

of such bridge, the approaches thereto and connections with State highways shall be ascertained in accordance with laws applicable to the ascertainment of damages in relocating, widening or constructing State highways, and such damages, when ascertained shall be paid by the Commonwealth, or county, or counties as may be agreed upon in accordance with the laws relating to State highways.

The Department of Highways shall have authority to make and carry out and to do every other act necessary to carry out the project herein authorized.

Section 3. After the completion of such bridge and the approaches thereto, it shall be reconstructed and maintained by the Department of Highways in accordance with present or future laws governing the reconstruction and maintenance of State highways.

Section 4. So much of the money in the Motor License Fund from time to time as may be needed to carry out the provisions of this act is hereby specifically appropriated to the Department of Highways for such purposes.

APPROVED—The 27th day of May, A. D. 1965.

WILLIAM W. SCRANTON

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No. 51

AN ACT

HB 83

Amending the act of May 5, 1933 (P. L. 284), entitled, as amended, "An act imposing a State tax, payable by those herein defined as manufacturers and by others, on malt or brewed beverages used, sold, 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 malt or brewed beverages taxable hereunder; and providing penalties," changing the method of paying the tax and making refunds; requiring the filing of bonds by importing agents of foreign manufacturers, manufacturers and distributors; imposing duties upon importing agents of foreign manufacturers, manufacturers, distributors and persons shipping or transporting malt and brewed beverages into this Commonwealth; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "manufacturer" in section 2, act of May 5, 1933 (P. L. 284), known as the "Malt Beverage Tax Law," re-enacted and amended July 9, 1935 (P. L. 628), is amended to read:

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:

\* \* \*

“Manufacturer.” A person engaged in the brewing or manufacturing of malt or brewed beverages for sale, and for the purposes of posting bond and payment of taxes required under the provisions of this act, shall include importing agents for foreign manufacturers.

\* \* \*

Section 2. Section 3 of the act, amended May 29, 1951 (P. L. 481), is amended to read:

Section 3. (a) Each manufacturer shall be subject to pay to the Commonwealth the taxes imposed by this section upon all malt or brewed beverages manufactured and sold by him in this Commonwealth [when prepared for market, 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] for use in this Commonwealth or manufactured by him outside this Commonwealth and sold to an importing distributor or any person for importation into, and use in, this Commonwealth. 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. Such taxes, payable in the manner prescribed in subsections (a) and (b) of section 4 of this act, shall be at the rate of two-third cent ( $2/3\phi$ ) per half pint of eight (8) fluid ounces or fraction thereof, and in larger quantities at the rate of one cent ( $1\phi$ ) per pint of sixteen (16) fluid ounces or fraction thereof.

The tax rates per original container or standard fraction thereof are as follows:

| Standard Fraction | Malt Beverage Tax Rate | Volume      |
|-------------------|------------------------|-------------|
| 1 barrel          | \$2.48                 | 31 gal.     |
| 1/2 barrel        | 1.24                   | 15 1/2 gal. |
| 1/3 barrel        | .84                    | 10 1/3 gal. |
| 1/4 barrel        | .62                    | 7 3/4 gal.  |
| 1/6 barrel        | .42                    | 5 1/6 gal.  |
| 1/8 barrel        | .32                    | 3 7/8 gal.  |

| Standard<br>Fraction | Malt Beverage<br>Tax Rate | Volume |
|----------------------|---------------------------|--------|
| 1 gallon             | .08                       |        |
| 1/2 gallon           | .04                       |        |
| 1 quart              | .02                       |        |
| 1 pint               | .01                       |        |
| 1/2 pint             | .0066                     |        |

(a.1) If the tax shall not be paid when due, there shall be added to the amount of the tax as a penalty a sum equivalent to ten percent (10%) thereof, and in addition thereto interest on the tax and penalty at the rate of one percent (1%) per month or fraction of a month from the date the tax became due until paid. Nothing herein contained shall be construed to relieve any person otherwise liable from liability for payment of the tax.

(b) In the event that any state, territory or country shall impose upon malt or brewed beverages, which have been manufactured in Pennsylvania, a higher tax or fee than is imposed upon malt or brewed beverages manufactured within such state, territory or country, every [person who ships or transports from such state, territory or country malt or brewed beverages manufactured therein into this Commonwealth for sale, delivery or storage in this Commonwealth, shall pay thereon to the Commonwealth before such beverages are transported within] manufacturer whose malt or brewed beverages manufactured within such state, territory or country are sold to an importing distributor or any person for importation into, and use in, this Commonwealth shall, as to such beverages, pay thereon to this Commonwealth, in addition to the tax imposed by this section, a tax equal to such excess tax or fee which is imposed in such state, territory or country on Pennsylvania-manufactured malt or brewed beverages. Such additional tax shall be levied, assessed and collected in the same manner as the other taxes imposed by this act.

(c) Manufacturers [and all persons who bring malt or brewed beverages into the] whose malt or brewed beverages are sold in this Commonwealth or are sold to importing distributors or any person for importation into, and use in, this Commonwealth shall be liable to the Commonwealth as taxpayers for the payment of the taxes imposed by this act.

Section 3. Subsections (a) and (b) of section 4 of the act, amended June 21, 1947 (P. L. 801), are amended to read:

Section 4. (a) [The payment of the taxes herein provided shall be evidenced by the affixing of malt beverage tax stamps or crowns to the original containers in which all malt or brewed beverages are placed, received, stored, shipped, or handled. Such stamps or crowns shall be affixed to each individual container of malt or brewed beverages by manufacturers of this Commonwealth within twenty-four (24) hours after such malt or brewed beverages are placed therein, 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.] Each manufacturer whose malt or brewed beverages are sold in or imported into this Commonwealth shall, on or before the fifteenth day of each month, file with the department, on forms prescribed by it, a verified report showing for the preceding calendar month the quantities of such malt and brewed beverages:

(1) Manufactured by him in this Commonwealth, and constituting his beginning and ending inventory in this Commonwealth for the month;

(2) Sold by him in this Commonwealth for use in this Commonwealth or sold to an importing distributor or any person for importation into, and use in, this Commonwealth, specifically naming the distributors to whom such sales were made and the quantity sold to each;

(3) Sold to purchasers or persons outside this Commonwealth for exportation from, and use outside, this Commonwealth, or sold in other tax exempt transactions, naming the purchasers and the quantity sold to each and specifically indicating those sales or transactions to which the tax imposed by this act is not applicable;

(4) Such additional information as the department may reasonably

require to assure the accuracy of the tax computation and payment and the proper administration of this act.

The tax payable on all malt or brewed beverages first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into, and use in, this Commonwealth during such month in the amount disclosed by the report, shall accompany the report and be paid by the manufacturer to the department.

(b) 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 paid, 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, on or before the fifteenth day of each month, submit monthly reports of such sales and of such other information as the department may require to the Department of Revenue upon a form prescribed therefor by said department, and shall pay the tax due on all such sales at the rate provided by the provisions of this act at the time such reports are filed.

[(b)] It is the intent and purpose of this section to require all manufacturers and 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] whose malt or brewed beverages are sold or used in this Commonwealth to pay the tax on all such malt or brewed beverages in the month following that in which such beverages are first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into and use in this Commonwealth, except that as to malt or brewed beverages sold to public service licensees, the public service licensees, and not the manu-

facturer, shall report and pay the tax on all malt or brewed beverages sold by them within the Commonwealth.

\* \* \*

Section 4. Subsection (c) of section 4 of the act is repealed.

Section 5. The act is amended by adding, after section 4, a new section to read:

Section 4.1. (a) No malt or brewed beverages shall be sold in or imported into <sup>1</sup> the Commonwealth of Pennsylvania until and unless the manufacturer of such malt or brewed beverage has on file with the department and in full force and effect an approved bond, duly executed, payable to the Commonwealth of Pennsylvania, together with a warrant of attorney to confess judgment in a sum equal to the amount of his highest two month average tax liability during the last year prior to the time of giving bond, but in no event less than five thousand dollars (\$5,000.00). All such bonds shall be conditioned upon the payment of the tax imposed by this act, and shall have as surety a duly authorized surety company, or shall have deposited therewith, as collateral security, cash or negotiable obligations of the United States of America or the Commonwealth of Pennsylvania in the same amount as herein provided for the penal sum of such bonds.

(b) In all cases where cash or securities in lieu of other surety have been deposited with the department, the depositor shall be permitted to continue the same deposit from year to year, but in no event shall he be permitted to withdraw his deposit during the time he holds a license, or until six months after the expiration of the license, if any, held by him, or while revocation proceedings are pending against such licensee, or while forfeiture proceedings are pending against the depositor's bond.

(c) All cash or securities received by the department in lieu of other surety shall be turned over by the department to the State Treasurer and held by him. The State Treasurer shall repay or return money or securities deposited with him to the respective depositors only on the order of the department.

<sup>1</sup>"the Commonwealth of" not in original.

(d) After notice from the department that such a bond has been forfeited, the State Treasurer shall immediately pay into the General Fund all cash deposited as collateral with such bond, and when securities have been deposited with such a bond, the State Treasurer shall sell at private sale, at not less than the prevailing market price, any such securities so deposited as collateral with any such forfeited bond. The State Treasurer shall thereafter deposit in the General Fund the net amount realized from the sale of such securities, except that if the amount so realized, after deducting proper costs and expenses, is in excess of the penal amount of the bond, such excess shall be paid over by him to the obligor on such forfeited bond.

(e) Every such bond shall be turned over to the Department of Justice to be collected if and when the depositor shall have been held liable for the unlawful nonpayment of taxes imposed by this act.

Section 6. Sections 5 and 6 of the act are repealed.

Section 7. Section 7 of the act, reenacted and amended July 9, 1935 (P. L. 628), is amended to read:

Section 7. (a) For the purpose of verifying the [stamp requirements] tax payments required by this act, it shall be the duty of every [manufacturer,] transporter for hire, bailee for hire, warehouseman, distributor and retail licensee, on or before the [tenth] fifteenth day of the succeeding month, to transmit to the department, on forms supplied by the department, a report, under oath or affirmation, of malt or brewed beverages [prepared for market, or] which were imported and came 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] imported, transported, or stored during the period for which it is made, and such further information as the department shall prescribe.

(b) Each manufacturer, transporter for hire, bailee for hire, warehouseman, distributor and retail licensee shall maintain and keep, for a period of two (2) years, such record or records of malt or brewed beverages manufactured, sold by a manufacturer or distributor, trans-

ported from a point outside of the Commonwealth to a point within the Commonwealth, [or] imported, or substantiating the other information required on his report, together with invoices, bills of lading and other pertinent papers, as may be required by the department.

Section 8. Section 9 of the act is repealed.

Section 9. Section 10 of the act, amended July 24, 1941 (P. L. 477), is amended to read:

Section 10. (a) In case any malt or brewed beverages upon which [stamps or crowns have been placed] the tax has been paid by a manufacturer have been sold or shipped by him to a licensed or regular dealer in such malt or brewed beverages in another state, such manufacturer 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 or brewed beverages were so sold and shipped, 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, or, upon satisfactory proof that such affidavit or certificate cannot be obtained, other evidence satisfactory to the department that he has received such malt 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.

(b) In case any malt or brewed beverages upon which [stamps or crowns have been placed] the tax has been paid by a manufacturer have been sold to commissaries, ship's stores or voluntary unincorporated organizations of the [Army or of the Navy] armed forces personnel operating under regulations promulgated by the Secretary of [War or the Secretary of the Navy] Defense, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(c) In case any malt or brewed beverages upon which [stamps or crowns have been placed] the tax has been paid by an out of state manufacturer and subsequently sold by an importing distributor to commissaries, ship's stores or voluntary unincorporated organizations of the [Army or of the Navy] armed forces personnel operating under regulations promulgated by the Secretary of [War or the Secretary of the Navy] Defense, such manufacturer shall be entitled to a refund of the



actual amount of tax paid by him upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(d) In case any malt or brewed beverages, upon which [stamps or crowns have been placed by a manufacturer, have been destroyed by him, under the supervision of the Treasury Department of the United States of America, he shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit that such malt or brewed beverages were so destroyed, and shall also furnish the department with a certificate, executed by the representative of the Treasury Department of the United States of America who witnessed the destruction of such malt or brewed beverages, to the effect that the said destruction has taken place, and shall also furnish such other proof as the department shall require.] the tax has been paid by a manufacturer shall be rendered unsaleable by reason of damage or destruction, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department that the malt beverages were so damaged or destroyed.

(e) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold and delivered to a public service licensee who is obligated to pay the tax thereon, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department of such facts.

In each of the above cases the department shall, with the approval of the Board of Finance and Revenue, pay or issue to the manufacturer [stamps or crowns] credits of sufficient value to cover the refund. Such credits may be used by the manufacturer for the payment of any taxes due by him to the Commonwealth. 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.

Section 10. Section 11 of the act, reenacted and amended July 9, 1935 (P. L. 628), is amended to read:

Section 11. The department [may] shall promulgate rules and regulations to relieve manufacturers from [affixing the stamps or crowns] paying the tax on such goods as are sold and shipped to points outside this Commonwealth, or as are sold in other tax exempt transactions.

Section 11. Section 12 of the act, amended April 29, 1937 (P. L. 527), is amended to read:

Section 12. It shall be unlawful for any person to [accept delivery of taxable malt or brewed beverages in containers upon which stamps or crowns are not affixed and perforated in the manner prescribed by the regulations of the department. Such acceptance] transport into the Commonwealth of Pennsylvania, taxable malt or brewed beverages in containers on which the tax is not paid or provisions for the payment thereof are not made pursuant to the provisions of this act. The transportation of malt or brewed beverages in violation of this section shall be a misdemeanor, and, upon conviction thereof in a summary proceeding before a magistrate, alderman or justice of the peace, such person shall be fined ten dollars (\$10.00) for each container so [accepted] transported, and, in default of payment thereof, shall undergo imprisonment for not more than five (5) days for each container so [accepted. Possession of] transported. Transportation into Pennsylvania of malt or brewed beverages in containers [upon which stamps or crowns are not affixed and perforated,] other than in the manner prescribed by the regulations of the department, shall be prima facie evidence of violation of this section.

Section 12. Section 14 of the act is repealed.

Section 13. Nothing in this act shall be construed or deemed to require the payment of the tax imposed by this act more than once upon any malt or brewed beverage imported into, or sold, delivered or stored in this Commonwealth; and such tax shall not be assessed or collected more than once on any such malt or brewed beverages.

Section 14. The purchase and affixation of malt and brewed beverages tax stamps and crowns shall not be required hereafter in this Commonwealth, and all requirements pertaining to the purchase and affixation of malt and brewed beverages tax stamps and crowns are hereby abolished.

Section 15. Each manufacturer may take credit on his monthly report for the full amount of the tax paid by the affixation, before the effective

date of this act, of stamps, crowns or lids to the original container of malt or brewed beverages included in the taxable transactions covered by his report. The department shall allow the manufacturer a credit on his report or a refund in the amount of the tax paid for (1) tax stamps returned unused to the department within sixty days after the effective date of this act, and (2) tax crowns or lids as to which the manufacturer has submitted satisfactory proof to the department, within sixty days after the effective date of this act, that the crowns and lids were in his possession as unused inventory on the effective date of this act. For the purpose of offsetting the temporary reduction in revenue occasioned by the transition from the prepayment of tax stamps, crowns and lids to the reporting method, each manufacturer who files a bond under the provisions of subsection (a) of section 4.1 of this act shall, within six months after the effective date of this act, prepay on account of future tax liability to the department an amount in cash or its equivalent equal to such manufacturer's highest two months' tax liability for tax stamps and crowns or lids during the twelve month period ending July 31, 1965. The manufacturer may apply on account of such prepayment so much of the tax heretofore paid for stamps and crowns or lids for which he is entitled to a refund or credit. The amount so prepaid shall thereafter be credited to the manufacturer's tax liability at the rate of three per cent (3%) per month until depleted, as provided by regulation of the Department of Revenue. The manufacturer shall, after determination of the amount of refund or credit due him for his crown and lid inventory on the effective date of this act, thereafter be permitted to use the crowns or lids constituting that inventory on his malt and brewed beverages solely as proprietary crowns, or lids, without such use indicating payment of the tax.

Section 16. (a) Clause (10) of section 492, act of April 12, 1951 (P. L. 90), known as the "Liquor Code," is repealed in so far as it requires tax stamps or crowns to be affixed to containers in which malt or brewed beverages are transported.

(b) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 17. This act shall take effect July 1, 1965.

APPROVED—The 2d day of June, A. D. 1965.

WILLIAM W. SCRANTON