WEST VIRGINIA LEGISLATURE
SECOND REGULAR THIRTY-DAY SESSION, 1958

ENROLLED

SENATE BILL NO. 39

(By Mr. Hedrick and Marchand)

PASSED February 5, 1958

In Effect Passage
AN ACT to amend article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, two, three, five and six; and by enacting six new sections, to be designated sections four-a, four-b, five-a, five-b, five-c and seven-a, all relating to the soft drinks tax.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, two, three, five and six; and by enacting six new sections, to be desig-
nated sections four-a, four-b, five-a, five-b, five-c and seven-a, all to read as follows:

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

1. (1) “Bottled soft drinks” shall include any and all non-alcoholic 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 flavoring has been added, or natural undiluted fruit juice or vegetable juice.

2. (2) “Soft drink syrups” shall include the compound mixture or the basic ingredients, whether dry or liquid, usable in making, mixing or compounding soft drinks 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, nugrape syrup, lemon syrup, va-
nilla syrup, chocolate syrup, cherry smash syrup, rock
candy syrup, simple syrup or any other prepared syrups
sold or used for the purpose of mixing soft drinks, as well
as all powder bases prepared for the purpose of mixing
soft drinks, including but not limited to such soft drinks
as kool-aid, oh boy drink, tip top and miracle aid: Provided,
however, That powdered mixes prepared for domestic
cooking or baking only shall be excluded therefrom.”

(3) “Simple syrup” shall mean the making, mixing,
compounding or manufacturing, by dissolving sugar and
water or any other mixture that will create simple syrup
to which may or may not be added concentrates or
extracts.

(4) “Person” shall mean and include an individual,
firm, partnership, association or corporation.

(5) “Wholesale dealer” includes only those persons
who sell any bottled soft drink or soft drink syrup to re-
tail dealers for the purpose of resale.
(6) "Retail dealer" includes every person other than a wholesale dealer mixing, making, compounding or manufacturing any drink from a soft drink syrup or powder base.

(7) "Distributor" shall mean any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

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

Sec. 2. Excise Tax on Bottled Soft Drinks and Syrups; Disposition Thereof.—For the purpose of providing revenue 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
12 each sixteen fluid ounces, or fraction thereof, contained
13 therein.

14 (2) On each gallon of soft drink syrup, a tax of eighty
cents, and in like ratio on each part gallon thereof, and on
16 each ounce of dry mixtures used for making soft
17 drinks, a tax proportionate to that levied on soft drink
18 syrup, in a ratio to be determined by the commissi-
er.

20 Any person manufacturing or producing within this
state any bottled soft drink or soft drink syrup for sale
within this state and any distributor, wholesale dealer or
23 retail dealer or any other person who is the original con-
signee of any bottled soft drink or soft drink syrup manu-
25 factured or produced outside this state, or who brings such
26 drinks or syrups into this state, shall be liable for the
27 excise tax hereby imposed. The excise tax hereby imposed
28 shall not be collected more than once in respect to any
29 bottled soft drink or soft drink syrup manufactured, sold,
30 used or distributed in this state.

31 All revenue collected by the commissioner under the
32 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 construction, 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 obtained from the commissioner a soft drink permit as provided in this section. Each wholesale dealer and each distributor 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 ten dollars. 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 manufacturing and/or purchasing unstamped syrups 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 five dollars. 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-a. Cancellation and Removal of Stamps.—Any person subject to the tax imposed by this article who affixes a soft drink stamp to a container shall be required to immediately cancel the stamp by writing or marking initials thereon and the date upon which the stamp was affixed. When any container to which a stamp has been affixed is emptied, the person emptying the same or on whose behalf the same has been emptied shall be required to immediately remove or deface the tax stamp thereon.

Sec. 4-b. Disposition of Unused Crowns; Penalty for Violation.—Unused tax crowns upon which the tax im-
posed by this article has not been paid and which the
original purchaser has not used and does not intend to
use, and which are fit for use, shall be disposed of in the
following manner only:
(1) By returning same to the manufacturer thereof
and receiving from such manufacturer a certificate which
shall indicate the name of the person returning the
crowns, the date of return and the number and denomina-
tions of crowns returned; or
(2) By transferring such crowns to any person and
receiving in exchange therefor a certificate issued by the
commissioner authorizing the transferee to acquire such
crowns.
Upon receipt of either such certificate the commissioner
shall credit the account of the original purchaser in the
amount indicated by the certificate.
In the event of the disposition of such crowns in a man-
ner not authorized by this section, the original purchaser
thereof or his estate, and/or any person (whether acting
in an official capacity or otherwise) who shall make such
unauthorized disposition shall be liable for the amount of
tax which the crowns represents; and, in addition, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five thousand dollars and imprisonment in the county jail for not less than sixty days nor more than one year, in the discretion of the court.

Sec. 5. Purchase of Tax Stamps or Tax Crowns; Discounts and Commissions; Provisions for Credit.—The commissioner is hereby authorized to promulgate rules and regulations governing the design, purchase, sale and distribution of tax stamps and tax crowns required by this article. Manufacturers or distributors of crowns may be required to furnish bond to insure faithful compliance with such regulations. Any person desiring to purchase such crowns shall obtain from the commissioner an authorization to do so, which shall specify the number of crowns to be purchased, and upon shipment thereof the manufacturer shall transmit to the commissioner a copy of the invoice of such shipment. The commissioner shall not authorize the purchase of crowns by any person who is in default in the payment of any tax required by this 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 commissioner, 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 commissioner shall issue the necessary authorization. Any person who obtains such credit shall, on or before the fifteenth 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 commissioner 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 allowance of any claim for refund by reason of the breakage or destruction of containers stamped or crowned as provided in this article, the spoilation of the soft drinks or syrups, or the loss or destruction of tax stamps or tax crowns.
Sec. 5-a. Keeping of Records; Inspections and Audits.—

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 stocks and supplies on hand at any time. Every such person shall be required either to make his records available for inspection within this state or to pay the reasonable expenses of sending an auditor outside the state to inspect and audit such records.

Sec. 5-b. Penalties for Late Filing.—If any taxpayer fails to file a return or pay the proper amount of tax within the time specified herein, there shall be added to the unpaid tax the amount of the discount to which the taxpayer would have been entitled had he not been delinquent as a penalty for being delinquent for the first month, or a fraction thereof, and, if the delinquency continues, there shall be a penalty of one per cent of the unpaid tax for each succeeding month, or fraction thereof: Provided, however, That if the failure to pay was due to reasonable cause, the commissioner may waive or remit the penalties
imposed in this paragraph in whole or in part. In addition to the penalties herein provided, the commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer.

Sec. 5-c. Assessment; Collection by Action or Suit.—If the commissioner believes that the tax imposed by this article has been insufficiently returned, he shall proceed to investigate and determine the tax liability of any taxpayer and make an assessment therefor.

Taxes and penalties due and unpaid may be collected by action in debt, motion for judgment, or other appropriate remedy, including suit in a justice court.

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 tax imposed hereby.

Sec. 7-a. Seizure and Sale of Soft Drink Syrups by Commissioner; Forfeiture; Collection of Tax.—Whenever the commissioner or any of his duly authorized agents shall discover any soft drink syrups, subject to tax as
provided by this article and upon which the tax has not been paid as herein required, the commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such soft drink syrups, which shall thereupon be deemed to be forfeited to the state and the commissioner may within a reasonable time thereafter by a notice posted upon the premises where such seizure was made, or by publication in some newspaper having circulation in the county wherein such seizure is made, at least five days before the day of sale, sell such forfeited soft drink syrups; and from the proceeds of such sale shall collect the tax due thereon together with a penalty of fifty per cent thereof and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such soft drink syrups were found: Provided, however, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale shall be made in the county where most convenient and economical. All money collected under the provisions of this section shall be
26 paid into the state treasury and treated as other taxes
27 collected under this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

W. E. C. Clifton
Chairman House Committee

Originated in the Senate.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 11th day of February, 1958.

Governor

Filed in Office of the Secretary of State of West Virginia FEB 11, 1958

HELEN HOLT
SECRETARY OF STATE