WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1988

ENROLLED

SENATE BILL NO. 3

(By Senators TONKOVICH, MR. PRESIDENT (By Request), AND HARMS)

PASSED March 27, 1988
In Effect from Passage
ENROLLED

Senate Bill No. 3

(BY SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN)

[Passed March 22, 1988; in effect from passage.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a; to amend and reenact section two, article fifteen-a of said chapter eleven; and to amend article four-b, chapter twenty-three of said code by adding thereto a new section, designated section eight-a, all relating to increasing state revenues, cash flow, money transfers and repayments; authorizing transfers from coal-workers' pneumoconiosis fund upon request of the governor and as needed for timely payment for government operations; specifying the maximum amount of transfer authorization and purpose for which such moneys as transferred may be disbursed and expended; providing terms and conditions for repayment of all such transfers, including interest; specifying that the rate of premiums to be paid for coverage by the coal-workers' pneumoconiosis fund shall be determined with like effect as if such transfers had not taken place; creating a special account in the state treasury for activities of deposit, withdrawal and repayment transfers and for invoking applicability of the special fund doctrine with respect to budget activities beyond one fiscal year for casual debt; providing for temporary increase in the rates of the consumers sales tax and complementary use tax laws for
specified period, with reversion thereafter to prior rates, to enhance revenue receipts, cash flow and repayment transfers; exclusions from temporary rate increases; requiring portion of tax receipts to be allocated and directed by tax commissioner into special accounts for repayment of coal-workers' pneumoconiosis fund debt, payable over five-fiscal-year period, and other portion to be allocated and directed for payment of public employees health insurance claims; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a; that section two, article fifteen-a of said chapter eleven be amended and reenacted; and that article four-b, chapter twenty-three of said code be amended by adding thereto a new section, designated section eight-a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-3a. Temporary one-cent increase in rate of tax for period beginning June 1, 1988 and ending June 30, 1989; exclusions from increase; portion of taxes required to be allocated and directed by tax commissioner into special accounts for repayment of pneumoconiosis fund debt and for payment of public employees health insurance claims.

For the privilege of selling tangible personal property or dispensing certain selected services defined in this article, the vendor shall collect from the purchaser the tax as provided under this article and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article.

(a) Beginning on the first day of June, one thousand nine hundred eighty-eight and ending after the thirtieth day of June, one thousand nine hundred eighty-nine, the general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales, excluding gasoline and special fuel sales, which remain taxable at the rate in section three, and excluding sales of mobile homes,
which remain taxable at the rate in section nine of this article. After the thirtieth day of June, one thousand nine hundred eighty-nine, the rate of tax shall revert to the prior rate as provided in section three of this article, subject to such exclusions.

There shall be no tax on sales where the monetary consideration is five cents or less. The amount of tax specified in this section at the six cents rate shall be computed as follows:

(1) On each sale, where the monetary consideration is from six cents to sixteen cents, both inclusive, one cent.

(2) On each sale, where the monetary consideration is from seventeen cents to thirty-three cents, both inclusive, two cents.

(3) On each sale, where the monetary consideration is from thirty-four cents to fifty cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from fifty-one cents to sixty-seven cents, both inclusive, four cents.

(5) On each sale, where the monetary consideration is from sixty-eight cents to eighty-four cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from eighty-five cents to one dollar, both inclusive, six cents.

(7) If the sale price is in excess of one dollar, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars, as follows: One cent on the fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the fractional part of the dollar if in excess of fifty-one cents but less than sixty-eight cents; five cents on the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents; on sales from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive, eight cents; on sales from one dollar
and thirty-four cents to one dollar and fifty cents, both inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and sixty-seven cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and eighty-four cents, both inclusive, eleven cents; and on sales from one dollar and eighty-five cents to two dollars, both inclusive, twelve cents.

Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. Notwithstanding any other provision, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(b) Allocation of tax and transfers. — Of the taxes collected under the provisions of this article for the period beginning on the first day of June, one thousand nine hundred eighty-eight and ending after the thirtieth day of June, one thousand nine hundred eighty-nine, the portion of such taxes representing just the temporary rate of increase (the additional one cent) receivable by the tax commissioner during such period or thereafter, shall be allocated by him on reasonable basis and with allowance for refunds; and the tax commissioner shall, initially or by transfer, deposit a part of such portion of allocated taxes into the special account created in the treasury by section eight-a, article four-b, chapter twenty-three of this code, and being the amount sufficient for making timely repayment of the principal and interest under the first payment due, by the thirtieth day of June, one thousand nine hundred eighty-nine, in repayment for the moneys previously transferred from such pneumoconiosis fund. The other four repayment transfers required for full repayment of the pneumoconiosis fund debt, payable in the four succeeding fiscal years shall be made by the tax commissioner, timely and in the aforesaid manner, from all taxes collected under this article in such fiscal years. The remainder of such allocated portion of the temporary tax increase (the additional one cent) aforesaid, after receipt, shall be, initially or by transfer, deposited by the tax commissioner, monthly, directly into the special revenue fund of the Public Employees Insurance Agency, designated "Basic Insurance Premium Fund," Account No. 8265-05, for payment of health insurance claims.
ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; additional temporary one percent increase in rate of tax for period beginning June 1, 1988 and ending June 30, 1989; exclusions from increase; portion of taxes required to be allocated and directed by tax commissioner into special accounts for repayment of pneumoconiosis fund debt and for payment of public employees health insurance claims; inclusion of services as taxable on and after July 1, 1987.

(a) An excise is hereby levied and imposed on the use in this state of tangible personal property or taxable services, to be collected and paid as hereinafter provided, at the rate of five percent of the purchase price of such property or taxable services, with such rate being hereby temporarily increased to a rate of six percent for the period beginning on the first day of June, one thousand nine hundred eighty-eight and ending after the thirtieth day of June, one thousand nine hundred eighty-nine, excluding gasoline and special fuel sales and excluding sales of mobile homes, which shall remain taxable at prior rates. “Taxable services,” for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words “tangible personal property” or “property” appear, the same shall include the words “or taxable services,” where the context so requires.

(b) Of the taxes collected under the provisions of this section and article for the period beginning on the first day of June, one thousand nine hundred eighty-eight and ending after the thirtieth day of June, one thousand nine hundred eighty-nine, the portion of such taxes representing just the temporary rate of increase (the additional one percent) receivable by the tax commissioner, during such period or thereafter, shall be allocated by him on reasonable basis and with allowance for refunds; and the tax commissioner shall, initially or by transfer, deposit a part of such portion of allocated taxes into the special account created in the state treasury by section eight-a, article four-b, chapter twenty-three of this code, and being the amount sufficient, together with the moneys similarly
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dedicated by section three-a, article fifteen of this chapter, for making timely repayment of the principal and interest under the first payment due, by the thirtieth day of June, one thousand nine hundred eighty-nine, in repayment for the moneys prior-borrowed from such pneumoconiosis fund. The other four repayment transfers required for full repayment of the pneumoconiosis fund debt, payable in the four succeeding fiscal years, shall be made by the tax commissioner, timely and in the aforesaid manner, from any taxes collected under this article in such fiscal years. The remainder of such allocated portion of the temporary tax increase (the additional one percent) aforesaid, after receipt, shall be, initially or by transfer, deposited by the tax commissioner, quarterly, directly into the special revenue fund of the Public Employees Insurance Agency designated "Basic Insurance Premium Fund," Account No. 8265-05, for payment of health insurance claims.

(c) Such tax is hereby imposed upon every person using tangible personal property or taxable services within this state. That person's liability is not extinguished until such tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(d) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use taxes if such were sold outside of the state for use in West Virginia.

(e) This article shall not apply to purchases made by counties or municipal corporations.

(f) The provisions of this section, as amended, shall apply on and after the first day of June, one thousand nine hundred eighty-eight, except where other internal specific effective date controls.
CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 4B. COAL-WORKERS’ PNEUMOCONIOSIS FUND.

§23-4B-8a. Legislative findings; transfers to the state; maximum transfer authorization; purpose for which moneys transferred may be disbursed and expended; maximum amount of transfer authorization; terms and conditions for repayment; premiums to be set without regard to transfers; creation of special account in state treasury.

(a) The Legislature hereby finds and declares that there is a casual deficit in the general revenue fund of this state because of the failure of the state’s taxation program to produce the estimated revenues, such deficit condition having come into existence from ordinary expenses of the state without design and unexpectedly; that there is a large surplus of moneys in the coal-workers’ pneumoconiosis fund; that transfers not to exceed thirty million dollars from the coal-workers’ pneumoconiosis fund will assist in financing government operations, without in any way affecting the solvency of the coal-workers’ pneumoconiosis fund; and that the interest being earned on the coal-workers’ pneumoconiosis fund each year has for some time exceeded thirty million dollars. This section is enacted in view of these findings.

(b) Whenever the governor determines that the general revenue fund available for expenditure is insufficient for the timely payment for government operations, the treasurer, state board of investments and the commissioner shall transfer moneys from the coal-workers’ pneumoconiosis fund to the special account created in the state treasury by subsection (f) of this section, in the amounts determined by the governor to be sufficient and necessary to meet such payments. The total of the amounts transferred may not exceed thirty million dollars, and the transfers shall be subject to the payment of interest equal to the actual interest rate earned by the coal-workers’ pneumoconiosis fund on the day of each transfer for the period of each transfer until repayment.

(c) Any such transfer may be used only for payments for medicaid reimbursement.
(d) Full repayment of all transfers, with interest, shall be made to the coal-workers' pneumoconiosis fund by budget action as first priority from the moneys available for each fiscal year as follows: At least one fifth of the outstanding amount with interest shall be repaid no later than the thirtieth day of June, one thousand nine hundred eighty-nine; at least one fourth of the outstanding amount with interest shall be repaid no later than the thirtieth day of June, one thousand nine hundred ninety; at least one third of the outstanding amount with interest shall be repaid no later than the thirtieth day of June, one thousand nine hundred ninety-one; at least one half of the outstanding amount with interest shall be repaid no later than the thirtieth day of June, one thousand nine hundred ninety-two; and the balance of the remaining amount transferred shall be repaid with interest no later than the thirtieth day of June, one thousand nine hundred ninety-three. Repayment transfers, shall be made by budget action as first priority from the moneys available for each fiscal year and as made, shall not be deemed to renew, restore or increase in any way the maximum amount of thirty million dollars herein authorized.

(e) The rates of premiums to be paid for coverage by the coal-workers' pneumoconiosis fund shall be determined by the commissioner with like effect as if all such transfers had not been made but had, together with the interest earned thereon, been available for use by the coal-workers' pneumoconiosis fund.

(f) There is hereby created in the state treasury a special account for the deposit, withdrawal and repayment of moneys transferred pursuant to this section and to invoke the applicability of the special fund doctrine with respect to budgetary transfer activities involving more than one fiscal year.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 25th day of March, 1988.

Governor