

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 108

(By Mr. Strouss)



PASSED Feb. 28, 1939

In Effect July 1, 1939 Passage

**ENROLLED**

**House Bill No. 108**

(BY MR. STROUSS)

[Passed February 28, 1939; in effect ~~July 1, 1939~~

*from passage.] (ok JSH  
by FE)*

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by adding a new section, to be designated as section eighteen-a, and by amending and reenacting sections one, two and twenty-nine of said article fifteen, all relating to a general consumers sales and service tax.

*Be it enacted by the Legislature of West Virginia:*

That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be further amended by adding a new section, to be designated section eighteen-a, and by amending and reenacting sections one, two and twenty-nine of said article fifteen, to read as follows:

**Article 15. Consumers Sales Tax.**

Section 1. *General Consumers Sales and Service Tax Im-*

2 posed. The purpose of this article is to impose a general con-  
3 sumers sales and service tax.

Sec. 2. *Definitions.* For the purpose of this article:

2 (1) "Person" shall mean any person, firm, partnership,  
3 association, corporation, guardian, or committee;

4 (2) "Tax commissioner" shall mean the state tax com-  
5 missioner;

6 (3) "Gross proceeds" shall mean the amount received  
7 in money, credits, property or other consideration from sales  
8 at retail within this state, without deduction on account of  
9 the cost of the property sold, amounts paid for interest or  
10 discounts, or other expenses whatsoever. Losses shall not be  
11 deducted, but any credit or refund made for goods returned  
12 may be deducted;

13 (4) "Sale at retail" shall mean any transaction by which  
14 the ownership of tangible personal property is transferred  
15 for a consideration, when the transfer is made in the ordinary  
16 course of the transferor's business and is made to the trans-  
17 feree for consumption or use or any other purpose, except  
18 resale in its original form without change or processing.  
19 "Sale at retail" includes conditional sales and transactions

20 under whatever name whereby title is ultimately to pass,  
21 but presently retained for security. "Sale at retail" shall  
22 not include an isolated transaction in which any tangible  
23 personal property is sold, transferred, offered for sale, or  
24 delivered by the owner thereof, or by his representative for  
25 the owner's account, such sale, transfer, offer for sale or  
26 delivery not being made in the ordinary course of repeated  
27 and successive transactions of a like character by such owner  
28 or on his account by such representative;

29 (5) "Retail dealer" shall mean a person engaged in the  
30 business of sale at retail in this state, or one who furnishes  
31 services taxed by this article;

32 (6) "Wholesale dealer" shall mean a person engaged in  
33 this state in the business of selling to a retail dealer in this  
34 state for resale only, or of selling machinery, supplies and  
35 material in wholesale quantities, to contractors or to persons  
36 engaged in the business of manufacturing, transportation,  
37 transmission, communication or in the production of natural  
38 resources in this state;

39 (7) "Business" shall include all activities engaged in or  
40 caused to be engaged in with the object of gain or economic

41 benefit, direct, or indirect;

42 (8) "Tax" shall include all taxes, interest or penalties  
43 levied hereunder;

44 (9) "Purchaser" shall mean a person who purchases  
45 tangible personal property or a service taxed by this article;

46 (10) "Service, or selected service" shall include all non-  
47 professional activities engaged in for other persons for a  
48 consideration, which involve the rendering of a service as  
49 distinguished from the sale of tangible property, but shall  
50 not include personal services or the services rendered by an  
51 employee to his employer;

52 (11) "Personal service" shall include those:

53 (a) Compensated by the payment of wages in the ordinary  
54 course of employment;

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

59 (12) "Taxpayer" shall mean a retail dealer.

Sec. 18-a. *Receivership; Bankruptcy.* In the distribution,  
2 voluntary or compulsory, in receivership, bankruptcy or oth-

3 erwise, of the property or estate of any person, all taxes due  
4 and unpaid under this article shall be paid from the first  
5 money available for distribution, in priority to all claims  
6 and liens, except taxes and debts due the United States.  
7 Any person charged with the administration or distribution  
8 of any such property or estate who shall violate the provisions  
9 of this section, shall be personally liable for any taxes accrued  
10 and unpaid under this article which are chargeable against  
11 the person whose property or estate is in administration or  
12 distribution.

Sec. 29. *Penalty for Violation; Jurisdiction.* Except as  
2 herein otherwise provided, a person who wilfully violates any  
3 of the provisions of this article, or any lawful rule or regu-  
4 lation promulgated under it, shall be guilty of a misdemeanor,  
5 and, upon conviction, shall be fined not less than fifty dollars,  
6 nor more than three hundred dollars for the first offense;  
7 and for any second or subsequent offense, shall be guilty  
8 of a felony, and, upon conviction, shall be fined not less than  
9 five hundred dollars, nor more than five thousand dollars,  
10 and confined in the penitentiary not to exceed two years,  
11 either such fine or imprisonment, or both, in the discretion

12 of the court. Justices of the peace shall have concurrent juris-  
13 diction with the circuit court, and any other courts having  
14 criminal jurisdiction in their county, for the trial of all  
15 misdemeanors arising under this article.

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

.....  
*Chairman Senate Committee*

*Walter*

.....  
*Chairman House Committee*

Originated in the *House of Delegates*

Takes effect *July 1, 1939* passage.

*Chapman*

.....  
*Clerk of the Senate*

*W. S. Hall*

.....  
*Clerk of the House of Delegates*

*W. S. Hall*

.....  
*President of the Senate*

*James H. H. H.*

.....  
*Speaker House of Delegates*

The within *approved* this the *69*

day of *March*, 1939.

*Wm. S. O'Brien*

.....  
*Governor.*



Filed in the office of the Secretary of State  
of West Virginia. **MAR 7 1939**

*Wm. S. O'Brien,*  
Secretary of State