

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

Comm. Sub. for House B.

SENATE BILL No. 186

(By Mr.....)

PASSED *March 3rd*..... 1939

In Effect *July 1st*..... 1939 Passage



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ENROLLED
SENATE COMMITTEE SUBSTITUTE
FOR
House Bill No. 186

[Passed March 3, 1939; in effect July 1, 1939]

AN ACT to amend and reenact sections one, two, seven, nineteen, twenty and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to tax on gasoline.

Be it enacted by the Legislature of West Virginia:

That sections one, two, seven, nineteen, twenty and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted to read as follows:

Section 1. *Definitions.* When used in this article:

2 The term "gasoline" shall include any substance or com-

3 bination of substances which is capable of use as a motor fuel
4 for any internal combustion engine, and sold or used for that
5 purpose;

6 The term "person" or the term "company" shall include
7 any individual, firm, co-partnership, joint adventure, associa-
8 tion, corporation, trust and any other group or combination
9 acting as a unit, and the plural as well as the singular number,
10 unless the intention to give a more limited meaning is dis-
11 closed by the context, and when used in connection with the
12 penalties imposed by this article, shall mean and include the
13 officers, directors, trustees, or members of any firm, co-
14 partnership, joint adventure, association, corporation, trust
15 or any other group acting as a unit;

16 The term "distributor" shall mean and include every per-
17 son who refines, produces, manufactures, compounds, or blends
18 gasoline in this state for use or for sale to jobbers or consumers,
19 and every person who is now engaged, or who may hereafter
20 engage, in his own name or in the name of his representative or
21 agent in this state, in the selling of gasoline for the purpose of
22 resale or distribution; and persons operating tank wagons into
23 this state from places of business located outside this state

24 and selling gasoline in quantities as desired by purchasers in
25 this state without definite orders having been placed prior to
26 the delivery of the product, shall be deemed distributors in this
27 state;

28 The term "retail dealer" shall mean and include any per-
29 son not a distributor who sells gasoline in this state to con-
30 sumers only;

31 The term "importer" shall mean any person who purchases
32 or obtains gasoline outside this state and uses the same within
33 the state;

34 The term "sale" shall include any exchange, gift, or other
35 disposition, and "purchase" shall include any acquisition of
36 ownership;

37 The term "motor vehicle" shall mean automobiles, motor
38 trucks and motorcycles, and shall include all other vehicles,
39 engines or machines which are operated or propelled by com-
40 bustion of gasoline.

Sec. 2. *Annual License Tax.* Every distributor shall pay
2 an annual license tax of five dollars for each distributing sta-
3 tion or place of business or agency located in this state at or
4 from which gasoline is sold for resale or distribution or at

5 which gasoline is produced, refined or compounded, and an
6 annual license tax of one dollar for each filling station or place
7 of business in this state from which gasoline is sold at retail.
8 Such license tax for the last half of the calendar year one
9 thousand nine hundred thirty-nine shall be due and payable
10 on the first day of July, one thousand nine hundred thirty-
11 nine; and such annual license tax shall be due and payable
12 on or before the first day of January, one thousand nine hun-
13 dred forty, and annually thereafter.

14 Persons operating tank wagons into this state from places
15 of business located outside this state and selling gasoline in
16 quantities as desired by purchasers in this state without
17 definite orders having been placed prior to the delivery of the
18 product, shall be deemed distributors in this state and shall
19 pay an annual license tax of five dollars on account of each
20 place of business from which tank wagons are so operated.

21 Every other retail dealer shall pay an annual license tax of
22 one dollar for each filling station or place of business in this
23 state at which gasoline is sold. Such license tax for the last
24 half of the calendar year one thousand nine hundred thirty-
25 nine shall be due and payable on the first day of July, one

26 thousand nine hundred thirty-nine, and such annual license
27 tax shall be payable on or before the first day of January,
28 one thousand nine hundred forty, and annually thereafter.

29 The privilege granted through the payment of the annual
30 license tax shall be conditioned upon the licensee complying
31 with the requirements of this article pertaining to the filing
32 of statements and the payment of the excise tax imposed by
33 section three hereof.

34 It shall be the duty of every person intending to deal in
35 gasoline in this state to make application to the state tax com-
36 missioner for a license so to do, which application shall be ac-
37 companied by the amount of the license tax herein required
38 and shall state whether the applicant intends to engage in such
39 business as a distributor or retail dealer, and shall designate
40 the intended place or places of business. A license certificate
41 for any person commencing business on or after July first in
42 any year may be issued for the half year upon payment of
43 half the annual license tax herein required. The license cer-
44 tificate shall be posted or displayed and so kept at all times in
45 public view at the place of business for which the same was
46 issued.

47 The license certificate provided for herein shall not be
48 transferable from one person to another nor from one location
49 to another. If any person shall fail, neglect or refuse to pay
50 the license tax herein imposed within the time prescribed,
51 there shall automatically accrue a penalty of fifty per cent
52 thereof, and the tax and the penalty shall be collected as
53 hereinafter provided.

Sec. 7. Delivering of Gasoline Prohibited in Certain Cases;

2 *Penalties.* Any person transporting gasoline upon the public
3 highway, except licensed distributors, shall carry either an
4 invoice, sales memorandum, or waybill, designating the name
5 of the seller, purchaser or consignee, and point of delivery
6 of the gasoline being transported. Any person violating any
7 of the provisions of this section shall be guilty of a misde-
8 meanor, and shall, upon conviction thereof, be sentenced to
9 pay a fine of not less than five dollars nor more than one hun-
10 dred dollars.

11 The delivery of gasoline from a tank truck to the tank of
12 a motor vehicle is prohibited, except in cases of emergency.
13 Any person violating the provision of this section shall be
14 fined not more than fifty dollars, or confined in jail not more
15 than thirty days, or both, in the discretion of the court.

Sec. 19. *Refund for Gasoline Exported or Lost.* Any distributor who shall export gasoline from West Virginia to any other state or nation may be refunded a sum equal to the amount of such excise tax paid on such gallonage upon application made on proper forms to the tax commissioner within thirty days after the close of the month in which such gasoline was exported. Any distributor who shall in the conduct of his wholesale gasoline business sustain losses of gasoline by reason of shrinkage or evaporation, which gasoline shall have been included in the measure by which the excise tax imposed by this article is determined, shall be refunded a sum equal to the amount of such excise tax on the gallonage lost, not to exceed one per cent of the gallonage handled during that month which has been previously included in the measure by which the excise tax imposed by this article is determined: *Provided, however,* That the tax commissioner shall cause refund to be made under authority of this section only when application for refund, as herein provided, is filed with the tax commissioner within thirty days after the close of the month during which the gasoline was exported or lost, on forms prescribed

22 by the tax commissioner, of the quantity of and full details
23 concerning such gasoline exported or lost.

24 Every distributor shall be entitled to a refund from the
25 state of West Virginia of the amount of gasoline tax paid by
26 him, on any gasoline lost or destroyed, while he shall be the
27 owner thereof, through fire, lightning, breakage, or flood:

28 *Provided, however,* That such distributor shall notify the tax
29 commissioner in writing of such loss or destruction, and the
30 amount of gasoline lost or destroyed, within ten days from
31 the date of the discovery of such loss or destruction: *Pro-*

32 *vided further,* That within thirty days after the discovery of
33 such loss or destruction such distributor shall file with the
34 tax commissioner an affidavit sworn to by him, setting forth
35 in full the circumstances and amount of the loss or destruc-
36 tion, and such other information with respect thereto as the
37 tax commissioner may require.

Sec. 20. *Refund to Consumers.* Any person who shall buy
2 in quantities of twenty-five gallons or more, at any one time,
3 gasoline as defined by this article, for the purpose of and the
4 same is actually used (a) as a motor fuel for diesel engines

5 not operated upon the public highways or streets of this
6 state, or (b) as a motor fuel to operate tractors and gas
7 engines or threshing machines for agricultural purposes,
8 when such operation is not, in whole or in part, upon the
9 public highways or streets of this state, or (c) as a motor
10 fuel to operate aeroplanes or other aircraft, or (d) by any
11 railway company subject to regulation by the Public Service
12 Commission of West Virginia, for any purpose other than
13 upon the public highways or streets of this state, or (e) in the
14 business of manufacturing, or in the production of natural
15 resources, either as a motor fuel or for any other purpose
16 except upon the public highways and streets of this state, or
17 (f) as a cleaning fluid in any laundry or dry cleaning busi-
18 ness, or (g) as a motor fuel in motor boats or other water
19 craft operated upon the navigable streams of this state, may,
20 if the gasoline tax imposed by this article shall have pre-
21 viously been paid upon such gasoline, be refunded a sum
22 equal to the amount of such tax, upon presenting to the tax
23 commissioner an affidavit accompanied by original or top
24 copy sales slips or invoices, or certified copies thereof, from
25 the distributor or retail dealer, showing such purchases,

26 together with evidence of payment thereof, which affidavit
27 shall set forth the total amount of such gasoline purchased
28 and used by such consumer, other than upon any public
29 highways, streets or alleys of this state, and how used; and
30 the tax commissioner upon the receipt of such affidavit and
31 such paid sales slips or invoices shall cause to be refunded
32 such tax paid on gasoline purchased and used as aforesaid.
33 The right to receive any refund under the provisions of this
34 article shall not be assignable and any assignment thereof
35 shall be void and of no effect. Nor shall any payment be
36 made to any person other than the original person entitled
37 thereto using gasoline as hereinbefore in this section set
38 forth: *Provided, however,* That the tax commissioner shall
39 cause refund to be made under authority of this section only
40 when application for refund is filed with the tax commis-
41 sioner, upon forms prepared and furnished by the tax com-
42 missioner, within sixty days from the date of purchase or
43 delivery of the gasoline.

Sec. 22. *Taxes to be Used for Road Purposes.* All taxes
2 collected under the provisions of this article shall be paid
3 into the state treasury and shall be used only for the purpose

4 of the construction, reconstruction, maintenance and repair
5 of roads and highways, and for the payment of the interest
6 and sinking fund on state bonds issued for roads purposes.

7 Unless necessary for such bond requirements, one-fifth of
8 the taxes collected under the provisions of this article shall
9 be used for secondary road purposes, until July first, one
10 thousand nine hundred forty-one.

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

E. Ellisenman
Chairman Senate Committee

Reed B. Baete
Chairman House Committee

Originated in the *Senate*

Takes effect *July 1st, 1939* passage.

Robert H. Miller
Clerk of the Senate

Wm. S. Stall
Clerk of the House of Delegates

Wm. M. Deary
President of the Senate

James Key Hoskins
Speaker House of Delegates

The within *approved* this the *9th*

day of *March*, 1939.

James S. Lee
Governor.



Filed in the office of the Secretary of State
of West Virginia. **MAR 9 1939**
Wm. S. O'BRIEN,
Secretary of State.