

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943



ENROLLED

HOUSE BILL No. 46

(By Mr. Hansbarger)



PASSED March 10, 1943

In Effect ninety days from Passage

ENROLLED
House Bill No. 46

(BY MR. HANSBARGER)

[Passed March 10, 1943; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, ten, eleven and seventeen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred twenty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to a general consumers' sales and service tax.

Be it enacted by the Legislature of West Virginia:

That sections two, ten, eleven and seventeen, article fifteen, 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:

Article 15. Consumers Sales Tax.

Section 2. *Definitions.*—For the purpose of this article:

- 2 (1) "Persons" shall mean any person, firm, partner-
3 ship, 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 in
7 money, credits, property or other consideration from
8 sales at retail within this state, without deduction on ac-
9 count of the cost of the property sold, amounts paid for
10 interest or discounts or other expenses whatsoever. Losses
11 shall not be deducted, but any credit or refund made for
12 goods returned may be deducted;

13 (4) "Sales at retail" shall mean any transaction by
14 which the ownership of tangible personal property is
15 transferred for a consideration, when the transfer is made
16 in the ordinary course of the transferor's business and
17 is made to the transferee for consumption or use or any
18 other purpose, except resale in its original form without
19 change or processing. "Sale at retail" includes conditional
20 sales and transactions under whatever name whereby title
21 is ultimately to pass, but presently retained for security.
22 "Sale at retail" shall not include an isolated transaction
23 in which any tangible personal property is sold, trans-
24 ferred, offered for sale, or delivered by the owner thereof,

25 or by his representative for the owner's account, such
26 sales, transfer, offer for sale or delivery not being made
27 in the ordinary course of repeated and successive trans-
28 actions of a like character by such owner or on his account
29 by such representative;

30 (5) "Retail dealer" shall mean a person engaged in
31 the business of sale at retail, or one who furnishes serv-
32 ices taxed by this article, in this state, to the ultimate
33 consumer;

34 (6) "Wholesale dealer" shall mean a person engaged
35 in this state in the business of selling tangible personal
36 property or furnishing services to retail dealers for re-
37 sale only; but such person, when sales are made for per-
38 sonal consumption or use, shall, with respect to such sales,
39 be classified as a "retail dealer"; and the fact that the pur-
40 chaser has a store license shall not exempt him from paying
41 the tax on the retail value of the goods or services bought
42 unless he is a bona fide retail dealer of such goods or
43 services. The term "wholesale dealer" shall also include
44 any person engaged in this state in the business of selling
45 machinery, supplies and materials in wholesale quantities

46 or of furnishing services to churches, incorporated chari-
47 table organizations, contractors or to persons engaged in
48 the business of manufacturing, transportation, transmis-
49 sion, communication, or in the production of natural re-
50 sources in this state: *Provided, however,* That this ex-
51 emption shall not apply to fraternal or social organiza-
52 tions, nor to charitable organizations which charge for
53 services rendered;

54 (7) "Ultimate consumer" shall mean a person who
55 uses or consumes services or personal property for the
56 immediate satisfaction of human desires or requirements,
57 distinguished from services and goods, used or consumed
58 in connection with the conduct of the business of pro-
59 ducing or selling personal property or dispensing a serv-
60 ice taxable under this article;

61 (8) "Business" shall include all activities engaged in
62 or caused to be engaged in with the object of gain or
63 economic benefit, direct or indirect;

64 (9) "Tax" shall include all taxes, interest or penalties
65 levied hereunder;

66 (10) "Purchaser" shall mean a person who purchases

67 tangible personal property or a service taxed by this
68 article;

69 (11) "Service, or selected service" shall include all
70 nonprofessional activities engaged in for other persons
71 for a consideration, which involve the rendering of a
72 service as distinguished from the sale of tangible prop-
73 erty, but shall not include personal services or the serv-
74 ices rendered by an employee to his employer or any
75 service rendered for resale.

76 (12) "Personal service" shall include those:

77 (a) Compensated by the payment of wages in the ordi-
78 nary course of employment;

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

83 (13) "Taxpayer" shall mean a retail dealer.

Sec. 10. *Tax Paid by a Consumer.*—It is the intent of this
2 article that the tax levied hereunder shall be passed on to
3 and be paid by the ultimate consumer. The amount of the

4 tax shall be added to the sales price, and shall constitute a
5 part of that price and be collectible as such.

Sec. 11. *Seller Shall Not Pay Tax; Penalty.*—A person
2 engaged in any business taxable hereunder shall not ad-
3 vertise or hold out to the public, in any manner, directly
4 or indirectly that he will absorb all or any part of the
5 tax, or that the tax imposed by this article is not to be
6 considered an element in the price to the ultimate con-
7 sumer. A person who violates this provision shall be
8 guilty of a misdemeanor and upon conviction shall be
9 punishable by a fine of not less than fifty, nor more than
10 one thousand dollars, or imprisonment in the county jail
11 for not exceeding one year, or both, in the discretion of
12 the court.

Sec. 17. *Lien of Tax; Penalties; Recording.*—A tax due
2 and unpaid under this article shall be a debt due the state.
3 It shall be a personal obligation of the taxpayer and shall
4 be a lien upon all the property of the taxpayer, provided
5 no such lien shall be enforceable against a purchaser
6 (including lien creditors) for valuable consideration with-
7 out notice, unless it be docketed in the office of the clerk

8 of the county court in the county wherein such property
9 is located before a deed of trust, or bill of sale therefor
10 to such purchaser is delivered for record to the clerk of
11 the county court of such county.

12 The taxpayer who fails to file his return and remit the
13 tax at the time required by this article, shall in addition
14 to all other penalties pay a penalty of six per cent of the
15 amount of the tax collected during the period reported,
16 and for each succeeding thirty days elapsing before the
17 payment there shall be added an additional penalty of
18 one per cent. If the taxpayer is an association, or corpora-
19 tion, the officers thereof, whose duty it is to make the re-
20 turn and pay the tax, shall be personally liable, jointly
21 and severally, for any default on the part of the corpora-
22 tion.

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

Ray F. Johnson
Chairman Senate Committee

Fred L. Robb
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Fred B. Madson
Clerk of the Senate

Joseph
Clerk of the House of Delegates

James Paul
President of the Senate

John E. Cannon
Speaker House of Delegates

The within approved this the 19th
day of March, 1943.

Walter M. Reel
Governor.



Filed in the office of the Secretary of State
of West Virginia MAR 19 1943
Wm. S. O'BRIEN,
Secretary of State