

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

HOUSE BILL No. 105

(Originating in the Committee on Finance.)  
(By Mr. \_\_\_\_\_)



PASSED March 7 1947

In Effect ninety days from Passage



105

**ENROLLED**  
COMMITTEE SUBSTITUTE FOR  
**House Bill No. 105**

[Passed March 7, 1947; in effect ninety days from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by enacting and adding thereto two new articles to be designated articles seventeen and eighteen, relative to cigarette tax, to raise revenues by levying and imposing taxes upon the sale of cigarettes, to provide for the payment and collection of such tax, to provide for administration, and prescribing penalties for violation thereof.

*Be it enacted by the Legislature of West Virginia:*

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles designated as article seventeen and article eighteen, to read as follows:

**Article 17.**

Section 1. *Definitions.*—As used in this article:

2 "Person" includes firms and corporations;

3 "Wholesale dealer" includes only those persons who  
4 sell cigarettes to licensed retail dealers for the purpose of  
5 resale only;

6 "Retail dealer" includes every person other than a  
7 wholesale dealer engaged in the business of selling cig-  
8 arettes in this state, irrespective of quantity or amount  
9 or number of sales thereof;

10 "Sale" includes exchange, barter, gift, offer for sale and  
11 distribution, and excludes transactions in interstate or  
12 foreign commerce;

13 "Cigarette" includes any roll for smoking made wholly  
14 or in any part of tobacco irrespective of size or shape  
15 and whether or not such tobacco is flavored, adulterated  
16 or mixed with any other ingredient, the wrapper or cover  
17 of which is made of paper or any other material except-  
18 ing tobacco;

19 "Package" means the individual package, box or other  
20 container in or from which retail sales of cigarettes are  
21 normally made or intended to be made;

22 "Stamp" shall mean any cigarette stamps required un-  
23 der this article, or any meter or ink impression author-  
24 ized by the tax commissioner to serve as such stamp;

25 "Commissioner" means the state tax commissioner and  
26 where the meaning of the context requires, all deputies,  
27 and employees duly authorized by him.

Sec. 2. *Purpose of Tax; Ratio.*—For the purpose of pro-  
2 viding revenues for the general revenue fund of the state  
3 an excise tax is hereby levied and imposed on sales of  
4 cigarettes on and after midnight of the thirtieth day of  
5 June, one thousand nine hundred forty-seven, at the rate  
6 of one-half cent on each ten cigarettes or fractional part  
7 thereof. Only one sale of the same article shall be used in  
8 computing the amount of tax due hereunder.

Sec. 3. *Money Received Paid into General Revenue*  
2 *Fund.*—All moneys received by the state tax commis-  
3 sioner from the excise tax on sales of cigarettes under  
4 this article, less deductions therefrom allowed for the  
5 cost of administration and operation, and refunds pro-  
6 vided in section ten hereunder, shall be paid into the

7 general revenue fund of the state and expended there-  
8 from in satisfaction of appropriations.

Sec. 4. *How Tax Paid; Stamps; How Affixed and*  
2 *Cancelled; Violations.* — The tax hereby imposed shall  
3 be paid by the purchase of stamps as provided in  
4 this article. No stamp shall be of a denomination  
5 of less than one-half cent. A stamp or stamps shall  
6 be affixed to or printed on each package of an  
7 aggregate denomination not less than the amount  
8 of the tax upon the contents thereof. The stamp  
9 or stamps, so affixed, shall be prima facie evidence  
10 of payment of the tax imposed by this article.  
11 Except as may be otherwise provided in the rules  
12 and regulations prescribed by the commissioner under  
13 authority of this article, and unless such stamps have  
14 been previously affixed, they shall be so affixed by  
15 each wholesale dealer in this state, and cancelled, by  
16 writing across the face thereof the name of such whole-  
17 sale dealer and the date of cancellation, prior to the de-  
18 livery of any cigarettes to any retail dealer in this state.  
19 Each retail dealer in this state shall immediately upon

20 the receipt of any cigarettes at his place of business, so  
21 affix such stamps to each package, unless such stamps  
22 shall have been previously affixed thereto, and shall can-  
23 cel the same by writing or stamping his name and the  
24 date of cancellation across the face thereof, or shall im-  
25 mediately mark in ink on each unopened box, carton, or  
26 other container of such cigarettes the word "Received"  
27 and the month, day and hour of such receipt and shall  
28 affix his signature thereto. He shall in any event open  
29 such box, carton or other container and immediately so  
30 affix such stamps to each package therein, and cancel the  
31 same in the manner herein designated, within twenty-  
32 four hours after such receipt and prior to the sale of such  
33 cigarettes.

34 Whenever any cigarettes are found in the place of busi-  
35 ness of such retail dealer without the stamps so affixed  
36 and cancelled or not so marked as having been received  
37 within the preceding twenty-four hours, the prima facie  
38 presumption shall arise that such cigarettes are kept  
39 therein in violation of the provisions of this article.

Sec. 5. *Dealer's Records.*—From and after the first day

2 of July, one thousand nine hundred forty-seven, and at  
3 the time of delivering cigarettes to any person each whole-  
4 sale dealer in this state shall make a true duplicate in-  
5 voice showing the date of delivery, the amount and value  
6 of each shipment of cigarettes delivered and the name  
7 of the purchaser to whom delivery is made, and retain  
8 the same for a period of two years, subject to the use  
9 and inspection of the tax commissioner.

10 Each wholesale and retail dealer in this state shall  
11 procure and retain invoices showing the amount and  
12 value of each shipment of cigarettes received by him after  
13 the first day of July, one thousand nine hundred forty-  
14 seven, the date thereof and the name of the shipper and  
15 shall retain the same for a period of two years subject to  
16 the use and inspection of the commissioner.

17 In each case in which cigarettes are shipped into the  
18 state of West Virginia by public carrier, the railroad com-  
19 pany, express company or other public carrier transport-  
20 ing any shipment thereof shall file with the commissioner  
21 a copy of the freight bill within ten days after the de-

22 livery in this state of each shipment when requested so  
23 to do by the tax commissioner.

Sec. 6. *Tobacco License Requirements.*—No person  
2 shall engage in the business of trafficking in cigarettes  
3 within this state without having first secured the license  
4 provided in section six of article twelve of section eleven  
5 of this code or having taken an assignment of such license  
6 in the manner permitted by law. Companies operating  
7 club and dining cars or other cars upon which cigarettes  
8 are sold shall comply with the requirements of this article  
9 with respect to the imposition of cigarette tax and affix-  
10 ing stamps to packages in which the same are sold in the  
11 state of West Virginia.

Sec. 7. *List of Licenses.*—The county clerk of each  
2 county shall prepare and certify to the tax commissioner  
3 a list of the names of all persons to whom he has issued  
4 tobacco licenses under section six, article twelve, chap-  
5 ter eleven of this code, quarterly or oftener as required  
6 by the tax commissioner, together with the business or  
7 residential address of such licensee as furnished to him.  
8 The tax commissioner is authorized to allow and pay to

9 each county clerk such reasonable expense as the com-  
10 missioner may allow for preparing such list and charge  
11 the same as a part of the costs of the administration of  
12 this article, and payments so made to the clerk are to be  
13 paid by him into the general fund of his county. The tax  
14 commissioner shall prepare and keep alphabetical indices  
15 with respect to such licensees for use in connection with  
16 the administration of this article.

Sec. 8. *Wholesale and Retail Dealers; Separate Places  
2 of Business.*—No person in this state shall sell any cigar-  
3 ettes both as a retail dealer and as a wholesale dealer at  
4 the same place of business. No wholesale dealer shall  
5 sell cigarettes to any person in this state other than to  
6 a licensed retail dealer, and no person in this state other  
7 than a licensed wholesale dealer shall sell cigarettes to  
8 a licensed retail dealer.

Sec. 9. *Power of Tax Commissioner; Rules and Regu-  
2 lations; Records of Wholesalers and Retailers; Metering  
3 in Lieu of Stamping; Agents for Metering; Levy to Col-  
4 lect Tax.*—The tax commissioner shall have power and  
5 authority to enforce and administer the provisions of

6 this article and article eighteen of this chapter. The tax  
7 commissioner shall have authority to promulgate in ac-  
8 cordance with the provisions of this article such rules  
9 and regulations as he may deem necessary to carry out  
10 its provisions, and may adopt different detailed regula-  
11 tions applicable to diverse methods and conditions of  
12 sale of cigarettes in this state, prescribing, in each class  
13 of cases, upon whom, as between the wholesale dealer  
14 and the retail dealer, the primary duty of affixing stamps  
15 shall rest and the manner in which stamps shall be af-  
16 fixed. Each licensed dealer shall be furnished a copy of  
17 such regulations upon request. Any such rule or regula-  
18 tion so furnished, excusing a wholesale dealer from af-  
19 fixing stamps under the circumstances of the particular  
20 case, shall be a defense in the prosecution of such dealer  
21 for violation of section sixteen of this article.

22 All books, papers, invoices and records of any whole-  
23 sale or retail dealer in this state, whether or not required  
24 under the provisions of this article to be kept by him,  
25 showing his sales, receipts and purchases of cigarettes,  
26 shall at all times, during the usual business hours of the

27 day, be open for the inspection of the tax commissioner  
28 for such purposes; and the tax commissioner or a deputy  
29 shall have power to investigate and examine the stock of  
30 cigarettes in and upon any premises where the same are  
31 placed, stored or sold, for the purpose of determining  
32 whether or not the provisions of this act are being obeyed.

33 The tax commissioner, if he shall determine that it is  
34 practicable to stamp packages of cigarettes by impression  
35 by means of a metering device, shall provide that such me-  
36 tering device and its impression may be used in lieu of the  
37 stamps otherwise required by law. The tax commissioner  
38 shall authorize any wholesale or retail dealer to use any  
39 metering device approved by the tax commissioner, such  
40 device to be sealed by the tax commissioner or a deputy,  
41 or agent authorized by the commissioner, before being  
42 used, and which device shall be used only in accordance  
43 with the regulations prescribed by the tax commissioner.

44 Any wholesale or retail dealer authorized by the tax  
45 commissioner to affix stamps to packages of cigarettes by  
46 means of a metering device shall file with the tax commis-  
47 sioner a bond in such amount as the tax commissioner

48 may designate, conditioned upon the payment of the tax  
49 upon the cigarettes so stamped.

50 Wholesale and retail dealers licensed to use said device  
51 shall make a monthly return to the tax commissioner and  
52 remit monthly the amounts of tax due the state: *Pro-*  
53 *vided, however,* That a wholesale or retail dealer may  
54 elect to pay the tax in advance where a metering device  
55 is used, in which event such dealer shall deliver the  
56 metering device to the tax commissioner, or his agent  
57 authorized for the purpose, who shall seal the meter in  
58 accordance with the prepayment so made. The commis-  
59 sioner may designate and authorize any bank or trust  
60 company with banking offices in any county of this state,  
61 to act as his deputy or agent for the purpose of perform-  
62 ing his duties with respect to sealing of metering de-  
63 vices in such county, and may require bond, and the  
64 action of any such deputy by its duly authorized officer  
65 or employees shall be as valid as though performed by  
66 the commissioner.

67 The tax commissioner shall have power to make an  
68 assessment against any retail or wholesale dealer who

69 fails to return or makes a false or erroneous return. The  
70 tax commissioner may collect such assessment by levy,  
71 action at law, distraint or any other method of enforce-  
72 ing taxes which may be provided by law and shall have  
73 the right to file liens therefor in any county.

Sec. 10. *Form of Stamps; Custody; Discounts, Security for Payments.*—The tax commissioner shall design,  
2 and procure stamps to be used as herein provided for,  
3 affixed and attached to containers, packages or receptacle  
4 of whatever kind that may be used for containing cigar-  
5 ettes. In the preparing of said stamp or stamps the same  
6 shall have printed or impressed thereon the words “State  
7 of West Virginia-Cigarette Tax Stamp” and such other  
8 words and figures as he may deem proper to show the  
9 value and denomination of the stamp or stamps. He shall  
10 also prescribe the form of impression to be placed upon  
11 any package or container of cigarettes by any metering  
12 device. The state tax commissioner shall collect the taxes  
13 provided for by this article.

15 Such stamps shall be kept in the custody of the state  
16 tax commissioner or such deputies as he may designate

17 to sell the same. Such stamps shall be sold and ac-  
18 counted for at the face value thereof except that the  
19 tax commissioner may authorize sale thereof, or sell to  
20 wholesale or retail dealers in this state, or to wholesalers  
21 outside of this state such stamps at a discount of ten  
22 per cent of the face value of such stamps, the same  
23 to be allowed as a commission for affixing and cancel-  
24 ling such stamps; and excepting further that the tax com-  
25 missioner may, by like regulation so certified, authorize  
26 the delivery of stamps to wholesale or retail dealers in  
27 this state or to wholesale dealers outside of this state on  
28 credit, allowing the same discount as when sold for cash,  
29 if and when the purchaser shall file with the tax com-  
30 missioner a bond not exceeding fifteen thousand dol-  
31 lars, payable to the state of West Virginia, in such form  
32 and amount as the tax commissioner shall prescribe, and  
33 with surety or sureties to the satisfaction of the tax com-  
34 missioner, conditioned as he may require, to guarantee  
35 payment within thirty days for stamps so delivered with-  
36 in such period of time and by making of such reports and  
37 settlements as the tax commissioner may require. In the

38 event a wholesale dealer in this state has aggregate  
39 purchases during thirty-day credit periods in excess  
40 of fifteen thousand dollars, such dealer may file with  
41 the tax commissioner a statement of excess credit  
42 requirement, together with a financial statement duly  
43 verified by a certified public accountant or public ac-  
44 countant. Should the tax commissioner determine that  
45 the maximum bond together with such dealer's known  
46 assets are sufficient to insure payment to the state for  
47 stamps purchased, the tax commissioner shall authorize  
48 the delivery of stamps to such dealer on credit. The tax  
49 commissioner may, by further regulations, provide for  
50 cancelling, renewing or increasing such bond or for the  
51 substitution of the surety thereon. The tax commissioner  
52 shall redeem and pay for any unused or spoiled stamps  
53 on written verified requests made by the purchaser, his  
54 administrators, executors, successors or assigns. Such  
55 payments shall for purposes hereof be deemed to be re-  
56 funds of taxes improperly collected and shall be allowed  
57 and paid as part of the costs of administration of this  
58 article as in this article provided.

Sec. 11. *Sales by Deputies; Fees; Reports of Deputies.*—

2 The tax commissioner may appoint any sheriff, or any  
3 bank or trust company authorized to do business in, and  
4 doing business in this state, as his deputy for the purpose  
5 of selling such stamps, excepting that no such deputy  
6 shall be thereby authorized to sell the same at a dis-  
7 count or on credit, and excepting, further, that provisions  
8 hereof relating to sale of stamps shall not prevent any  
9 bank or trust company from acting as the commission-  
10 er's deputy for purposes of checking and sealing meters  
11 under other provisions of this article. The tax commis-  
12 sioner is hereby authorized to allow to any such deputy,  
13 authorized to sell stamps hereunder, a fee of one-half of  
14 one per cent of the face value of all stamps sold by  
15 such deputy, and pay the same from the proceeds of sales  
16 of stamps sold by such deputy and charge the same as a  
17 part of the costs of administration of this article. It shall  
18 be the duty of any such deputy to act as such deputy and  
19 all the powers and duties thereby imposed upon any  
20 such sheriff shall be deemed and considered to be within  
21 the scope of his office as county treasurer for all purposes.

22 The state tax commissioner shall be responsible for the  
23 delivery of stamps to any county sheriff or other deputy  
24 so appointed, and may prescribe such regulations and  
25 forms of receipts and reports as he may deem necessary  
26 and advisable for the transaction of the business of selling  
27 such stamps. Each such deputy shall remit monthly or  
28 oftener as requested, to the tax commissioner all moneys  
29 arising from the sale of such stamps by him, together  
30 with a report showing the names of the purchasers and  
31 the number of each denomination and the aggregate face  
32 value sold by each such deputy. Commissions or allow-  
33 ances retained or paid to sheriffs shall be paid by such  
34 sheriffs into the general fund of his county. The tax  
35 commissioner may sell stamps at his office.

Sec. 12. *Possession of Unstamped Cigarettes; Failure  
2 to Produce Invoices; Penalties.*—Whoever, being a retail  
3 dealer in this state, has in his possession packages of cig-  
4 arettes not bearing the stamps herein required to be af-  
5 fixed thereto after the first day of July, one thousand  
6 nine hundred forty-seven, unless such packages shall be  
7 in unbroken containers marked, pursuant to section four

8 of this article, as received within the preceding twenty-  
9 four hours; or fails to produce, on demand by the com-  
10 missioner, invoices of all cigarettes purchased or received  
11 by him within two years prior to such demand, or on  
12 hand or received and purchased after the first day of  
13 July, one thousand nine hundred forty-seven, as the case  
14 may be, unless upon satisfactory proof it is shown that  
15 such non-production is due to providential or other causes  
16 beyond his control, shall be fined not less than twenty-  
17 five dollars nor more than five hundred dollars.

Sec. 13. *False Records; Penalties.*—Whoever makes  
2 any false entry upon an invoice, package or container  
3 of cigarettes required to be made under the provisions  
4 of this article, or with intent to evade the tax imposed  
5 by this article, presents any such false entry for the in-  
6 spection of the commissioner, shall be fined not less than  
7 twenty-five dollars nor more than five hundred dollars.

Sec. 14. *Preventing Inspections; Penalties.*—Whoever  
2 prevents or hinders the commissioner or his deputy from  
3 making a full inspection of any place where cigarettes  
4 subject to the tax imposed by this state are sold or

5 stored, or prevents or hinders the full inspection of in-  
6 voices, books, records or papers required to be kept un-  
7 der the provisions of this act, shall be fined not less than  
8 twenty-five dollars nor more than five hundred dollars.

Sec. 15. *Sales Without Affixing Stamps; Penalties.*—

2 Whoever sells cigarettes in this state without there hav-  
3 ing been first affixed to each individual package thereof  
4 the stamp or stamps required to be affixed thereto by  
5 this article shall be fined not more than five hundred  
6 dollars, or imprisoned in the county jail not more than  
7 ninety days, or both, in the discretion of the court.

Sec. 16. *Altering or Counterfeiting Stamps; Altering*

2 *Same; Penalties.*—Whoever falsely or fraudulently makes,  
3 forges, alters, or counterfeits any stamp prescribed by  
4 the commissioner under the provisions of this article,  
5 or causes or procures to be falsely or fraudulently made,  
6 forged, altered or counterfeited any such stamps, or  
7 knowingly or wilfully utters, publishes, passes or ten-  
8 ders as true, any such false, altered, forged or counter-  
9 feited stamps, or uses more than once any stamp pro-  
10 vided for and required by this article for the purpose of

11 evading the tax hereby imposed shall be imprisoned in  
12 the penitentiary for a term of not less than one year nor  
13 more than five years.

Sec. 17. *Penalties.*—Whoever violates any of the pro-  
2 visions of this article or any lawful rule or regulation  
3 promulgated by the commissioner under authority of this  
4 article for the violation of which no penalty is provided  
5 by law, shall be fined not less than twenty-five dollars  
6 nor more than one hundred dollars.

Sec. 18. *Seizure and Sale of Cigarettes by Commis-*  
2 *sioner; Forfeiture; Collection of Tax.*—Whenever the  
3 commissioner or any of his deputies or employees author-  
4 ized by him for such purpose shall discover any cigar-  
5 ettes, subject to tax as provided by this article and upon  
6 which the tax has not been paid as herein required, the  
7 commissioner, or such deputy or employee is hereby au-  
8 thorized and empowered forthwith to seize and take pos-  
9 session of such cigarettes, which shall thereupon be  
10 deemed to be forfeited to the state and the commissioner  
11 may within a reasonable time thereafter by a notice post-  
12 ed upon the premises where such seizure was made, or

13 by publication in some newspaper having circulation in  
14 the county wherein such seizure is made, at least five  
15 days before the day of sale, sell such forfeited ciagrettes  
16 and from the proceeds of such sale shall collect the tax  
17 due thereon together with a penalty of fifty per centum  
18 thereof and the cost incurred in such proceedings and  
19 pay the balance, if any, to the person in whose posses-  
20 sion such forfeited cigarettes were found: *Provided, how-*  
21 *ever,* That such seizure and sale shall not be deemed to  
22 relieve any person from fine or imprisonment provided  
23 herein for violation of any provision of this article. Such  
24 sale shall be made in the county where most convenient  
25 and economical. All moneys collected under the provi-  
26 sions of this section shall be paid into the state treas-  
27 ury and treated as other taxes collected under this article.

Sec. 19. *Issuance of Warrant to Sheriff by Attorney-*  
2 *General or Commissioner; Priority of Tax.*—In addition  
3 to all other remedies for the collection of any taxes or  
4 fees due under the provisions of law, the attorney-gen-  
5 eral or the tax commissioner may issue a warrant di-  
6 rected to the sheriff of any county of the state command-

7 ing said sheriff to levy upon and sell the goods and chat-  
8 tels of such dealer, without exemption, found within  
9 his jurisdiction, for the payment of the amount of such  
10 delinquency with the added penalties and interest and  
11 the cost of executing the warrant and to return such  
12 warrant to the tax commissioner or attorney-general and  
13 to pay him the money collected by virtue thereof within  
14 the time to be therein specified which shall not be less  
15 than twenty nor more than sixty days from the date of  
16 the warrant. The sheriff to whom any such warrant shall  
17 be directed shall proceed upon the same in all respects  
18 and with like effect and in the same manner as prescribed  
19 by law in respect to executions issued against goods and  
20 chattels upon judgments by a court of record, and shall  
21 be entitled to the same fees for his services in executing  
22 the warrant to be collected in the same manner.

23 The claim arising by reason of delinquent cigarette  
24 taxes shall be a preferred claim against all of the assets  
25 of the dealer, real and personal, with priority over all  
26 taxes except claims of the United States, real property

27 taxes and other recorded state tax claims docketed accord-  
28 ing to law.

Sec. 20. *Revocation of License.*—The state tax com-  
2 missioner shall have the right to revoke any tobacco  
3 license issued under article twelve, of chapter eleven of  
4 this code, for violation by licensee thereunder of the pro-  
5 visions of this article, and article eighteen of this chap-  
6 ter. Persons whose licenses are revoked hereunder shall  
7 have the same rights of appeal provided in sections forty-  
8 seven and forty-eight of article twelve of this chapter.

Sec. 21. *Amounts Allowed for Administration.*—The  
2 state tax commissioner, in the administration and en-  
3 forcement of this article shall be allowed to expend out  
4 of the taxes collected thereunder, or proceeds of sales of  
5 stamps a sum of not to exceed one and one-half  
6 per centum of the tax collected or stamps sold, and in  
7 addition to said one and one-half per centum all  
8 refunds allowed by this article and discounts allowed and  
9 commissions paid to deputies for the sales of stamps shall  
10 be charged as a part of the expense of administration.  
11 The tax commissioner is authorized to draw his warrants

12 for any costs of administration authorized by this article  
13 upon the proper officer of the state in the manner pro-  
14 vided by law.

Sec. 22. *No Cigarette Tax by Municipalities or Other  
2 Governmental Subdivisions.*—No municipality or govern-  
3 mental subdivision shall levy any excise or other tax  
4 requiring cigarettes to be stamped, or requiring licenses  
5 for sale thereof other than licenses which may be im-  
6 posed as a result of licenses provided for in article twelve  
7 of this chapter.

**Article 18.**

Section 1. *Definitions.*—As used in this article:

2 “Person” includes individuals, firms, partnerships, as-  
3 sociations, joint stock companies and corporations, and  
4 combinations or individuals of whatsoever form and  
5 character.

6 “Commissioner” means the tax commissioner of West  
7 Virginia.

8 “Storage” means and includes any keeping or reten-  
9 tion of cigarettes for use or consumption in this state.

10 "Use" means and includes the exercise of any right  
11 or power incidental to the ownership of cigarettes.

12 "Consumer" means any person who shall have title to  
13 or possession of cigarettes in storage, for use or other  
14 consumption in this state.

Sec. 2. *Levy of Tax on Cigarettes.*—For the purpose  
2 of providing revenue for the general fund of this state  
3 an excise tax is hereby levied on the use, consumption  
4 or storage for consumption of cigarettes by consumers  
5 in this state at the rate of one-half cent on each ten or frac-  
6 tional part thereof: *Provided, however,* That the tax  
7 shall not apply if the tax levied in article seventeen of  
8 this chapter has been paid.

Sec. 3. *Returns; Remittance.*—Every person who has ac-  
2 quired cigarettes for use, storage or other consumption  
3 subject to the tax herein levied shall, on or before the  
4 fifteenth day of the month following receipt of such cig-  
5 arettes, make and file with the commissioner a return  
6 showing the amount of cigarettes acquired, together with  
7 remittance of the tax thereon.

Sec. 4. *Assessment by Commissioner.*—In case any per-

2 son required to pay the taxes levied by this article, fails  
3 to make remittance as herein required, the commissioner  
4 shall have the power to issue an assessment against such  
5 person, based on any information in his possession or  
6 which may come to his possession or knowledge.

7 All of the provisions of section nine and nineteen of  
8 article seventeen of this chapter, and other provisions of  
9 law, relating to assessments, distraints, levies, findings or  
10 appeals from assessments or findings, and the effect of  
11 assessments or findings before or after hearing, and be-  
12 fore or after filing same in the office of the clerk of the  
13 county court, and all provisions of such sections relat-  
14 ing to the procedure, authority, duties, liabilities, powers  
15 and privileges of the person assessed, the commissioner,  
16 the clerk of the county court and all other public offi-  
17 cials shall be applicable to assessments made pursuant  
18 to the provisions of this article.

Sec. 5. *Penalties for Failure to Make and File Return.*—

2 If any person required by this act to make and file a re-  
3 turn with the commissioner, neglects or refuses to make  
4 such return, or neglects or refuses to pay the tax levied

5 by this article, or neglects or refuses to pay any lawful  
6 assessment issued by the commissioner he shall be guilty  
7 of a misdemeanor and upon conviction thereof shall be  
8 fined not less than twenty-five dollars nor more than one  
9 hundred dollars.

Sec. 6. *Disposition of Taxes Collected.*—The moneys  
2 received as taxes under the provisions of this article,  
3 shall be credited and held for the same purposes as taxes  
4 collected under article seventeen of this chapter.

Sec. 7. *Separability of Provisions of Act.*—The vari-  
2 ous provisions of the several sections of article seventeen  
3 and article eighteen, contained in this act, shall be deemed  
4 to be separable insofar as they or their meaning is not  
5 inseparably connected, and if any provisions of this act  
6 shall be held unconstitutional, such holding shall not ef-  
7 fect any of the other provisions of this act, and said arti-  
8 cles seventeen and eighteen, not inseparably connected  
9 in meaning and effect with such part so held unconsti-  
10 tutional.

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

Forest L. McNeer  
Chairman Senate Committee

R. L. Matthews  
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Howard Myers  
Clerk of the Senate

J. Rupp  
Clerk of the House of Delegates

Arnold M. Tickers  
President of the Senate

John E. Amos  
Speaker House of Delegates

The within approved this the 13  
day of March, 1947.

Clarence Meadows  
Governor.



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