WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED

HOUSE BILL No. 268

(By Mr. [Signature: Mr. Hennesy])

PASSED March 9, 1951

In Effect July 1, 1951

Passage
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article nineteen, relating to the imposition and collection of an excise tax upon the sale, use, handling or distribution of bottled soft drinks and soft drink syrups, and prescribing penalties for the 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 a new article, to be designated article nineteen, to read as follows:

Article 19. Soft Drinks Tax

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

2 (1) “Bottled soft drinks” shall include any and all nonalcoholic beverages, whether carbonated or not, such
as soda water, ginger ale, coca cola, lime cola, pepsi cola,
doctor pepper, root beer, carbonated water, orangeade,
lemonade, fruit juice when any plain or carbonated water,
flavoring or syrup is added, or any and all preparations
commonly referred to as "soft drinks" of whatever kind,
which are closed and sealed in glass, paper, or any other
type of container or bottle, whether manufactured with
or without the use of any syrup. The term "bottled soft
drinks" shall not include fluid milk to which no flavor-
ing has been added, or natural undiluted fruit juice or
vegetable juice.
(2) "Soft drink syrups" shall include the compound
mixture or the basic ingredients, whether dry or liquid,
practically and commercially usable in making, mixing
or compounding soft drinks at soda fountains by the
mixing thereof with carbonated or plain water, ice, fruit,
milk or any other product suitable to make a soft drink,
among such syrups being such products as coca cola
syrup, chero cola syrup, pepsi cola syrup, doctor pepper
syrup, root beer syrup, nu-grape syrup, lemon syrup,
vanilla syrup, chocolate syrup, cherry smash syrup, rock
candy syrup, simple syrup, among such syrups being all
these or any other prepared syrups sold or used for the
purpose of mixing soft drinks at soda fountains.
(3) "Person" shall mean and include an individual,
firm, partnership, association or corporation.
(4) "Wholesale dealer" includes only those persons
who sell any bottled soft drink or soft drink syrup to
retail dealers for the purpose of resale.
(5) "Retail dealer" includes every person other than
a wholesale dealer selling, serving or delivering or other-
wise dispensing any bottled soft drink or any drink made
from soft drink syrup.
(6) "Distributor" shall mean any person who manu-
factures, bottles, produces or purchases for sale to retail
dealers any bottled soft drink or soft drink syrup.
(7) "Commissioner" means the state tax commissioner,
and where the meaning of the context requires, all depu-
ties and employees duly authorized by him.

Sec. 2. Excise Tax on Bottled Soft Drinks and Syrups;
Disposition Thereof.—For the purpose of providing rev-

eue for the construction, maintenance and operation of
a four-year school of medicine, dentistry and nursing of
West Virginia university, an excise tax is hereby levied
and imposed on and after midnight of the last day of
June, one thousand nine hundred fifty-one, upon the sale,
use, handling or distribution of all bottled soft drinks and
all soft drink syrups, whether manufactured within or
without this state, as follows:
(1) On each bottled soft drink, a tax of one cent on
each sixteen fluid ounces, or fraction thereof, contained
therein.
(2) On each gallon of soft drink syrup, a tax of eighty
cents, and in like ratio on each part gallon thereof, and
on each ounce of dry mixture used for making soft drinks,
a tax proportionate to that levied on soft drink syrup, in
a ratio to be determined by the commissioner.
The person manufacturing or producing within this
state any bottled soft drink or soft drink syrup for sale
within this state shall pay the excise tax hereby imposed,
and the distributor, wholesale dealer or retail dealer or
any other person who is the original consignee of any
bottled soft drink or soft drink syrup manufactured
or produced outside this state, or who brings such drinks
or syrups into this state, shall pay such excise tax. The
excise tax hereby imposed shall not be collected more
than once in respect to any bottled soft drink or soft
drink syrup manufactured, sold, used or distributed in
this state.
All revenue collected by the commissioner under the
provisions of this article, less such costs of administration
as are hereinafter provided for, shall be paid by him into
a special medical school fund, which is hereby created
in the state treasury, to be used solely for the construc-
tion, maintenance and operation of a four-year school of
medicine, dentistry and nursing, as otherwise provided by
law.

Sec. 3. Soft Drink Permits Required.—On and after the
first day of July, one thousand nine hundred fifty-one, it
shall be unlawful for any person to manufacture, bottle,
import, distribute or sell in this state any bottled soft
drink or any soft drink syrup without having first ob-
tained from the commissioner a soft drink permit as pro-
vided in this section. Each wholesale dealer and each dis-
tributor shall each year obtain from the commissioner a
Each wholesale dealer and each distributor who sells or distributes any such drink or syrup within the state, but who does not own or operate any place of business within the state, shall likewise obtain each year from the commissioner a soft drink permit and shall pay therefor a fee of ten dollars. Each retail dealer shall each year obtain from the commissioner a soft drink permit for each place of business owned or operated by him within the state and shall pay for each permit an annual fee of one dollar. The commissioner may suspend or, after a hearing, revoke any soft drink permit whenever the holder thereof has failed to comply with any of the provisions of this article or any rules or regulations made and promulgated by him as provided herein.

Sec. 4. Affixing of Tax Stamps or Tax Crowns.—The payment of the taxes herein provided shall be evidenced by the affixing of soft drink tax stamps or tax crowns to the original containers or bottles in which any bottled
soft drink or syrup is placed, received, stored or handled.

Such stamps or crowns, of the appropriate denomination,
shall be affixed to each container of syrup and to each
bottled soft drink by the person who under the provisions
of this article is first required to pay the tax thereon,
within twenty-four hours after such person has such
bottled soft drink or syrup in his possession for the first
time. The provisions of this paragraph shall not apply to
syrup used by bottlers in the manufacture of bottled soft
drinks, or to bottled soft drinks or syrups which are trans-
ported through this state and which are not sold, de-
ivered, used or stored herein, if transported in accord-
ance with such rules and regulations as may be promul-
gated by the commissioner, or to any bottled drink or
syrup which is manufactured in this state and sold to a
purchaser outside this state.

Except as otherwise provided in this section, it shall
be unlawful for any person to sell, use, handle or dis-
tribute any bottled soft drink or soft drink syrup to which
the tax stamps or tax crowns required by this section are
not affixed, and any person who shall violate this pro-
26 vision shall be guilty of a misdemeanor and, upon con-
27 viction thereof, shall be punished by a fine of not less
28 than one hundred dollars nor more than five hundred
29 dollars, or by imprisonment for not more than six months,
30 or by both such fine and imprisonment.

Sec. 5. *Purchase of Tax Stamps or Tax Crowns; Discounts and Commissions; Provisions for Credit.*—The
2 commissioner is hereby authorized to promulgate rules
3 and regulations governing the design, purchase, sale and
4 distribution of tax stamps and tax crowns required by
5 this article. Manufacturers or distributors of crowns may
6 be required to furnish bond to insure faithful compliance
7 with such regulations. Any person desiring to purchase
8 such crowns shall obtain from the commissioner an auth-
9 orization to do so, which shall specify the number of
10 crowns to be purchased, and upon shipment thereof the
11 manufacturer shall transmit to the commissioner a copy
12 of the invoice of such shipment. The commissioner shall
13 not authorize the purchase of crowns by any person who
14 is in default in the payment of any tax required by this
15 article.
The commissioner shall sell the stamps required by this article, or may authorize any sheriff, or any bank or trust company in this state, to sell such stamps as his deputy, and may allow as a commission a fee of one-half of one per cent of the face value of all stamps sold by such deputy. In the sale of such stamps the commissioner shall allow the following discounts: on a sale of less than twenty-five dollars, no discount; on a sale of twenty-five dollars or over and less than fifty dollars, a discount of five per cent; and on a sale of fifty dollars or more, a discount of ten per cent.

In the case of stamps, the tax imposed by this article shall be paid in advance at the time the stamps are purchased. In the case of tax crowns, the tax shall be paid in advance at the time the tax commissioner authorizes the purchase of such tax crowns, unless the purchaser applies for and obtains credit as provided in the following paragraph.

Whenever any person applies for an authorization to purchase tax crowns he may apply for an extension of credit on the tax due with respect to such crowns, and if
he files a bond in the form prescribed by the commis-
ioner, with satisfactory corporate surety, in an amount
not less than twenty-five per cent more than the tax due
with respect to the tax crowns to be purchased, the com-
missioner shall issue the necessary authorization. Any
person who obtains such credit shall, on or before the
tenth day of each month, file with the commissioner on
forms prescribed by him a return stating the number of
tax crowns used by such person during the preceding
month, and he shall at the same time pay to the com-
missioner the tax due on the crowns so used.

The commissioner shall allow to each purchaser of
tax crowns, whether for cash or credit, a discount of
twelve and one-half per cent of the tax value of such
tax crowns. Such discount, and the discount allowed
on the sale of tax stamps, shall be in lieu of the allow-
ance of any claim for refund by reason of the breakage
or destruction of containers stamped or crowned as pro-
vided in this article, or the loss or destruction of tax
stamps or tax crowns.

Sec. 6. Rules and Regulations.—The commissioner is
hereby authorized to make and promulgate such reasonable rules and regulations as may be necessary to administer the provisions of this article and to insure the collection of the taxes imposed hereby. Every person subject to the provisions of this article shall make such reports and keep such records as may be required by the rules and regulations of the commissioner, and shall permit him to inspect such records and the stock and supplies on hand at any time.

Sec. 7. Lien for Delinquent Taxes.—The claims of the state for any delinquent taxes due under the provisions of this article shall be a preferred claim against all the property, real and personal, belonging to the delinquent taxpayer, with priority over all taxes except real property taxes, and other recorded state tax claims docketed according to law.

Sec. 8. Amount Allowed for Administration.—The commissioner, in the administration and enforcement of this article, shall be allowed to expend out of the revenue collected hereunder, a sum not to exceed two and one-half per cent of the total revenue collected.
Sec. 9. Altering, Counterfeiting or Re-using Tax Stamps or Tax Crowns; Penalty.—Any person who falsely or fraudently makes, forges, alters, or counterfeits any tax stamp or tax crown prescribed by the commissioner under the provisions of this article, or who knowingly or willfully utters, passes or tenders as true any such false, altered, forged or counterfeited stamp or crown, or who uses more than once any stamp or crown for the purpose of evading the tax imposed by this article, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one year nor more than five years.

Sec. 10. Penalties.—Any person who violates any of the provisions of this article or any lawful rule or regulation promulgated by the commissioner under authority of this article, for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

Sec. 11. Separability.—The provisions of the several
sections of this article shall be deemed to be separable insofar as they or their meaning is not inseparably connected, and if any provisions of this article shall be held unconstitutional, such holding shall not affect any of the other provisions thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect [July 1, 1951] passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 15th
day of March, 1951.

[Signature]
Governor

[Stamp] MAR 15 1951
D. Pitt O'Brien, Secretary of State