

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953

ENROLLED

SENATE BILL NO. 235

(By Mr. Stemple)

PASSED March 4 1953

In Effect July 1, 1953 Passage

Filed in the Office of the Secretary of State
of West Virginia

MAR 7 1953

D. PITT O'BRIEN

ENROLLED

Senate Bill No. 235

(By MR. STEMPLE)

[Passed March 4, 1953; in effect July 1, 1953.]

AN ACT authorizing and directing the state tax commissioner to approve, and the state auditor to issue a warrant for, the refunding of moneys paid in gross sales taxes to the state of West Virginia during the years one thousand nine hundred forty-three and one thousand nine hundred forty-four by the American Oil Company, a corporation doing business in the state of West Virginia.

WHEREAS, The American Oil Company during the years one thousand nine hundred forty-three and one thousand nine hundred forty-four was obliged to pay to the Defense Supplies Commission, a federal agency created for the purpose of taking care of excess transportation costs in the oil industry

occasioned by land shipments of oil rather than by the cheaper method of shipping by water, and rather than pass the increased cost to the consumer directly, the American Oil Company was obliged by the said Federal Commission to collect and turn over to the commission the excess amounts so collected and was then required to pay the gross sales tax to the state of West Virginia on said excess collections, notwithstanding that the American Oil Company received no benefit whatever from such excess sales, and

WHEREAS, After a period of two years had elapsed, the matter was called to the attention of the state tax commissioner, who ruled that the American Oil Company was not required under law to pay a tax on said excess costs but refused to refund such overpayments on the ground that such repayments were barred by the statute of limitations (two year rule), and

WHEREAS, The said American Oil Company, after the ruling by the state tax commissioner, presented its case to the West Virginia State Court of Claims (Case No. 615) in the year one thousand nine hundred forty-eight, and was awarded the sum of six hundred seventy-four dollars and eighty-three

cents, on the theory that even though the claim was barred by the two year statute of limitations, nevertheless the claim was a "moral obligation" on the state which should be paid, and

WHEREAS, The one thousand nine hundred forty-nine and the one thousand nine hundred fifty-one Legislatures failed to authorize the payment of said claim and to make an appropriation for the payment thereof, and

WHEREAS, On December nine, one thousand nine hundred fifty-two, the West Virginia Supreme Court of Appeals, in the case of Raleigh County Bank v. Simms, ____ W. Va. ____, 73 S. E. (2d) 526, decided that a moral obligation exists based upon overpayment of taxes even though the taxpayer failed to file a petition for a refund of the overpayment within the time allowed by the statute, therefore:

Be it enacted by the Legislature of West Virginia:

Section 1. *Tax Commissioner Directed to Refund and*

2 *Auditor Empowered to Repay Certain Gross Sales Taxes*

3 *Paid By the American Oil Company.*—The tax commis-

4 sioner is directed to approve and the state auditor is

5 directed to issue a warrant payable out of any surplus

6 in the general revenue to the American Oil Company,
7 General Offices American Building, Baltimore 3, Mary-
8 land, the amount of six hundred seventy-four dollars and
9 eighty-three cents for refund of gross sales taxes paid
10 by said company in the years one thousand nine hun-
11 dred forty-three and one thousand nine hundred forty-
12 four.

Sec. 2. *Finding of Moral Obligation.*—It is hereby de-
2 clared to be the finding of the Legislature, based upon
3 its conclusions of fact and the recommendations of the
4 court of claims, and the decision of the supreme court
5 of appeals of West Virginia, that this refund and re-
6 imbursement is necessary to discharge a moral obliga-
7 tion of the state of West Virginia.

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

H. M. Kuley
Chairman Senate Committee

W. H. Auel
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1953 passage.

Howard Meyer
Clerk of the Senate

Philip
Clerk of the House of Delegates

Ralph B. Ryan
President of the Senate

W. E. Jones
Speaker House of Delegates

The within approved this the 7th
day of March, 1953.

William C. Mearns
Governor.