commissioner shall have the authority
2 to promulgate and enforce reasonable rules and regulations

3 necessary to the administration and enforcement of this
4 article.

Sec. 29. Except as herein otherwise provided a person
2 who wilfully violates any of the provisions of this article,
3 or any lawful rule or regulation promulgated under it, shall
4 be guilty of a misdemeanor and upon conviction, shall be
5 fined not less than fifty nor more than five thousand dollars.

Sec. 30. 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. 31. The provisions of this act shall be construed as
2 severable and if any part is held to be unconstitutional, or
3 for any other reason invalid, the remaining provisions shall
4 not be affected. If the application of a tax imposed by this
5 act to any particular taxpayer or to 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.

Car B. Halbeath

Chairman Senate Committee

Edo B. Walker

Chairman House Committee

Originated in the

House

Takes effect

July 1-1937

passage.

Thomas S. Miller

Clerk of the Senate

Jno S. Hall

Clerk of the House of Delegates

Chas. E. Hedges

President of the Senate

James Ray Thomas

Speaker House of Delegates

The within

Approved

this the

13th

day of

January

, 1937.

James A. Holt

Governor.

FEB 15 1937

Filed in the office of the Secretary of State
of West Virginia

MAR 15 1937

Wm. S. O'BRIEN,

Secretary of State