

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



ENROLLED

HOUSE BILL No... 419....

(By Mr. Speaker, Mr. Singleton)



PASSED March 9, 1961

In Effect from Passage

Filed in Office of the Secretary of State
of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE

419

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(By MR. SPEAKER, MR. SINGLETON)

[Passed March 9, 1961; in effect from passage.]

AN ACT to repeal chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, and chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty, and to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, numbered and designated article twenty-two, relating to the imposition of a state excise tax upon the privilege of transferring real property and providing penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, and chapter twenty-six, acts of the Legislature, regular session, one

thousand nine hundred sixty, be, and the same are, hereby repealed; and that chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be, and the same is, hereby amended by adding thereto a new article, designated and numbered article twenty-two, to read as follows:

Article 22. Excise Tax on Privilege of Transferring Real

Property.

Section 1. *Definitions.*—The following words when used in this chapter shall have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

“Association” means a partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons.

“Corporation” means a corporation or joint-stock association, organized under the laws of this state, the United States or any other state, territory, or foreign country, or dependency, including, but not limited to, banking institutions.

“Commissioner” means the state tax commissioner.

14 "Document" means any deed, or instrument or writing
15 whereby any real property within this state or any in-
16 terest therein shall be granted, conveyed or otherwise
17 transferred to the grantee, purchaser, or any other person;
18 but does not include wills, transfer of real property
19 where the value of the property transferred is one hun-
20 dred dollars or less, testamentary or inter vivos trusts,
21 deeds of partition, deeds made pursuant to mergers of
22 corporations, deeds made by a subsidiary corporation to
23 its parent corporation for no consideration other than
24 the cancellation or surrender of the subsidiary's stock,
25 leases, transfers between husband and wife, between
26 parent and child without consideration, transfers with-
27 out consideration between a principal and straw par-
28 ty for any purpose, transfers to or between volun-
29 tary charitable or educational associations or trustees
30 thereof and like nonprofit corporations having the same
31 or similar purposes, quitclaim or corrective deeds with-
32 out consideration, transfers to or from the United States,
33 the state of West Virginia, or to or from any of their
34 instrumentalities, agencies or political subdivisions, by

35 gift, dedication, deed or condemnation proceedings, or
36 mortgages or deeds of trust given as security for a debt.

37 "Person" means every natural person, association, or
38 corporation. Whenever used in any clause prescribing
39 and imposing a fine or imprisonment, or both, the term
40 "person" as applied to associations, shall mean the part-
41 ners or members thereof, and, as applied to corporations,
42 the officers thereof.

43 "Transaction" means the delivering, accepting, or pre-
44 senting for recording of a document.

45 "Value" means in the case of any document not a gift,
46 the amount of the full actual consideration therefor, paid
47 or to be paid, including the amount of any lien or liens
48 assumed; in the case of a gift, or any other document
49 without consideration, the actual monetary value of the
50 property conveyed or transferred. In the event any docu-
51 ment includes real property or any interest therein lying
52 outside the state of West Virginia or includes personal
53 property, value shall be the proportion of the consider-
54 ation paid in case of the transfer for consideration, or
55 the proportion of the true and actual value in case of a

56 gift, which the actual value of the real property located
57 in West Virginia bears to the total actual value of all
58 the property, real or personal, transferred by the docu-
59 ment. The value as herein defined shall be stated in the
60 declaration of consideration or value provided for in sec-
61 tion six hereof.

Sec. 2. *Rate of Tax; When and by Whom Payable.*—

2 Every person who delivers, accepts or presents for re-
3 cording any document, or in whose behalf any document
4 is delivered, accepted or presented for recording, shall
5 be subject to pay for and in respect to the transaction or
6 any part thereof, a state excise tax upon the privilege
7 of transferring title to real estate at the rate of one dollar
8 and ten cents for each five hundred dollars value or
9 fraction thereof as represented by such document as de-
10 fined in section one hereof, which state tax shall be pay-
11 able at the time of delivery, acceptance or presenting for
12 recording of such document: *Provided, however,* That
13 only one such state tax shall be paid on any one document;
14 and the same shall be paid by the grantor therein unless
15 the grantee accepts the same without such tax having

16 been paid, in which event such tax shall be paid by the
17 grantee: *Provided further*, That on any transfer of real
18 property from a trustee or a county clerk transferring
19 real estate sold for taxes, such tax shall be paid by the
20 grantee.

Sec. 3. *Payment from Proceeds of Judicial Sale.*—The
2 tax herein imposed shall be fully paid, and have priority
3 out of the proceeds of any judicial sale of real estate
4 before any other obligation, claim, lien, judgment, estate
5 or costs of the sale and of the writ upon which the sale
6 is made, and the sheriff, commissioner, or other officer,
7 conducting said sale, shall pay the tax herein imposed
8 out of the first moneys paid to him in connection there-
9 with.

Sec. 4. *Documentary Stamps; Affixing; Cancellation;*
2 *Declaration of Value.*—The payment of the tax imposed
3 by this article shall be evidenced by the affixing of a
4 documentary stamp or stamps to every document by the
5 person executing, delivering or presenting for recording
6 such document. Each stamp shall be affixed in such man-
7 ner that its removal will require the continued application

8 of steam or water, and the person using or affixing such
9 stamps shall write or stamp or cause to be written or
10 stamped thereon the initials of his name and the date
11 upon which such stamps are affixed or used so that such
12 stamps may not again be used: *Provided*, That the com-
13 missioner may prescribe such other method of cancella-
14 tion as he may deem expedient.

Sec. 5. *Commissioner to Provide for Sale of Stamps;*
2 *Rules and Regulations.*—The commissioner shall pre-
3 scribe, prepare and furnish adhesive stamps of such de-
4 nominations and quantities as may be necessary, for the
5 payment of the tax imposed and assessed by this article,
6 to the clerks of the various county courts whose duty it
7 shall be to offer said stamps for sale.

8 The commissioner is hereby authorized and empowered
9 to prescribe, adopt, promulgate and enforce rules and
10 regulations relating to:

11 (a) The method and means to be used in affixing or
12 cancelling of stamps in substitution for or in addition to
13 the method and means provided in this article.

14 (b) The denominations and sale of stamps.

15 (c) Any other matter or thing pertaining to the admin-
16 istration and enforcement of the provisions of this article.

Sec. 6. *Duties of Clerk; Declaration of Consideration or*
2 *Value; Remittance and Use of Proceeds.*—When any ins-
3 trument on which the tax as herein provided is imposed
4 is offered for recordation, the clerk of the county court
5 shall ascertain and compute the amount of the tax due
6 thereon and shall ascertain if stamps in the proper amount
7 are attached thereto as a prerequisite to acceptance of
8 the instrument for recordation.

9 When offered for recording on or after the first day of
10 July, one thousand nine hundred fifty-nine, each instru-
11 ment subject to the tax as herein provided shall have
12 appended on the face or at the end thereof, a statement
13 or declaration signed by the grantor, grantee or other
14 responsible party familiar with the transaction therein
15 involved declaring the consideration paid for or the value
16 of the property thereby conveyed. Such declaration may
17 be in the following language:

18 "DECLARATION OF CONSIDERATION OR VALUE

19 I hereby declare:

20 (a) The total consideration paid for the property con-
 21 veyed by the document to which this declaration is ap-
 22 pended is \$.....; or,

23 (b) The true and actual value of the property trans-
 24 ferred by the document to which this declaration is ap-
 25 pended is, to the best of my knowledge and belief \$.....
 26; or,

27 (c) The proportion of all the property included in the
 28 document to which this declaration is appended which is
 29 real property located in West Virginia is%;
 30 the value of all the property \$.....; the value
 31 of real estate in West Virginia is \$.....; or,

32 (d) This deed conveys real estate located in more than
 33 one county in West Virginia; the total consideration paid
 34 for, or actual cash value of, all the real estate located in
 35 West Virginia conveyed by this document is \$.....;
 36 and documentary stamps showing payment of all of the
 37 excise tax on all of said real estate are attached to an
 38 executed counterpart of this deed recorded in
 39 county.

40 Given under my hand thisday of, 19.....

41 Signature.....

42 (Indicate whether grantor, grantee,
43 or other interest in conveyance).

44

45 Address ”

46 Such declaration shall be considered by the clerk in
47 ascertaining the correct number of stamps required, and
48 if declaration (d) is used no stamps shall be required on
49 the duplicate deed to which it is attached and such dupli-
50 cate deed shall be admitted to record, and when recorded
51 shall have the same effect for all purposes as if stamps
52 were attached thereto.

53 The clerk shall, at the end of the month, pay all of the
54 proceeds collected from the sale of stamps to the state
55 auditor in the manner provided by law which shall be
56 credited to the state general revenue fund.

Sec. 7. *Failure to Affix Stamps.*—No document upon
2 which a tax is imposed by this article shall be made the
3 basis of any action or other legal proceeding, nor shall
4 proof thereof be offered or received in evidence in any

5 court of this state, nor shall the same be recorded in the
6 office of any clerk of any county court of this state,
7 unless or until a documentary stamp or stamps as pro-
8 vided in this article have been affixed thereto, but if
9 recorded without stamps or without the proper amount
10 of stamps, said document shall nevertheless be duly of
11 record except that no copy thereof may be admitted in
12 evidence until the proper amount of stamps has been
13 placed on the original or such copy.

Sec. 8. Penalty for Recording Without Documentary

2 *Stamp; Effect.*—Any clerk who shall record any docu-
3 ment upon which a tax is imposed by this article without
4 the proper documentary stamp or stamps affixed thereto
5 as required by this article as is indicated in such docu-
6 ment or accompanying declaration shall, upon conviction
7 in a court of competent jurisdiction, be fined fifty dollars.
8 Failure of the clerk to require the attachment of the
9 proper number of stamps shall not affect the record-
10 ability of the instrument, if otherwise recordable and
11 regularly recorded. The failure to pay this tax and to
12 attach the required stamps shall not be or constitute a

13 lien or claim against the property conveyed by the re-
14 corded instrument.

Sec. 9. *Unlawful Acts; Penalty.*—It shall be unlawful

2 for any person to:

3 (1) Knowingly make a false statement in the declar-
4 ation provided for in section six of this article; or,

5 (2) Fraudulently affix to any document upon which
6 tax is imposed by this article any previously used docu-
7 mentary stamp which has been cut, torn or removed from
8 any other document upon which tax is imposed by this
9 article, or any forged or counterfeited stamp, or any im-
10 pression of any forged or counterfeited stamp, die, plate
11 or other article; or,

12 (3) Wilfully remove or alter the cancellation marks
13 of any documentary stamp, or restore any such documen-
14 tary stamp, with intent to use or cause the same to be
15 used after it has already been used, or knowingly buy,
16 sell, offer for sale, or give away any such altered or re-
17 stored stamp to any person for use, or knowingly use
18 the same; or,

19 (4) Knowingly have in his possession any altered or

20 restored documentary stamp which has been removed
21 from any document upon which tax is imposed by this
22 article: *Provided*, That the possession of such stamps shall
23 be prima facie evidence of an intent to violate the pro-
24 visions of this clause; or,

25 (5) Knowingly or wilfully prepare, keep, sell, offer for
26 sale, or have in his possession, any forged or counter-
27 feited documentary stamps.

28 Any person violating any of the provisions of this sec-
29 tion shall be guilty of a misdemeanor, and, upon con-
30 viction thereof, shall be sentenced to pay a fine of not
31 less than one hundred dollars nor more than one thousand
32 dollars or be imprisoned for not more than five years, or
33 both, in the discretion of the court.

Sec. 10. *Erroneous Collections: Refund.*—Any person
2 who may have been required to pay the tax provided for
3 in this article because of any mistake of law or fact or
4 because the tax herein provided for was improperly col-
5 lected may apply for a refund thereof either to the county
6 clerk receiving such payment, or to the state auditor.

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

James Davis, Jr.
Chairman Senate Committee

Mrs. W. W. Withrow
Chairman House Committee

Originated in the House.

Takes effect *from* passage.

St. J. Jones, Meyer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard Carson
President of the Senate

Julius W. Singleton, Jr.
Speaker House of Delegates

The within *approved* this the *17th*
day of *March*, 1961.

W. W. Barron
Governor

Filed in Office of the Secretary of State
of West Virginia **MAR 17 1961**
JOE F. BURDETT
SECRETARY OF STATE