

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 From Passage



FEB 11 1958

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Senate Bill No. 39

(By MR. HEDRICK AND MR. MARCHAND)

[Passed February 5, 1958; in effect from 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:

2 (1) “Bottled soft drinks” shall include any and all
3 non-alcoholic beverages, whether carbonated or not, such
4 as soda water, ginger ale, coca cola, lime cola, pepsi cola,
5 doctor pepper, root beer, carbonated water, orangeade,
6 lemonade, fruit juice when any plain or carbonated water,
7 flavoring or syrup is added, or any and all preparations
8 commonly referred to as “soft drinks” of whatever kind,
9 which are closed and sealed in glass, paper, or any other
10 type of container or bottle, whether manufactured with
11 or without the use of any syrup. The term “bottled soft
12 drinks” shall not include fluid milk to which no flavoring
13 has been added, or natural undiluted fruit juice or vege-
14 table juice.

15 (2) “Soft drink syrups” shall include the compound
16 mixture or the basic ingredients, whether dry or liquid,
17 usable in making, mixing or compounding soft drinks by
18 the mixing thereof with carbonated or plain water, ice,
19 fruit, milk or any other product suitable to make a soft

20 drink among such syrups being such products as coca cola
21 syrup, chero cola syrup, pepsi cola syrup, doctor pepper
22 syrup, root beer syrup, nугrape syrup, lemon syrup, va-
23 nilla syrup, chocolate syrup, cherry smash syrup, rock
24 candy syrup, simple syrup or any other prepared syrups
25 sold or used for the purpose of mixing soft drinks, as well
26 as all powder bases prepared for the purpose of mixing
27 soft drinks, including but not limited to such soft drinks
28 as kool-aid, oh boy drink, tip top and miracle aid: *Provid-*
29 *ed, however,* That powdered mixes prepared for domestic
30 cooking or baking only shall be excluded therefrom.”

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

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

38 (5) “Wholesale dealer” includes only those persons
39 who sell any bottled soft drink or soft drink syrup to re-
40 tail dealers for the purpose of resale.

41 (6) "Retail dealer" includes every person other than
42 a wholesale dealer mixing, making, compounding or man-
43 ufacturing any drink from a soft drink syrup or powder
44 base.

45 (7) "Distributor" shall mean any person who manu-
46 factures, bottles, produces or purchases for sale to retail
47 dealers any bottled soft drink or soft drink syrup.

48 (8) "Commissioner" means the state tax commission-
49 er, and where the meaning of the context requires, all
50 deputies and employees duly authorized by him.

Sec. 2. *Excise Tax on Bottled Soft Drinks and Syrups;*

2 *Disposition Thereof.*—For the purpose of providing rev-
3 enue for the construction, maintenance and operation of
4 a four-year school of medicine, dentistry and nursing of
5 West Virginia university, an excise tax is hereby levied
6 and imposed on and after midnight of the last day of June,
7 one thousand nine hundred fifty-one, upon the sale, use,
8 handling or distribution of all bottled soft drinks and all
9 soft drink syrups, whether manufactured within or with-
10 out this state, as follows:

11 (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
15 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 commission-
19 er.

20 Any person manufacturing or producing within this
21 state any bottled soft drink or soft drink syrup for sale
22 within this state and any distributor, wholesale dealer or
23 retail dealer or any other person who is the original con-
24 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

33 as are hereinafter provided for, shall be paid by him into
34 a special medical school fund, which is hereby created in
35 the state treasury, to be used solely for the construction,
36 maintenance and operation of a four-year school of medi-
37 cine, dentistry and nursing, as otherwise provided by law.

Sec. 3. *Soft Drink Permits Required.*—On and after the
2 first day of July, one thousand nine hundred fifty-one, it
3 shall be unlawful for any person to manufacture, bottle,
4 import, distribute or sell in this state any bottled soft
5 drink or any soft drink syrup without having first ob-
6 tained from the commissioner a soft drink permit as pro-
7 vided in this section. Each wholesale dealer and each
8 distributor shall each year obtain from the commissioner
9 a soft drink permit for each place of business owned or
10 operated by him within the state and shall pay for each
11 permit an annual fee of ten dollars. Each wholesale
12 dealer and each distributor who sells or distributes any
13 such drink or syrup within the state, but who does not
14 own or operate any place of buisness within the state, shall
15 likewise obtain each year from the commissioner a soft
16 drink permit and shall pay therefor a fee of ten dollars.

17 Each retail dealer manufacturing and/or purchasing un-
18 stamped syrups shall each year obtain from the commis-
19 sioner a soft drink permit for each place of business own-
20 ed or operated by him within the state and shall pay for
21 each permit an annual fee of five dollars. The commis-
22 sioner may suspend or, after a hearing, revoke any soft
23 drink permit whenever the holder thereof has failed
24 to comply with any of the provisions of this article or any
25 rules or regulations made and promulgated by him as pro-
26 vided herein.

Sec. 4-a. *Cancellation and Removal of Stamps.*—Any
2 person subject to the tax imposed by this article who af-
3 fixes a soft drink stamp to a container shall be required
4 to immediately cancel the stamp by writing or marking
5 initials thereon and the date upon which the stamp was
6 affixed. When any container to which a stamp has been af-
7 fixed is emptied, the person emptying the same or on
8 whose behalf the same has been emptied shall be required
9 to immediately remove or deface the tax stamp thereon.

Sec. 4-b. *Disposition of Unused Crowns; Penalty for*
2 *Violation.*—Unused tax crowns upon which the tax im-

3 posed by this article has not been paid and which the
4 original purchaser has not used and does not intend to
5 use, and which are fit for use, shall be disposed of in the
6 following manner only:

7 (1) By returning same to the manufacturer thereof
8 and receiving from such manufacturer a certificate which
9 shall indicate the name of the person returning the
10 crowns, the date of return and the number and denomina-
11 tions of crowns returned; or

12 (2) By transferring such crowns to any person and
13 receiving in exchange therefor a certificate issued by the
14 commissioner authorizing the transferee to acquire such
15 crowns.

16 Upon receipt of either such certificate the commissioner
17 shall credit the account of the original purchaser in the
18 amount indicated by the certificate.

19 In the event of the disposition of such crowns in a man-
20 ner not authorized by this section, the original purchaser
21 thereof or his estate, and/or any person (whether acting
22 in an official capacity or otherwise) who shall make such
23 unauthorized disposition shall be liable for the amount of

24 tax which the crowns represents; and, in addition, shall
25 be guilty of a misdemeanor and, upon conviction thereof,
26 shall be punished by a fine of five thousand dollars and
27 imprisonment in the county jail for not less than sixty
28 days nor more than one year, in the discretion of the
29 court.

Sec. 5. *Purchase of Tax Stamps or Tax Crowns; Dis-*
2 *counts and Commissions; Provisions for Credit.*—The com-
3 missioner is hereby authorized to promulgate rules and
4 regulations governing the design, purchase, sale and dis-
5 tribution of tax stamps and tax crowns required by this
6 article. Manufacturers or distributors of crowns may be
7 required to furnish bond to insure faithful compliance
8 with such regulations. Any person desiring to purchase
9 such crowns shall obtain from the commissioner an au-
10 thorization to do so, which shall specify the number of
11 crowns to be purchased, and upon shipment thereof the
12 manufacturer shall transmit to the commissioner a copy
13 of the invoice of such shipment. The commissioner shall
14 not authorize the purchase of crowns by any person who
15 is in default in the payment of any tax required by this
16 article.

17 The commissioner shall sell the stamps required by this
18 article, or may authorize any sheriff, or any bank or trust
19 company in this state, to sell such stamps as his deputy,
20 and may allow as a commission a fee of one-half of one
21 per cent of the face value of all stamps sold by such
22 deputy. In the sale of such stamps the commissioner shall
23 allow the following discounts: On a sale of less than
24 twenty-five dollars, no discount; on a sale of twenty-five
25 dollars or over and less than fifty dollars, a discount of
26 five per cent; and on a sale of fifty dollars or more, a dis-
27 count of ten per cent.

28 In the case of stamps, the tax imposed by this article
29 shall be paid in advance at the time the stamps are pur-
30 chased. In the case of tax crowns, the tax shall be paid
31 in advance at the time the tax commissioner authorizes
32 the purchase of such tax crowns, unless the purchaser
33 applies for and obtains credit as provided in the following
34 paragraph.

35 Whenever any person applies for an authorization to
36 purchase tax crowns, he may apply for an extension of
37 credit on the tax due with respect to such crowns, and if

38 he files a bond in the form prescribed by the commissioner,
39 with satisfactory corporate surety, in an amount not less
40 than twenty-five per cent more than the tax due with re-
41 spect to the tax crowns to be purchased, the commissioner
42 shall issue the necessary authorization. Any person who
43 obtains such credit shall, on or before the fifteenth day of
44 each month, file with the commissioner on forms pre-
45 scribed by him a return stating the number of tax crowns
46 used by such person during the preceding month, and he
47 shall at the same time pay to the commissioner the tax
48 due on the crowns so used.

49 The commissioner shall allow to each purchaser of tax
50 crowns, whether for cash or credit, a discount of twelve
51 and one-half per cent of the tax value of such tax crowns.
52 Such discount, and the discount allowed on the sale of tax
53 stamps, shall be in lieu of the allowance of any claim for
54 refund by reason of the breakage or destruction of contain-
55 ers stamped or crowned as provided in this article, the
56 spoilation of the soft drinks or syrups, or the loss or de-
57 struction of tax stamps or tax crowns.

Sec. 5-a. *Keeping of Records; Inspections and Audits.*—

2 Every person subject to the provisions of this article shall
3 make such reports and keep such records as may be re-
4 quired by the rules and regulations of the commissioner,
5 and shall permit him to inspect such records and the
6 stocks and supplies on hand at any time. Every such per-
7 son shall be required either to make his records available
8 for inspection within this state or to pay the reasonable
9 expenses of sending an auditor outside the state to inspect
10 and audit such records.

Sec. 5-b. *Penalties for Late Filing.*—If any taxpayer

2 fails to file a return or pay the proper amount of tax with-
3 in the time specified herein, there shall be added to the
4 unpaid tax the amount of the discount to which the tax-
5 payer would have been entitled had he not been delin-
6 quent as a penalty for being delinquent for the first month,
7 or a fraction thereof, and, if the delinquency continues,
8 there shall be a penalty of one per cent of the unpaid tax
9 for each succeeding month, or fraction thereof: *Provided,*
10 *however,* That if the failure to pay was due to reasonable
11 cause, the commissioner may waive or remit the penalties

12 imposed in this paragraph in whole or in part. In addi-
13 tion to the penalties herein provided, the commissioner
14 shall refuse to authorize the purchase of tax stamps or
15 crowns by the delinquent taxpayer.

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

6 Taxes and penalties due and unpaid may be collected
7 by action in debt, motion for judgment, or other appro-
8 priate remedy, including suit in a justice court.

Sec. 6. *Rules and Regulations.*—The commissioner is
2 hereby authorized to make and promulgate such reason-
3 able rules and regulations as may be necessary to admin-
4 ister the provisions of this article and to insure the collec-
5 tion of the tax imposed hereby.

Sec. 7-a. *Seizure and Sale of Soft Drink Syrups by*
2 *Commissioner; Forfeiture; Collection of Tax.*—Whenever
3 the commissioner or any of his duly authorized agents
4 shall discover any soft drink syrups, subject to tax as

5 provided by this article and upon which the tax has not
6 been paid as herein required, the commissioner or his duly
7 authorized agent is hereby authorized and empowered
8 forthwith to seize and take possession of such soft drink
9 syrups, which shall thereupon be deemed to be forfeited
10 to the state and the commissioner may within a reason-
11 able time thereafter by a notice posted upon the premises
12 where such seizure was made, or by publication in some
13 newspaper having circulation in the county wherein such
14 seizure is made, at least five days before the day of sale,
15 sell such forfeited soft drink syrups; and from the pro-
16 ceeds of such sale shall collect the tax due thereon to-
17 gether with a penalty of fifty per cent thereof and the
18 cost incurred in such proceedings, and pay the balance, if
19 any, to the person in whose possession such soft drink
20 syrups were found: *Provided, however,* That such seizure
21 and sale shall not be deemed to relieve any person from
22 fine or imprisonment provided herein for violation of any
23 provision of this article. Such sale shall be made in the
24 county where most convenient and economical. All mon-
25 eys 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.

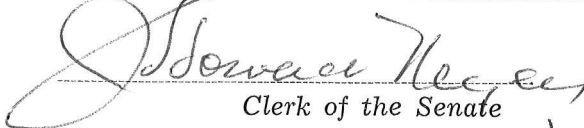
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

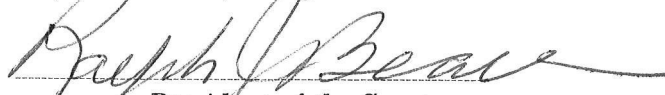

Chairman House Committee


Originated in the Senate.

Takes effect from passage.

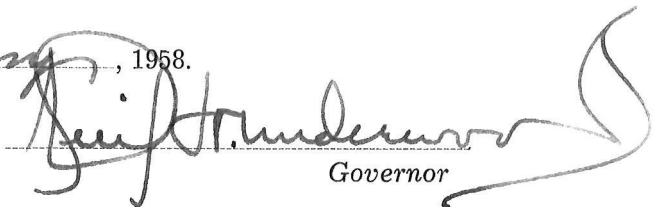

Clerk of the Senate


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