WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1943

ENROLLED

HOUSE BILL No. 213

(By Mr. Jackson)

PASSED March 11, 1943

In Effect ninety days from Passage
AN ACT to amend and reenact sections four, thirteen and seventeen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, and sections one, seven, nineteen and twenty-two, article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one, as last amended and reenacted by chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to gasoline tax.

Be it enacted by the Legislature of West Virginia:

That sections four, thirteen and seventeen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, and sections one, seven, nineteen and twenty-two, article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one, as last amended and re-
enacted by chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

Section 1. Definitions: Gasoline, Person, Company, Distributor, Retail Dealer, Importer, Sale, Purchase and Motor Vehicles.—When used in this article: The term “gasoline” shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner's solvent, and any other liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine;

The term “person” or the term “company” shall include any individual, firm, co-partnership, joint adventure, association, corporation, trust and any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context, and when used in connection with the penalties imposed by this article, shall mean and include the officers, directors,
trustees, or members of any firm, co-partnership, joint
adventure, association, corporation, trust or any other
group acting as a unit;

The term "distributor" shall mean and include every
person who refines, produces, manufactures, compounds,
or blends gasoline in this state for use or for sale to
jobbers or consumers, and every person who is now en-
gaged, or who may hereafter engage, in his own name
or in the name of his representative or agent in this
state, in the selling of gasoline for the purpose of resale
or distribution; and persons operating tank wagons into
this state from places of business located outside this
state and selling gasoline in quantities as desired by
purchasers in this state without definite orders having
been placed prior to the delivery of the product, shall
be deemed distributors in this state;

The term "retail dealer" shall mean and include any
person not a distributor who sells gasoline in this state to
consumers only;

The term "importer" shall mean any person who pur-
chases or obtains gasoline outside this state and uses the same within the state;

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

The term "motor vehicle" shall mean automobiles, motor trucks and motorcycles, and shall include all other vehicles, engines or machines which are operated or propelled by combustion of gasoline.

Sec. 4. Distributors Monthly Statement; Payment of Tax; Gasoline Furnished to Distributor's Own Filling Stations; Detailed Information; Distributors Unable to Furnish Detailed Information.—Every distributor selling gasoline in this state shall, within thirty days after the close of each month, transmit to the tax commissioner a statement, verified by oath or affirmation, on such forms as the tax commissioner shall prescribe, of all gasoline refined, produced, compounded, purchased and received, sold, distributed or used by such distributor during the month to be covered, and if any of the gallonage received by such distributor had not previously been in-
cluded in the measure of tax under the provisions of this article, he shall at the same time pay to the tax commissioner the amount of tax due for such month: Provided, That all gallonage furnished by any distributor to any of its service stations in this state shall be deemed to have been sold and shall be treated and considered, in computing the tax, in the same manner as though the same had been sold to retail dealers or to other persons.

Such statement shall also contain full details as to each sale made, including the gallonage of gasoline shipped from points without West Virginia direct to customers or consignees in West Virginia; the name and address of each purchaser; the date of each shipment or delivery; the point from which shipped or delivered; the point to which shipped or delivered; the quantity of each shipment or sale; the number and initials of the car in which shipped if shipped by rail; the name of the boat or barge if shipped by water; or if delivered by other means, the method of delivery. The statement shall also accurately show the gallonage purchased or received by such dis-
tributor during the month; the date each quantity was received; the point from which shipped or delivered; the point at which received; the name and address of the person from whom purchased or obtained; the quantity of each purchase; the number and initials of the car if shipped by rail; the name of the boat or barge if shipped by water; or if delivered by other means, the method of delivery. The statement shall also contain any additional information the tax commissioner may deem necessary for the proper ascertainment and assessment of the tax.

If any distributor is unable to furnish the information called for above, he shall report the quantity of gasoline purchased or obtained during the month and, if any such gasoline had not previously been included in the measure of tax under the provisions of this article, he shall pay the amount of tax due thereon.

Sec. 7 Delivery of Gasoline Prohibited; Penalties; Police Powers.—Any person transporting gasoline upon the public highway, except licensed distributors, shall carry either an invoice, sales memorandum, or waybill, desig-
nating the name of the seller, purchaser or consignee, and point of delivery of the gasoline being transported. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than five dollars nor more than one hundred dollars.

The delivery of gasoline from a tank truck to the tank of a motor vehicle is prohibited, except in cases of emergency. Any person violating the provision of this section shall be fined not more than fifty dollars, or confined in jail not more than thirty days, or both, in the discretion of the court. Any employee of the gasoline tax department so designated by the tax commissioner, shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or city of this state, and such employee shall, before entering upon the discharge of his duties, execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to
form by the attorney general, and as to sufficiency by the
board of public works, and the same shall be filed with
the secretary of state and preserved in his office.

Sec. 13. Failure or Refusal to Make Statement or Pay
Tax; Penalty.—If any distributor, retail dealer or im-
porter fail, neglect or refuse to make any statement re-
quired for any month or to pay the excise tax due for
any month within the time prescribed for the filing of
such statement or the payment of such tax, there shall
automatically accrue a penalty equal to one-tenth of one
cent on each gallon of gasoline on which the excise tax
is due and payable in that period, or on each gallon pur-
chased during that month if no excise tax is due, the
amount of which penalty shall in no case be less than
five dollars (or if no sales or purchases were made, a
penalty of five dollars), such penalty to be paid or col-
lected in the same manner as the tax imposed by this
article is required to be paid or collected.

The tax commissioner shall notify any distributor, re-
tail dealer, or importer, that fails, neglects or refuses to
make any statement required for any month within the
time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten days from the date of such notification, there shall automatically accrue a penalty equal to one cent on each gallon of gasoline on which the excise tax is due and payable in that period or on each gallon purchased during that month if no excise tax is due, the amount of which penalty shall in no case be less than twenty-five dollars (or if no sales or purchases were made, a penalty of twenty-five dollars), such penalty to be paid or collected in the same manner as the tax imposed by this article is required to be paid or collected.

Sec. 17. Status of Tax Accrued and Unpaid; Embezzlement Thereof; Bond Indemnifying State Against Loss; Tax Commissioner May Require a Surety Bond.—The excise tax imposed in this article, when accrued and while in the hands of the distributor, retail dealer, or importer, shall be the property of the state of West Virginia held in trust. If any person shall willfully fail to pay the tax to the tax commissioner as provided in this
article, he shall be guilty of embezzlement of funds, the
property of the state of West Virginia, and upon convic-
tion, he shall be confined in the penitentiary not less than
one nor more than five years. Further, in any case where
it shall be deemed necessary by the tax commissioner, the
tax commissioner is authorized to require any distributor,
retail dealer or importer to deposit with the tax commis-
sioner a surety bond, to be approved by the tax commis-
sioner—as to the sufficiency and by the attorney general
as to form indemnifying the state against any loss aris-
ing from the failure of the distributor, retail dealer or
importer to pay the excise tax for any cause whatso-
ever.

Sec. 19. Refund for Gasoline Exported or Lost.—Any
distributor who shall export gasoline from West Vir-
ginia to any other state or nation may be refunded a sum
equal to the amount of such excise tax paid on such gal-
lonage 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 dis-
tributor 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 and one-half 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 by the tax commissioner, of the quantity of and full details concerning such gasoline exported or lost.

Every distributor shall be entitled to a refund from the state of West Virginia of the amount of gasoline tax paid by him, on any gasoline lost or destroyed, while he shall be the owner thereof, through fire, lightning, breakage, or flood: Provided, however, That such distributor shall
notify the tax commissioner in writing of such loss or
destruction, and the amount of gasoline lost or destroyed,
within ten days from the date of the discovery of such
loss or destruction: Provided further, That within thirty
days after the discovery of such loss or destruction such
distributor shall file with the tax commissioner an affi-
davit sworn to by him, setting forth in full the circum-
stances and amount of the loss or destruction, and such
other information with respect thereto as the tax com-
missioner may require.

Sec. 22. Taxes to Be Used for Road Purposes.—All
taxes collected under the provisions of this article shall
be paid into the state treasury and shall be used only for
the purpose of the construction, reconstruction, mainte-
nance and repair of roads and highways, and for the pay-
ment of the interest and sinking fund on state bonds
issued for road purposes. Unless necessary for such bond
requirements, one-fifth of the taxes collected under the
provisions of this article shall be used for secondary road
purposes until July first, one thousand nine hundred
forty-five.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approval this the 19th day of March 1943.

Governor.

Filed in the office of the Secretary of State of West Virginia MAR 19 1943

Wm. S. O'BRIEN, Secretary of State