

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1973

ENROLLED

SENATE BILL NO. 3

(By Mr. Hubbard)

PASSED July 11, 1973

In Effect 90 days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 7-19-73

ENROLLED

Senate Bill No. 3

(By MR. HUBBARD)

[Passed July 11, 1973; in effect ninety days from passage.]

AN ACT to amend and reenact section five-c, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections five-d, five-e, five-f and five-g, all relating to the soft drinks tax; providing for reports, due date of reports, and additional reports; providing for examination of witnesses under oath; providing for certification of facts and names to circuit courts in order to obtain subpoena duces tecum; providing for investigation, examination, assessment and jeopardy assessment of tax; providing for written notice of assessment of tax and petition for reassessment; providing for finalization of assessment of tax upon failure to petition for reassessment within specified time; providing for hearing and written notice of such hearing upon a petition for reassessment; providing for finalization of assessment of tax upon failure to appeal from decision of commissioner on petition for reassessment; providing for collection of tax and penalty; providing for appeal from decision of commissioner; providing for notice, filing and docketing of such appeal; providing for filing of bond on such appeal; providing for certified copy of commissioner's assessment as prima facie evidence of tax due on such appeal; providing for decree of the circuit court on such appeal; and providing for appeal from the decree of the circuit court to the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

That section five-c, article nineteen, chapter eleven of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections five-d, five-e, five-f and five-g, all to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5c. Reports; subpoena duces tecum.

1 Every person subject to the tax imposed by this article shall
2 on or before the fifteenth day of each month make to the com-
3 missioner such reports of such person's operations for pre-
4 ceding month necessary to verify such person's liability under
5 this article as the commissioner may require, and shall, from
6 time to time as the commissioner may require by due notice of
7 fifteen days, make such additional reports necessary to verify
8 such person's liability under this article as the commissioner
9 may deem necessary. For good cause shown, the commissioner
10 may extend the time for filing said reports for a period not
11 exceeding thirty days.

12 As a further means of obtaining the records, books, and
13 papers of any person and ascertaining the amount of taxes and
14 the reports due under this article, the commissioner shall have
15 the power to examine witnesses, under oath; and if any wit-
16 ness shall fail or refuse upon the request of the commissioner
17 to grant access to such records, books and papers, the com-
18 missioner shall certify the facts and the names to the circuit
19 court of the county having jurisdiction of the party and such
20 court shall thereupon issue a subpoena duces tecum to such
21 party to appear before the commissioner, at a place designated
22 within the jurisdiction of such court, on a day fixed.

§11-19-5d. Assessment of tax when insufficiently returned.

1 If the commissioner believes that the tax imposed by this
2 article is insufficiently returned by a person, either because
3 said person has failed to properly remit the tax or has failed
4 to make a return, or has made a return which is incomplete,
5 deficient or otherwise erroneous, or has requested or has been
6 granted a refund and credit which is incomplete, deficient or
7 otherwise erroneous, he may proceed to investigate and deter-
8 mine or estimate the tax liability and make an assessment
9 therefor.

§11-19-5e. Jeopardy assessments.

1 If the commissioner believes that the collection of any tax
2 which he is required to administer will be jeopardized by delay,
3 he shall thereupon make an assessment of tax, noting that fact
4 upon the assessment. The amount assessed shall be immediate-
5 ly due and payable. Unless a person against whom a jeopardy
6 assessment is made petitions for reassessment within twenty
7 days after service of notice of jeopardy assessment, such
8 assessment becomes final. A petition for reassessment by a
9 person against whom a jeopardy assessment has been made
10 must be accompanied by such security as the commissioner
11 may deem necessary to insure compliance with this article.

§11-19-5f. Notice of assessment, petition for reassessment.

1 The commissioner shall give written notice of any assessment
2 made pursuant to this article. Unless the person to whom a
3 notice of assessment is directed shall, within thirty days after
4 service thereof (except in the case of jeopardy assessments)
5 either personally or by certified mail, file with the commis-
6 sioner a petition in writing, verified under oath by said person
7 or his duly authorized agent having knowledge of the facts,
8 setting forth with particularity the items of the assessment ob-
9 jected to, together with the reasons for objections, said assess-
10 ment shall become final and conclusive, not subject to
11 judicial review, and the amount thereof shall be pay-
12 able at the end of the thirty-day period (twenty days in the
13 case of a jeopardy assessment). A petition for reassessment
14 shall be deemed to be timely filed if the postmark date thereon
15 is clearly within said thirty days (twenty days in case of a
16 jeopardy assessment) of receipt of said assessment or is re-
17 ceived within such period. If the thirtieth day (twentieth day
18 in case of a jeopardy assessment) falls on a Saturday, Sunday
19 or legal holiday, filing will be considered timely if it is done
20 on the next succeeding day which is not a Saturday, Sunday or
21 legal holiday.

§11-19-5g. Hearing; appeals; collection by action or suit.

1 In every case where a petition for reassessment as above de-
2 scribed is filed, the commissioner shall assign a time and place
3 for the hearing of same and shall notify the petitioner of such

4 hearing by written notice at least twenty days in advance there-
5 of, and such hearing shall be held within sixty days from the
6 filing of the petition for reassessment unless continued by
7 agreement or by the commissioner for good cause. The hear-
8 ing shall be informal and may be conducted by an examiner
9 designated by the commissioner. After any such hearing, the
10 commissioner shall, within ninety days, give notice in writing
11 of the decision. Unless an appeal is taken within thirty days
12 after service of this notice, the commissioner's decision shall be
13 final and not subject to judicial review. The amount, if any,
14 due the state under such decision shall be due and payable on
15 the day following the date upon which such decision becomes
16 final.

17 Taxes and penalties due and unpaid under this article may be
18 collected by civil action or suit in a justice court, where the
19 same is within the jurisdiction of the justice court.

20 An appeal may be taken by the taxpayer from the decision
21 of the commissioner on his petition for reassessment to the
22 circuit court of the county in which the activity taxed was car-
23 ried on, or in which the taxpayer resides or in the circuit court
24 of Kanawha county, within thirty days after he shall have
25 received notice from the commissioner of his decision as pro-
26 vided in this section.

27 The appeal shall be taken by written notice to the commis-
28 sioner and served as an original notice. When said notice is
29 so served, it shall, with the return thereon, be filed in the
30 office of the clerk of the circuit court and docketed as other
31 cases with the taxpayer as plaintiff and the commissioner as
32 defendant. Before the appeal is heard, the plaintiff shall file
33 with such clerk a bond for the use of the defendant, with sure-
34 ties approved by said clerk, the penalty of the bond to be not
35 less than the total amount of the tax and penalties appealed
36 from, and conditioned that the plaintiff shall perform the
37 orders of the court.

38 The court shall hear the appeal and determine anew all
39 questions submitted to it on appeal from the determination of
40 the commissioner. In such appeal, a certified copy of the com-
41 missioner's assessment shall be admissible and shall constitute

42 prima facie evidence of the tax due under the provisions of
43 this article. The court shall render its decree thereon and enter
44 judgment accordingly, and a certified copy of said decree shall
45 be filed by the clerk of said court with the commissioner who
46 shall then correct the assessment, if necessary, in accordance
47 with said decree. An appeal may be taken by the taxpayer or
48 the commissioner to the supreme court of appeals of this
49 state.

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

H. Darrel Darby

Chairman Senate Committee

Clarence C. Christian Jr.

Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

Howard B. Carson

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. T. Brotherton Jr.

President of the Senate

Louis M. W. Maurer

Speaker House of Delegates

The within *approved* this the *18th*
day of *July*, 1973.
Arch A. Shaver Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 7/17/73

Time 2:25 p.m.