

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-80

Time 2:00 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



ENROLLED

HOUSE BILL No. 1224

(By Mr. Tompkins + Mr. Polan)



Passed March 8, 1980

In Effect July 1, 1980 ~~Passage~~



NO: 1224

ENROLLED

H. B. 1224

(By MR. TOMPKINS and MR. POLAN)

[Passed March 8, 1980; in effect July 1, 1980.]

AN ACT to amend and reenact section five, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the soft drinks tax; authorizing refund or credit to be made when the tax stamps or crowns or the soft drinks, powders or syrups upon which tax has been paid are destroyed by fire, lightning or flood or the soft drinks, powders or syrups upon which tax has been paid are exported from this state or are destroyed pursuant to a federal or state order; providing a statute of limitations on the filing of a claim for refund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That section five, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5. Purchase of tax stamps or tax crowns; discounts and commissions; refunds and statute of limitations; effective date.

1 The commissioner is hereby authorized to promulgate rules
2 and regulations governing the design, purchase, sale and
3 distribution of tax stamps and tax crowns required by this
4 article. Manufacturers or distributors of crowns may be re-
5 quired to furnish bond to ensure faithful compliance with

6 such regulations. Any person desiring to purchase such
7 crowns shall obtain from the commissioner an authorization
8 to do so, which shall specify the number of crowns to be
9 purchased, and upon shipment thereof the manufacturer shall
10 transmit to the commissioner a copy of the invoice of such
11 shipment. The commissioner shall not authorize the purchase
12 of crowns by any person who is in default in the payment of
13 any tax required by this article.

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

24 In the case of stamps, the tax imposed by this article
25 shall be paid in advance at the time the stamps are purchased.
26 In the case of tax crowns, the tax shall be paid in advance
27 at the time the tax commissioner authorizes the purchase of
28 such tax crowns, unless the purchaser applies for and obtains
29 credit as provided in the following paragraph.

30 Whenever any person applies for an authorization to
31 purchase tax crowns, he may apply for an extension of credit
32 on the tax due with respect to such crowns, and if he files
33 a bond in the form prescribed by the commissioner, with
34 satisfactory corporate surety, in an amount not less than
35 twenty-five percent more than the tax due with respect to
36 the tax crowns to be purchased, the commissioner shall issue
37 the necessary authorization. Any person who obtains such
38 credit shall, on or before the fifteenth day of each month, file
39 with the commissioner on forms prescribed by him a return
40 stating the number of tax crowns used by such person during
41 the preceding month, and he shall at the same time pay to
42 the commissioner the tax due on the crowns so used.

43 The commissioner shall allow to each purchaser of tax

44 crowns, whether for cash or credit, a discount of twelve
45 and one half percent of the tax value of such crowns. Such
46 discount, and the discount allowed on the sale of tax stamps,
47 shall be in lieu of the allowance of any claim for refund by
48 reason of the breakage or destruction of containers stamped
49 or crowned as provided in this article, the spoilation of the
50 soft drinks or syrups, or the loss or destruction of tax
51 stamps or tax crowns. *Provided*, That when the tax stamps or
52 crowns or soft drinks, soft drink powders or soft drink syrups
53 upon which tax has been paid are destroyed by fire, lightning
54 or flood and when soft drinks, syrups or powders upon which
55 tax has been paid are exported from this state or are required
56 to be destroyed pursuant to federal or state order, the taxpayer
57 may file a claim for refund for an amount equal to the amount
58 of tax actually paid for such stamps or crowns. The commis-
59 sioner shall cause a refund to be made under this section only
60 when a claim for refund is filed within one hundred and eighty
61 days from the date the tax stamps or crowns were destroyed
62 or the soft drink product upon which tax was paid were de-
63 stroyed or exported from this state. Any claim for refund not
64 timely filed shall not be construed to be or to constitute a
65 moral obligation of this state for payment. Such claim for re-
66 fund shall also be subject to the provisions of section fourteen,
67 article ten of this chapter. At the election of the taxpayer, the
68 amount of any refund may be established as a credit. The
69 amount refunded or credited under this section shall not be
70 subject to the interest provisions of subsection (d), section
71 seventeen, article ten of this chapter.

72 Effective date.—The provision of this section as hereby
73 amended shall apply to soft drinks tax stamps or crowns de-
74 stroyed on or after the first day of July, one thousand nine
75 hundred eighty, and to soft drinks, powders and syrups ex-
76 ported or destroyed on or after the first day of said July. The
77 provisions of this section in effect prior to the said first day
78 of July shall apply to tax stamps, crowns and soft drinks,
79 powders and syrups destroyed or exported prior to said date.

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

James L. Davis
Chairman Senate Committee

Laurence C. Chestnut Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

Todd C. Miller
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. P. Brickeron Jr.
President of the Senate

Clayton M. Lee Jr.
Speaker House of Delegates

The within *is approved* this the *24*
day of *March*, 1980.

John A. Ruppel
Governor

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OFFICE OF THE GOVERNOR

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