WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 108

(By Mr. Strous)

PASSED Feb. 28 1939

In Effect July 1 1939 Passage
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-
posed. The purpose of this article is to impose a general consumers sales and service tax.

Sec. 2. Definitions. For the purpose 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 any credit or refund made for goods returned may be deducted;

(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 transferee for consumption or use or any other purpose, except resale in its original form without change or processing.

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

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

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

(7) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic
(8) "Tax" shall include all taxes, interest or penalties levied hereunder;

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

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

(11) "Personal service" shall include those:

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

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

(12) "Taxpayer" shall mean a retail dealer.
otherwise, of the property or estate of any person, all taxes due
and unpaid under this article shall be paid from the first
money available for distribution, in priority to all claims
and liens, except taxes and debts due the United States.
Any person charged with the administration or distribution
of any such property or estate who shall violate the provisions
of this section, shall be personally liable for any taxes accrued
and unpaid under this article which are chargeable against
the person whose property or estate is in administration or
distribution.

Sec. 29. Penalty for Violation; Jurisdiction. Except as
herein otherwise provided, a person who wilfully violates any
of the provisions of this article, or any lawful rule or regu-
lation promulgated under it, shall be guilty of a misdemeanor,
and, upon conviction, shall be fined not less than fifty dollars,
nor more than three hundred dollars for the first offense;
and for any second or subsequent offense, shall be guilty
of a felony, and, upon conviction, shall be fined not less than
five hundred dollars, nor more than five thousand dollars,
and confined in the penitentiary not to exceed two years,
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

[Signature]

Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1939, passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

President of the Senate

[Signature]

Speaker House of Delegates

The within approved this the 6th day of March, 1939.

[Signature]

Governor.

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

Mar. 7, 1939

Wm. S. O'Brien, Secretary of State