

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 213

(By Mr. Jackson)



PASSED March 11, 1943

In Effect ninety days from Passage

213

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(By MR. JACKSON)

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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,

19 trustees, or members of any firm, co-partnership, joint  
20 adventure, association, corporation, trust or any other  
21 group acting as a unit;

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

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

38 The term "importer" shall mean any person who pur-

39 chases or obtains gasoline outside this state and uses  
40 the same within the state;

41 The term "sale" shall include any exchange, gift, or  
42 other disposition, and "purchase" shall include any ac-  
43 quisition of ownership;

44 The term "motor vehicle" shall mean automobiles, mo-  
45 tor trucks and motorcycles, and shall include all other  
46 vehicles, engines or machines which are operated or pro-  
47 pelled by combustion of gasoline.

Sec. 4. *Distributors Monthly Statement; Payment of*  
2 *Tax; Gasoline Furnished to Distributor's Own Filling*  
3 *Stations; Detailed Information; Distributors Unable to*  
4 *Furnish Detailed Information.*—Every distributor selling  
5 gasoline in this state shall, within thirty days after the  
6 close of each month, transmit to the tax commissioner a  
7 statement, verified by oath or affirmation, on such forms  
8 as the tax commissioner shall prescribe, of all gasoline  
9 refined, produced, compounded, purchased and received,  
10 sold, distributed or used by such distributor during the  
11 month to be covered, and if any of the gallonage re-  
12 ceived by such distributor had not previously been in-

13 cluded in the measure of tax under the provisions of  
14 this article, he shall at the same time pay to the tax com-  
15 missioner the amount of tax due for such month: *Pro-*  
16 *vided*, That all gallonage furnished by any distributor to  
17 any of its service stations in this state shall be deemed  
18 to have been sold and shall be treated and considered,  
19 in computing the tax, in the same manner as though the  
20 same had been sold to retail dealers or to other  
21 persons.

22 Such statement shall also contain full details as to each  
23 sale made, including the gallonage of gasoline shipped  
24 from points without West Virginia direct to customers or  
25 consignees in West Virginia; the name and address of each  
26 purchaser; the date of each shipment or delivery; the  
27 point from which shipped or delivered; the point to  
28 which shipped or delivered; the quantity of each ship-  
29 ment or sale; the number and initials of the car in which  
30 shipped if shipped by rail; the name of the boat or barge  
31 if shipped by water; or if delivered by other means, the  
32 method of delivery. The statement shall also accurately  
33 show the gallonage purchased or received by such dis-

34 tributor during the month; the date each quantity was  
35 received; the point from which shipped or delivered; the  
36 point at which received; the name and address of the  
37 person from whom purchased or obtained; the quantity  
38 of each purchase; the number and initials of the car if  
39 shipped by rail; the name of the boat or barge if shipped  
40 by water; or if delivered by other means, the method  
41 of delivery. The statement shall also contain any ad-  
42 ditional information the tax commissioner may deem  
43 necessary for the proper ascertainment and assessment  
44 of the tax.

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

*Sec. 7 Delivery of Gasoline Prohibited; Penalties; Po-  
2 lice Powers.*—Any person transporting gasoline upon the  
3 public highway, except licensed distributors, shall carry  
4 either an invoice, sales memorandum, or waybill, desig-

5 nating the name of the seller, purchaser or consignee,  
6 and point of delivery of the gasoline being transported.  
7 Any person violating any of the provisions of this section  
8 shall be guilty of a misdemeanor, and shall, upon convic-  
9 tion thereof, be sentenced to pay a fine of not less than  
10 five dollars nor more than one hundred dollars.

11 The delivery of gasoline from a tank truck to the tank  
12 of a motor vehicle is prohibited, except in cases of emerg-  
13 ency. Any person violating the provision of this section  
14 shall be fined not more than fifty dollars, or confined in  
15 jail not more than thirty days, or both, in the discretion  
16 of the court. Any employee of the gasoline tax depart-  
17 ment so designated by the tax commissioner, shall have  
18 all the lawful powers delegated to members of the de-  
19 partment of public safety to enforce the provisions of this  
20 article in any county or city of this state, and such em-  
21 ployee shall, before entering upon the discharge of his  
22 duties, execute a bond with security in the sum of thirty-  
23 five hundred dollars, payable to the state of West Vir-  
24 ginia, conditioned for the faithful performance of his  
25 duties as such, and such bond shall be approved as to



26 form by the attorney general, and as to sufficiency by the  
27 board of public works, and the same shall be filed with  
28 the secretary of state and preserved in his office.

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

16 The tax commissioner shall notify any distributor, re-  
17 tail dealer, or importer, that fails, neglects or refuses to  
18 make any statement required for any month within the

19 time prescribed for the filing of such statement or the  
20 payment of such tax, of such failure and if the required  
21 statement is not filed or payment of tax is not made within  
22 ten days from the date of such notification, there shall  
23 automatically accrue a penalty equal to one cent on each  
24 gallon of gasoline on which the excise tax is due and pay-  
25 able in that period or on each gallon purchased during  
26 that month if no excise tax is due, the amount of which  
27 penalty shall in no case be less than twenty-five dollars  
28 (or if no sales or purchases were made, a penalty of  
29 twenty-five dollars), such penalty to be paid or collected  
30 in the same manner as the tax imposed by this article  
31 is required to be paid or collected.

Sec. 17. *Status of Tax Accrued and Unpaid; Embezzle-  
2 ment Thereof; Bond Indemnifying State Against Loss;  
3 Tax Commissioner May Require a Surety Bond.*—The  
4 excise tax imposed in this article, when accrued and  
5 while in the hands of the distributor, retail dealer, or  
6 importer, shall be the property of the state of West Vir-  
7 ginia held in trust. If any person shall willfully fail to  
8 pay the tax to the tax commissioner as provided in this

9 article, he shall be guilty of embezzlement of funds, the  
10 property of the state of West Virginia, and upon convic-  
11 tion, he shall be confined in the penitentiary not less than  
12 one nor more than five years. Further, in any case where  
13 it shall be deemed necessary by the tax commissioner, the  
14 tax commissioner is authorized to require any distributor,  
15 retail dealer or importer to deposit with the tax commis-  
16 sioner a surety bond, to be approved by the tax commis-  
17 sioner—as to the sufficiency and by the attorney general  
18 as to form indemnifying the state against any loss aris-  
19 ing from the failure of the distributor, retail dealer or  
20 importer to pay the excise tax for any cause whatso-  
21 ever.

Sec. 19. *Refund for Gasoline Exported or Lost.*—Any  
2 distributor who shall export gasoline from West Vir-  
3 ginia to any other state or nation may be refunded a sum  
4 equal to the amount of such excise tax paid on such gal-  
5 lonage upon application made on proper forms to the  
6 tax commissioner within thirty days after the close of  
7 the month in which such gasoline was exported. Any dis-  
8 tributor who shall in the conduct of his wholesale gasoline

9 business sustain losses of gasoline by reason of shrinkage  
10 or evaporation, which gasoline shall have been included in  
11 the measure by which the excise tax imposed by this ar-  
12 ticle is determined, shall be refunded a sum equal to the  
13 amount of such excise tax on the gallonage lost, not to  
14 exceed one and one-half per cent of the gallonage  
15 handled during that month which has been previously in-  
16 cluded in the measure by which the excise tax imposed by  
17 this article is determined: *Provided, however,* That the tax  
18 commissioner shall cause refund to be made under author-  
19 ity of this section only when application for refund, as  
20 herein provided, is filed with the tax commissioner within  
21 thirty days after the close of the month during which the  
22 gasoline was exported or lost, on forms prescribed by the  
23 tax commissioner, of the quantity of and full details con-  
24 cerning such gasoline exported or lost.

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

30 notify the tax commissioner in writing of such loss or  
31 destruction, and the amount of gasoline lost or destroyed,  
32 within ten days from the date of the discovery of such  
33 loss or destruction: *Provided further*, That within thirty  
34 days after the discovery of such loss or destruction such  
35 distributor shall file with the tax commissioner an affi-  
36 davit sworn to by him, setting forth in full the circum-  
37 stances and amount of the loss or destruction, and such  
38 other information with respect thereto as the tax com-  
39 missioner may require.

Sec. 22. *Taxes to Be Used for Road Purposes.*—All  
2 taxes collected under the provisions of this article shall  
3 be paid into the state treasury and shall be used only for  
4 the purpose of the construction, reconstruction, mainte-  
5 nance and repair of roads and highways, and for the pay-  
6 ment of the interest and sinking fund on state bonds  
7 issued for road purposes. Unless necessary for such bond  
8 requirements, one-fifth of the taxes collected under the  
9 provisions of this article shall be used for secondary road  
10 purposes until July first, one thousand nine hundred  
11 forty-five.

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

Wm. A. G. Quinn  
Chairman Senate Committee

Fred S. Rotroff  
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Fred B. Watkins  
Clerk of the Senate

J. A. Clipp  
Clerk of the House of Delegates

James Paull  
President of the Senate

John E. Cawood  
Speaker House of Delegates

The within approved this the 19<sup>th</sup>  
day of March, 1943.

Matthew Neal  
Governor.

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

Wm. S. O'BRIEN,  
Secretary of State