

this act, reduce the said tax levy for road and street purposes by an amount approximately equivalent to the amount to be expended in such township under the provisions of this act as compared with the amount levied for road and street purposes for the year one thousand nine hundred and thirty-three, except that proper provision shall be made by the townships for interest, sinking fund, and debt repayment charges, and such other administrative and overhead expenses as may be necessary: Provided further, That, if any board of supervisors of any township of the second class has, during the year one thousand nine hundred and thirty-five, delayed making its tax levy beyond the last day allowed by law for the levy of its road tax, any such action by a board of township supervisors in levying its tax on or before July fifteenth, one thousand nine hundred and thirty-five, is hereby ratified, confirmed, and made valid.

Validation of certain delayed tax levies.

Proviso.

Provided, that in case any township desires to make application for Federal funds any surplus of the funds appropriated by the act to which this is an amendment, over the amount required for maintenance, may with the approval of the Secretary of Highways be used for such purpose in the same manner as other State funds are now or may hereafter be used for such purpose in connection with State highways.

Disposition of unexpended balance of appropriated funds.

Section 2. Any balance of the funds appropriated by the act to which this is an amendment, and not expended on January first, one thousand nine hundred thirty-six, shall be added to the appropriation made by any other act appropriating funds for the same purpose for the years, one thousand nine hundred thirty-six and one thousand nine hundred thirty-seven, which may be enacted at this session of the General Assembly, and shall thereafter be expended under the provisions of such act in addition to the funds thereby appropriated.

When effective.

Section 3. This act shall become effective immediately upon final enactment.

APPROVED—The 9th day of July, A. D. 1935.

GEORGE H. EARLE

No. 222

AN ACT

To reenact and amend the title and the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, two hundred eighty-four), entitled "An act imposing a State tax, payable by those herein defined as manufacturers and distributors, on certain alcoholic beverages used or sold and delivered within the Commonwealth; prescribing the method and manner of evidencing the payment and collection

of such tax; conferring powers and imposing duties on the Department of Revenue, and those using or engaged in the sale, at retail or wholesale, of alcoholic beverages taxable hereunder; and providing penalties," as amended; providing for the imposition of taxes on manufacturers of malt and brewed beverages and on others importing or bringing such beverages into this Commonwealth; regulating the payment of taxes by public service licensees; requiring manufacturers, transporters for hire, warehousemen, distributors, and retail licensees to keep records and make reports; providing for the confiscation of certain malt and brewed beverages; regulating the refund of taxes; conferring additional powers on the Department of Revenue; and providing penalties.

Section 1. Be it enacted, &c., That the title of and the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, two hundred eighty-four), entitled "An act imposing a State tax, payable by those herein defined as manufacturers and distributors, on certain alcoholic beverages used or sold and delivered within the Commonwealth; prescribing the method and manner of evidencing the payment and collection of such tax; conferring powers and imposing duties on the Department of Revenue, and those using or engaged in the sale, at retail or wholesale, of alcoholic beverages taxable hereunder; and providing penalties," as amended by the act, approved the fifth day of December, one thousand nine hundred and thirty-three (Pamphlet Laws, fifty—one thousand nine hundred and thirty-three—one thousand nine hundred thirty-four), are hereby reënacted and further amended to read as follows:

Title and act of May 5, 1933 (P. L. 284), as amended by act of Dec. 5, 1933-34 (P. L. 50), reënacted and amended.

AN ACT

Imposing a State tax, payable by those herein defined as manufacturers and [distributors] *by others*, on [certain alcoholic] *malt or brewed* beverages used, [or] sold, [and] *transported*, or delivered within the Commonwealth; prescribing the method and manner of evidencing the payment and collection of such tax; conferring powers and imposing duties on the Department of Revenue, and those using or engaged in the sale, at retail or wholesale, or *in the transportation* of [alcoholic] *malt or brewed* beverages taxable hereunder; and providing penalties.

Section 1. Be it enacted, &c., That this act shall be known, and may be cited, as the "Malt [Liquor] Beverage Tax Law."

Malt Beverage Tax Law.

Section 2. The following words, terms, and phrases, when used in this act, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Definitions.

"Malt [Liquors] or *Brewed Beverages*." Alcoholic beverages, which include beer, lager beer, ale, porter, or similar fermented malt liquor, containing one-half of one per centum or more of alcohol, by whatever name such liquors may be called.

“Department.” Department of Revenue of this Commonwealth.

“Distributor.” A person engaged in the purchase and resale of malt [liquors] *or brewed beverages* in the original sealed packages as prepared for market by the manufacturer [or bottler], including any who or which—

1. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt [liquors] *or brewed beverages* for his own use in the Commonwealth of Pennsylvania, or for sale and delivery in and after reaching the Commonwealth. [other than in the original package, receptacle, or container.]

2. Imports or causes to be imported from any other state or territory of the United States, or from any foreign country, malt [liquors] *or brewed beverages* for his own use in the Commonwealth of Pennsylvania, or for sale or delivery therein, after the same have come to rest or storage therein, [whether or not] in the original package, receptacle, or container.

3. Purchases or receives malt [liquors] *or brewed beverages* in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use, or for sale and delivery therein, from any person who has imported the same from a foreign country.

4. Purchases or receives malt [liquors] *or brewed beverages* in the original package, receptacle, or container in the Commonwealth of Pennsylvania for his own use therein, or for sale and delivery therein, from any person who has imported the same from any other state or territory of the United States, in case such malt [liquors] *or brewed beverages* have not, prior to such purchase or receipt, come to rest or storage in the Commonwealth of Pennsylvania.

[5. Receives and, in any manner, uses or distributes malt liquors in the Commonwealth of Pennsylvania on which the tax provided in this act has not been previously paid.]

“Manufacturer.” A person engaged in the brewing *or manufacturing* [or bottling] of malt [liquors] *or brewed beverages* for sale.

“Original Container.” Bottle, cask, keg, or other container that has been securely capped, *sealed*, or corked by the manufacturer, with the name and address of the manufacturer permanently affixed to the bottle, cask, keg, or other container, or to the cap or cork used in sealing the same, *or to a label securely affixed to a bottle.*

“Person.” An individual or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals, or a corporation. Whenever

used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to a partnership, limited partnership, or any other form of unincorporated enterprise, shall mean the partners or members thereof, and, as applied to corporations, the officers thereof.

"Retail Dealer." A person engaged in the retail sale of malt [liquors] or brewed beverages either for consumption on the premises or not for consumption on the premises where sold.

"Sale." Any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution, in any manner or by any means whatsoever.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

Section 3. Each manufacturer [or distributor] shall be subject to pay to the Commonwealth the taxes imposed by this section upon all malt [liquors] or brewed beverages manufactured in this Commonwealth when prepared for market, [or imported into this Commonwealth when the same come to rest or storage in this Commonwealth] and every person who ships or transports malt or brewed beverages into this Commonwealth for sale, delivery, or storage in this Commonwealth shall pay to the Commonwealth the taxes imposed in this section before such beverages are transported within this Commonwealth. Such taxes shall be at the rate of one-half cent (1/2c) per pint of sixteen (16) fluid ounces, or fraction thereof.

Imposition
and rate
of tax.

The tax rates per barrel, or standard fraction thereof, are as follows:

	Standard Fraction	Malt Beverage Tax Rate	Volume
1	barrel	\$1.24	31 gal.
1/2	"	.62	15 1/2 gal.
1/3	"	.42	10 1/3 gal.
1/4	"	.31	7 3/4 gal.
1/6	"	.21	5 1/6 gal.
1/8	"	.16	3 7/8 gal.
1	gallon	.04	
1/2	"	.02	
1	quart	.01	
1	pint	.005	

Manufacturers and [distributors] all persons who bring malt or brewed beverages into the Commonwealth shall be liable to the Commonwealth as taxpayers for the payment of the taxes imposed by this act.

Section 4. The payment of the taxes herein provided shall be evidenced by the affixing of malt [liquor] beverage tax stamps or crowns to the original containers in which all malt [liquors] or brewed beverages are placed, received, stored, shipped, or handled. Such stamps or crowns shall be affixed to each individual container of

Malt beverage
tax stamps
or crowns.

malt [liquors] or brewed beverages by manufacturers of this Commonwealth within twenty-four (24) hours [and by distributors within forty-eight (48) hours,] after such malt [liquors] or brewed beverages are placed therein, [or received by them] and by manufacturers and other persons who import or bring any malt or brewed beverages into this Commonwealth before the same are transported within this Commonwealth for sale, delivery or storage therein. Nothing herein contained shall require stamps or crowns to be attached to containers of malt or brewed beverages which are transported through this Commonwealth and which are not sold, delivered or stored therein, if transported in accordance with such rules and regulations as may be adopted by the Department of Revenue and the Pennsylvania Liquor Control Board.

Persons licensed as "Public Service Licensees," under the provisions of any law of this Commonwealth relating to the sale of liquor and malt or brewed beverages, shall not be required, on reaching the borders of this Commonwealth, to evidence the payment of the tax herein provided for by affixing malt beverage tax stamps or crowns, as provided for in this section, on any malt or brewed beverage on which the Pennsylvania malt beverage tax has not been prepaid, but instead shall keep such records of the sales of such malt or brewed beverages in this Commonwealth as the Department of Revenue shall prescribe; shall submit monthly reports of such sales to the Department of Revenue upon a form prescribed therefor by said department, and shall pay the tax due by the provisions of this act at the time such reports are filed.

It is the intent and purpose of this section to require all manufacturers and [distributors] other persons with the exception of public service licensees to affix the stamps or crowns provided for in this act to all original containers in which malt liquors are normally placed, prepared for market, received, sold, or handled before such beverages are transported within the Commonwealth.

Any manufacturer or [distributor] person other than a public service licensee who shall sell malt [liquors] or brewed beverages to distributors, retail dealers, or consumers without affixing to the containers the stamps or crowns required by this act, and any person who shall purchase, receive, transport, store, or sell any malt or brewed beverages to which the stamps or crowns required by this act are not affixed except as herein provided in the case of public service licensees, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or to suffer

Penalty for failure to affix.

imprisonment for a term not exceeding six (6) months, or both, in the discretion of the court, and, in the case of a conviction of a second or subsequent offense hereunder, shall be sentenced to pay a fine of not less than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00), and to suffer imprisonment for a term of not less than six (6) months or more than three (3) years.

Any manufacturer or [distributor] *person* who shall be convicted of a misdemeanor under this section shall, in addition to the punishment heretofore prescribed, be adjudged to pay to the Commonwealth the tax due, together with interest at the rate of twelve (12) per centum per annum from the date when due and payable. Such adjudication shall be certified to the prothonotary of the county and shall be indexed as, and have the effect of, a judgment for the amount of such tax and interest.

Convicted person to be adjudged to pay tax due.

Adjudication to have effect of judgment.

Section 5. The department shall prescribe, prepare, and furnish stamps or crowns of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this act. The department shall make provision for the sale of such stamps or crowns in such places and at such times as it may deem necessary.

Preparation and sale of stamps and crowns.

The department may appoint persons, within or without the Commonwealth, as agents for the sale of stamps or crowns to be used in paying the tax herein imposed upon sales of malt [liquors] *or brewed beverages*; and, whenever the department shall sell, consign, or deliver to any such agent any such stamps or crowns for sale or use, such agent shall be entitled to receive as compensation for his services and expenses as such agent, and to retain out of the moneys to be paid by him for such stamps, a commission of one-half of one per centum on the face value thereof. The department is hereby authorized and required to allow such commission or compensation in the settlement of the accounts of such agent upon payment by him into the State Treasury, through the department, of any moneys which may be or become due to the Commonwealth by reason of the sale, delivery, or consignment to such agent of such stamps or crowns.

Agents for sale of stamps and crowns.

Agent's commission.

Section 6. Stamps shall be affixed in such manner that their removal will require continued application of steam or water.

Manner of affixing stamps.

Section 7. For the purpose of verifying the stamp requirements, it shall be the duty of every manufacturer, [and] *transporter for hire, warehouseman, distributor, and retail licensee*, on or before the tenth day of the succeeding month, to transmit to the department, on forms supplied by the department, a report, under oath or affirmation, of malt [liquors] *or brewed beverages* prepared for market, or which were imported and came

Reports by manufacturers and others.

to rest or storage, at his place of business in this Commonwealth during the preceding month, *or which were transported from a point outside the Commonwealth to a point within the Commonwealth.* Such report shall show the number of barrels, or standard fraction thereof, prepared for market [or] imported, *transported, or stored* during the period for which it is made, and such further information as the department shall prescribe. Each manufacturer, [and] *transporter for hire, warehouseman, distributor, and retail licensee* shall maintain and keep, for a period of two (2) years, such record or records of malt [liquors] *or brewed beverages* manufactured, *transported from a point outside of the Commonwealth to a point within the Commonwealth,* or imported, together with invoices, bills of lading, and other pertinent papers, as may be required by the department.

Retention
of records.

Section 8. The department, or any agent appointed in writing by it, is hereby authorized to examine the books, papers, invoices, and other records, and the stock of malt [liquors] *or brewed beverages* in and upon any premises where the same are placed, stored or sold, *and in or on any car, vessel, truck, vehicle, or other means of transportation,* to verify the payment of or liability for the tax imposed by this act. Any person in possession of such malt [liquors] *or brewed beverages* is hereby directed and required to give the Secretary of Revenue, or his duly authorized representative, the means, facilities, and opportunities for such examination. *The department, or any of its duly authorized agents, is hereby authorized to confiscate any malt or brewed beverages stored, sold, or transported in violation of the provisions hereof.*

Examination
of records
and stock.

Section 9. Producers or other vendors of malt [liquors] *or brewed beverages* from without this Commonwealth [may] *shall* purchase stamps or crowns from the department and affix them, in the manner prescribed by the department, to original containers of malt [liquors] *or brewed beverages* to be sold, *delivered, or transported for delivery* in this Commonwealth. [in which case the recipient of such malt liquors within this Commonwealth shall not be required to purchase and affix stamps or crowns thereon.]

Purchase and
use of stamps
or crowns
by foreign
producers.

Section 10. In case any malt [liquors] *or brewed beverages* upon which stamps or crowns have been placed by a manufacturer [or distributor] have been sold and shipped by him to a licensed or regular dealer in such malt [liquors] *or brewed beverages* in another state, such manufacturer [or distributor] in this Commonwealth shall be entitled to a refund of the actual amount of tax paid by him, upon condition that the seller in this Commonwealth shall make affidavit that the malt [liquors] *or brewed beverages* were so sold and shipped,

Refund of
stamps or
crowns used
on shipments
to other states.

and that he shall furnish from the purchaser an affidavit, or in cases where the total purchase price is five dollars (\$5.00) or less, a written certificate in lieu of an affidavit from the purchaser, that he has received such malt [liquors] or brewed beverages for sale or consumption outside the Commonwealth and the amount of stamps or crowns thereon, together with the name and address of the purchaser, whereupon the department shall, with the approval of the Board of Finance and Revenue, issue to the seller in this Commonwealth stamps or crowns of sufficient value to cover the refund.

The procedure for refund in any case shall be completed by the Department of Revenue and the Board of Finance and Revenue within sixty days after the proper affidavits have been filed with the department.

Amendment
by act Jan. 2,
1934 (P. L.
195).

Section 11. The department may promulgate rules and regulations to relieve manufacturers [or distributors] from affixing the stamps or crowns on such goods as are sold and shipped to points outside this Commonwealth.

Regulations
for out of
State ship-
ments.

Section 12. It shall be unlawful for any [retail dealer, consumer or other] person to accept delivery of taxable malt [liquors] or brewed beverages in containers upon which stamps or crowns do not appear. *Such acceptance shall be a misdemeanor*, and, upon conviction thereof [in a summary proceeding before a magistrate, alderman, or justice of the peace,] he shall be fined ten dollars (\$10.00) for each container so accepted, and, in default of payment thereof, shall undergo imprisonment for not more than five (5) days for each container so accepted.

Acceptance of
taxable or
brewed bever-
ages without
stamps or
crowns.

Penalty.

Section 13. Any person who shall fail, neglect, or refuse to comply with or shall violate any provision of this act, for which violation no specific penalty is provided, or any of the rules and regulations, prescribed, adopted, and promulgated by the department under the provisions of this act, or who shall refuse to permit the department, or any agent appointed by it in writing, to examine his books, papers, invoices, and other records, his stock of malt [liquors] or brewed beverages in and upon any premises where the same are prepared, stored, and sold, in or on any car, vessel, truck, vehicle, or other means of transportation, and his equipment pertaining to the manufacture, transportation, storage, or sale of malt [liquors] or brewed beverages taxable under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or to suffer imprisonment of not more than six (6) months, or both, in the discretion of the court.

Violations.

Penalty.

Section 14. Any person who falsely or fraudulently makes, forges, or alters, or counterfeits any stamp or crown prescribed by the department under the provi-

Counterfeit-
ing or wrong-
ful use of
stamps or
crowns.

- sions of this act, or causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such stamp or crown, or knowingly and wilfully utters, publishes, passes, or tenders as true, any such false, altered, forged, or counterfeited stamp or crown, or uses more than once any stamp or crown provided for and required by this act, for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to suffer imprisonment for a term of not less than two (2) years or more than five (5) years.
- Penalty.**
- Enforcement.** Section 15. The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act and the collection of taxes, penalties, and interest imposed by this act.
- Rules and regulations.** *The department is hereby authorized and directed to prescribe, adopt, promulgate, and enforce rules and regulations relating to the transportation of malt or brewed beverages through the Commonwealth and from points outside of the Commonwealth to points within the Commonwealth, and to prescribe, adopt, promulgate, and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of malt or brewed beverages manufactured in Pennsylvania.*
- Disposition of tax, fines, etc.** Section 16. All taxes, fines, penalties, and interest received, collected, or accruing under the provisions of this act, shall be paid into the general fund of the State Treasury by and through the department.
- Constitutionality.** Section 17. The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.
- [Section 18. This act shall become effective on the date of its approval by the Governor.]
- When effective.** Section 2. This act shall become effective immediately upon final enactment.

APPROVED—The 9th day of July, A. D. 1935.

GEORGE H. EARLE

No. 223

AN ACT

Making an appropriation out of the Motor License Fund to the Department of Highways for allocation to, and expenditures in, cities of the first class and the various second class townships of the Commonwealth for the maintenance, construction, and reconstruction of city and township streets, roads, and bridges during the calendar years one thousand nine hundred thirty-six, and one thousand nine hundred thirty-seven; requiring townships to reduce their tax rates for road and street purposes for said years; and providing for the use and maintenance of road building machinery and equipment, belonging to such townships, by the Department of Highways in carrying out the purposes of this act.

Section 1. Be it enacted, &c., That the sum of ten million dollars is hereby appropriated, to the Department of Highways for the two calendar years beginning January first, one thousand nine hundred thirty-six, out of the Motor License Fund, for allocation to and expenditure in cities of the first class and the various townships of the second class of the Commonwealth, in the amounts, upon the terms, in the manner, and for the purposes hereinafter set forth in this act as follows:

(a) The sum of one million dollars is hereby appropriated to the Department of Highways, to be paid by it to cities of the first class.

(b) The sum of nine million dollars is hereby appropriated to the Department of Highways for use in townships of the second class in the construction, reconstruction, maintenance, and repair of roads and bridges therein, not repaired and maintained by the Commonwealth under the provisions of any other law.

Section 2. The Department of Highways shall expend in each of the townships of the second class for the maintenance, construction, reconstruction, and repair of roads and bridges therein, not repaired and maintained by the Department of Highways under the provisions of any other law, such proportion of the total amount, hereinbefore provided, as the miles of streets or roads under its jurisdiction within its legal limits, and not maintained by the Department of Highways under the provisions of any other law, bears to the total number of miles of such streets or roads within the legal limits of all townships of the second class.

Section 3. Nothing in this act shall be construed to relieve any of the second class townships from any obligation they may have incurred under any contract or agreement entered into prior to January first, one thousand nine hundred thirty-six, for the construction or repair of any highway or structure now under their jurisdiction.

Section 4. The proper officials of each township of the second class, if they have not previously done so,

Highway
construction.

Appropriation.

Cities of the
first class.

Townships
of the
second class.

Money to be
expended for
the construction,
etc., of high-
ways, etc.

Townships
not relieved
from liabilities
under contracts
made prior to
January 1, 1936.

Tax levy
in townships.

shall, at the time of fixing the tax levy for the years one thousand nine hundred thirty-six and one thousand nine hundred thirty-seven, reduce the said tax levy for road and street purposes by an amount, approximately equivalent to the amount to be expended in such township under the provisions of this act, as compared with the amount levied for road and street purposes for the year one thousand nine hundred thirty-three, except that proper provision shall be made by the townships for interest, sinking fund, debt repayment charges, and such other administrative and overhead expenses as may be necessary.

Road equipment to be turned over to the department.

Section 5. The several second class townships, in which the money, hereby allocated, is expended by the Department of Highways, are hereby authorized and directed to turn over to the Department of Highways, for use in the maintenance of any road or street within the legal limits of such township, any road building machinery or equipment, now owned by such municipality, without charge for such use by the department. Any repairs to said equipment, which become necessary while in the possession and use of the Department of Highways for the purposes of this act, shall be made only with the consent and approval of the township authorities, and shall be paid for out of the funds hereby allocated to such township, whether the said repairs are made necessary by ordinary wear and tear or by negligence in the operation. The duly elected road supervisors of each township shall elect a roadmaster, who may be a member of the Board of Supervisors, who, subject to the approval of the Secretary of Highways, shall be employed by the Department of Highways in a supervisory capacity in the work to be done on the roads of such township under the provisions of this act.

Money not expended to be turned over to the townships.

Section 6. All of the funds, so appropriated and not expended therein by the Department of Highways, shall on March first, one thousand nine hundred and thirty-eight, be paid to the townships to be expended by them for the purposes set forth in this act.

Money appropriated to first class cities, to be turned over to them in eight installments.

Section 7. The amounts appropriated to be paid to cities of the first class, shall be paid over in eight equal installments on the first days of January, April, July, and October of the years one thousand nine hundred and thirty-six, and one thousand nine hundred and thirty-seven, into the treasury of the city entitled thereto, and shall be used in such city by the proper authorities thereof, for the repair and maintenance of such streets therein, as are not now maintained by the Department of Highways under the provisions of any other law.

APPROVED—The 9th day of July, A. D. 1935.

GEORGE H. EARLE