WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1951

ENROLLED

SENATE BILL NO. 181

(By Mr. [Signature])

PASSED March 10, 1951

In Effect July 1, 1951

Passage
ENROLLED

Senate Bill No. 181
(By Mr. Bean)

[Passed March 10, 1951; in effect July 1, 1951.]

AN ACT to amend and reenact sections one, four, six, nine, ten, eleven, nineteen and twenty, article seventeen, and the whole of article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred fifty-six, acts of the legislature, regular session, one thousand nine hundred forty-seven, relative to a tax on cigarettes, levying and imposing a tax upon the sale of cigarettes to raise revenues, providing for the payment and collection of such tax and the administration thereof, levying a tax on the use, consumption or storage of cigarettes and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, four, six, nine, ten, eleven, nineteen and
twenty, article seventeen, and the whole of article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred fifty-six, acts of the legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted, all to read as follows:

Article 17. Excise Tax on Sale of Cigarettes.

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

2 "Person" includes firms and corporations;

3 "Wholesale dealer" shall mean and include any person, distributor or commissary servicing, supplying or selling to affiliated or non-affiliated stores, who acquire cigarettes for purposes of sale to retailers, or to other persons for purposes of resale.

4 "Retail dealer" includes every person in this state, other than a wholesale dealer, engaged in the business of selling cigarettes irrespective of quantity or amount or number of sales thereof;

5 "Sale" includes exchange, barter, gift, offer for sale and distribution;

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

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

"Stamp" shall mean any cigarette stamps required under this article, or any meter or ink impression authorized by the tax commissioner to serve as such stamp;

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

Sec. 4. How Tax Paid; Stamps; How Affixed and Canceled; Violations.—The tax hereby imposed shall be paid by the purchase of stamps as provided in this article. No stamp shall be in a denomination of less than one-half cent. A stamp or stamps shall be affixed to or printed on each package of an aggregate denomination of not less than the amount of the tax upon the contents thereof.
The stamp or stamps, so affixed, shall be prima facie evidence of payment of the tax imposed by this article. Except as may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer in this state, and canceled, by writing across the face thereof the name of such wholesale dealer and the date of cancelation, prior to the delivery of any cigarettes to any retail dealer in this state.

Each retail dealer, authorized to deal in unstamped cigarettes, who receives, brings or causes to be brought into this state unstamped cigarettes, shall immediately upon receipt of such unstamped cigarettes at his place of business, so affix such stamp to each package and shall cancel the same by writing or stamping his name and the date of cancelation across the face thereof, or as otherwise directed by regulation of the commissioner, or shall immediately mark in ink on each unopened box, carton or other container of such cigarettes the word “Received” and the month, day and hour of such receipt and shall
affix his signature thereto, or as otherwise directed by
regulation of the commissioner. He shall in any event
open such box, carton or other container and immediate-
ly so affix such stamps to each package therein, and
cancel the same in the manner herein designated, within
twenty-four hours after such receipt and prior to the sale
of such cigarettes.
Whenever any cigarettes are found in the place of
business of such retail dealer without the stamps so af-
fixed and canceled or not so marked as having been
received within the preceding twenty-four hours, the
prima facie presumption shall arise that such cigarettes
are kept therein in violation of the provisions of this
article.

Sec. 6. Tobacco License Required.—No person shall
engage in the business of selling cigarettes at retail
within this state without having first secured the license
provided in section six, article twelve, chapter eleven of
this code or having taken an assignment of such license
in the manner permitted by law. Companies operating
club or dining cars or other cars upon which cigarettes
are sold shall comply with the requirements of this article with respect to the imposition of cigarette tax and affixing stamps to packages in which the same are sold in the State of West Virginia.

Sec. 9. Power of Tax Commissioner; Rules and Regulations; Records of Wholesalers and Retailers; Metering in Lieu of Stamping; Agents for Metering; Levy to Collect Tax.—The tax commissioner shall have power and authority to enforce and administer the provisions of this article and article eighteen of this chapter. The tax commissioner shall have authority to promulgate in accordance with the provisions of this article such rules and regulations as he may deem necessary to carry out its provisions, and may adopt different detailed regulations applicable to diverse methods and conditions of sale of cigarettes in this state, prescribing, in each class of cases upon whom, as between the wholesale dealer and the retail dealer, the primary duty of affixing stamps shall rest and the manner in which stamps shall be affixed. Each licensed dealer shall be furnished a copy of such regulations upon request. Any such rule or regu-
lation so furnished, excusing a wholesale dealer from affixing stamps under the circumstances of the particular case, shall be a defense in the prosecution of such dealer for violation of section sixteen of this article.

All books, papers, invoices and records of any wholesale or retail dealer in this state, whether or not required under the provisions of this article to be kept by him, showing his sales, receipts and purchases of cigarettes, shall at all times, during the usual business hours of the day, be open for the inspection of the tax commissioner, or his authorized agent, for such purposes; and the tax commissioner or a deputy shall have power to investigate and examine the stock of cigarettes in and upon any premises where the same are placed, stored or sold, for the purpose of determining whether or not the provisions of this act are being obeyed.

The tax commissioner, if he shall determine that it is practicable to stamp packages of cigarettes by impression by means of a metering device, shall provide that such metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax com-
missioner shall authorize any wholesale, or retail dealer, purchasing unstamped cigarettes and holding the license herein required, to use any metering device approved by the commissioner, such device to be sealed by the commissioner or a deputy, or agent authorized by the commissioner, before being used, and which device shall be used only in accordance with the regulations prescribed by the commissioner.

Any wholesale or retail dealer authorized by the tax commissioner to affix stamps to packages of cigarettes by means of a metering device shall file with the tax commissioner a bond in such amount as the tax commissioner may designate, conditioned upon the payment of the tax upon the cigarettes so stamped.

Wholesale and retail dealers licensed to use said device shall make a monthly return to the commissioner and remit monthly the amounts of tax due the state:

Provided, however, That a wholesale or retail dealer may elect to pay the tax in advance where a metering device is used, in which event such dealer shall deliver the metering device to the commissioner, or his agent
authorized for the purpose, who shall seal the meter in accordance with the prepayment so made. The commissioner may designate and authorize any bank or trust company with banking offices in any county of this state, to act as his deputy or agent for the purpose of performing his duties with respect to sealing of metering devices in such county, and may require bond, and the action of any such deputy by its duly authorized officer or employees shall be as valid as though performed by the commissioner.

The commissioner shall have power to make an assessment, against any retail or wholesale dealer who fails to return or make a false or erroneous return. The commissioner may collect such assessment by levy, action by law, distraint or any other method of enforcing taxes which may be provided by law and shall have the right to file liens therefor in any county.

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

Such stamps shall be kept in the custody of the state tax commissioner or such deputies as he may designate to sell the same. Such stamps shall be sold and accounted for at the face value thereof except that the tax commissioner may authorize sale thereof, or sell to wholesale or retail dealers in this state, or to wholesalers outside of this state such stamps at a discount of four percent of the face value of such stamps, the same to be allowed as a commission for affixing and canceling such stamps; and excepting further that the tax commissioner may, by like regulation so certified, authorize the de-
livery of stamps to wholesale or retail dealers in this state, or to wholesale dealers outside of this state on credit, allowing the same discount as when sold for cash, if when the purchaser shall file with the tax commissioner a bond not exceeding forty thousand dollars, payable to the state of West Virginia, in such form and amount as the commissioner shall prescribe, and with surety or sureties to the satisfaction of the commissioner, conditioned as he may require, to guarantee payment within thirty days for stamps so delivered within such period of time and by making of such reports and settlement as the commissioner may require. In the event a wholesale dealer in this state has aggregate purchases during thirty-day credit periods in excess of forty thousand dollars, such dealer may file with the commissioner a statement of excess credit requirement, together with a financial statement duly verified by a certified public accountant or public accountant. Should the commissioner determine that the maximum bond together with such dealer's known assets are sufficient to insure payment to the state for stamps purchased, the commissioner
shall authorize the delivery of stamps to such dealer on credit. The commissioner may, by further regulations, provide for canceling, renewing or increasing such bond or for the substitution of the surety thereon. The commissioner shall redeem any unused or mutilated, but identifiable stamps, that any licensed wholesale dealer or retail dealer may present for redemption, on written verified requests made by the purchaser, his administrators, executors, successors, or assigns, and refund therefor, ninety-five per cent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. The commissioner shall pay on a like basis for stamps destroyed by fire upon presentation of proof of such loss satisfactory to him. Such payments shall for purposes hereof be deemed to be refunds of taxes improperly collected and shall be allowed and paid as part of the cost of administration of this article as in this article provided.

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

—The tax commissioner may appoint any sheriff, or any bank or trust company authorized to do business in, and
doing business in this state, as his deputy for the purpose of selling such stamps, excepting that no such deputy shall be thereby authorized to sell the same at a discount or on credit, and excepting, further, that provisions hereof relating to sale of stamps shall not prevent any bank or trust company from acting as the commissioner's deputy for purposes of checking and sealing meters under other provisions of this article. The tax commissioner is hereby authorized to allow such deputy, authorized to sell stamps hereunder, a fee of one-eighth of one per cent of the face value of all stamps sold by such deputy and charge the same as a part of the costs of administration of this article. It shall be the duty of any such deputy to act as such deputy and all the powers and duties thereby imposed upon any such sheriff shall be deemed and considered to be within the scope of his office as county treasurer for all purposes. The state tax commissioner shall be responsible for the delivery of stamps to any county sheriff or other deputy so appointed, and may prescribe such regulations and forms of receipts and reports as he may deem necessary and advisable for the transaction of the business of
sells such stamps. Each such deputy shall remit
monthly or oftener as requested, to the tax commissioner
all moneys arising from the sale of such stamps by him,
together with a report showing the names of the pur-
chasers and the number of each denomination and the
aggregate face value sold by each such deputy. Commis-
sions or allowances retained or paid to sheriffs shall be
paid by such sheriffs into the general fund of his county.
The tax commissioner may sell stamps at his office.

Sec. 19. Issuance of Warrant to Sheriff by Attorney
General or Commissioner; Priority of Tax.—In addition
to all other remedies for the collection of any taxes or fees
due under the provisions of law, the attorney general or
the tax commissioner may issue a warrant directed to the
sheriff of any county of the state commanding said sheri-
iff to levy upon and sell the goods and chattels of such
dealer, without exemption, found within his jurisdiction,
for the payment of the amount of such delinquency with
the added penalties and interest and the cost of executing
the warrant and to return such warrant to the tax com-
missioner or attorney general and to pay him the money
collected by virtue thereof within the time to be therein
specified which shall not be less than twenty nor more
than sixty days from the date of the warrant. The sheriff
to whom any such warrant shall be directed shall proceed
upon the same in all respects and with like effect and in
the same manner as prescribed by law in respect to exe-
cutions issued against goods and chattels upon judgments
by a court of record, and shall be entitled to the same fees
for his services in executing the warrant to be collected
in the same manner.

The claim arising by reason of delinquent cigarette
taxes shall be a preferred claim against all of the assets
of the dealer, real and personal, with priority over all
taxes except real property taxes and other recorded state
tax claims docketed according to law.

Sec. 20. Revocation of Licenses.—The commissioner
shall have the right to revoke any license issued under
the provisions of this article and any tobacco license
issued under article twelve, chapter eleven of this code,
for violation by licensee thereunder of the provisions of
this article, article eighteen of this chapter, and the pro-
visions of any other statute regulating the business of wholesale and retail dealers of cigarettes. Persons whose licenses are revoked hereunder shall have the same rights of appeal provided in sections forty-seven and forty-eight of article twelve of this chapter.

**Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.**

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

2 "Person" includes individuals, firms, partnerships, association, joint stock companies and corporations, and combinations or individuals of whatsoever form and character.

6 "Commissioner" means the tax commissioner of West Virginia.

8 "Storage" means and includes any keeping or retention of cigarettes for any period of time in this state.

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

12 "Consumer" means any person who shall have title to or possession of cigarettes in storage, for use or consumption in this state.
Other terms defined in section one, article seventeen of this chapter shall have the same meaning when used in this article insofar as the same are applicable hereto.

Sec. 2. Levy of Tax on Cigarettes.—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied on the use, consumption or storage of cigarettes by consumers in this state at the rate of two-cents on each ten or fractional part thereof:

Provided, however, That the tax shall not apply if the tax levied in article seventeen of this chapter has been paid.

Sec. 3. Returns; Remittance.—Every person who has acquired cigarettes for use, storage or consumption subject to the tax herein levied shall, on or before the fifteenth day of the month following receipt of such cigarettes, make and file with the commissioner a return showing the amount of cigarettes acquired, together with remittance of the tax thereon.

Sec. 4. Assessment by Commissioner.—In case any person required to pay the taxes levied by this article, fails to make remittance as herein required, the commissioner shall have the power to issue an assessment against
such person, based on any information in his possession
or which may come to his possession or knowledge.

All of the provisions of section nine and nineteen of
article seventeen of this chapter, and other provisions of
law, relating to assessment, distraints, levies, findings or
appeals from assessment or findings, and the effect of
assessments or findings before or after hearing, and before
or after filing same in the office of the clerk of the county
court, and all provisions of such sections relating to the
procedure, authority, duties, liabilities, powers and privi-
leges of the person assessed, the commissioner, the clerk
of the county court and all other public officials shall be
applicable to assessments made pursuant to the provisions
of this article.

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

If any person required by this act to make and file a re-
turn with the commissioner, neglects or refuses to make
such return, or neglects or refuses to pay the tax levied
by this article, or neglects or refuses to pay any lawful
assessment issued by the commissioner he shall be guilty
of a misdemeanor and upon conviction thereof shall be
fined not less than twenty-five dollars nor more than one hundred dollars.

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

Sec. 7. Separability of Provision of Act.—The various provisions of the several sections of article seventeen and article eighteen, contained in this act, shall be deemed to be separable insofar as they or their meaning is not inseparably connected, and if any provisions of this act shall be held unconstitutional, such holding shall not affect any of the other provisions of this act, and said articles seventeen and eighteen, not inseparably connected in meaning and effect with such part so held unconstitutional.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robert C. Byrd
Chairman Senate Committee

Jane Corley
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1951

Norma H. Lewis
Clerk of the Senate

Clerk of the House of Delegates

H. Kingughieker
President of the Senate

W. E. Can
Speaker House of Delegates

The within approved this the 16th

day of March, 1951.

Okey L. Patton
Governor.

Witnessed in the office of the Secretary of State of West Virginia, MAR 16 1951.

D. Pitt O'Brien,
Secretary of State