

Section 4. This act shall become effective on the first day of June, one thousand nine hundred and thirty-seven. When effective.

APPROVED—The 29th day of April, A. D. 1937.

GEORGE H. EARLE

No. 119

AN ACT

To amend the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws, two hundred eighty-four), 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," as amended and re-enacted, by imposing an additional reciprocal tax; by providing for the assessment and revision of and appeal from additional taxes; and by making further provision with regard to refunds, evidence of payment of the tax, and penalties.

Section 1. Be it enacted, &c., That sections 3, 4, 6, 10, 12, and 14 of the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws, two hundred eighty-four), 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," as re-enacted and last amended by the act, approved the ninth day of July, one thousand nine hundred thirty-five (Pamphlet Laws, six hundred twenty-eight), are hereby amended or further amended, as the case may be, to read as follows:

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 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 this Commonwealth. Such

Malt Beverage  
Tax Law.

Sections 3, 4, 6,  
10, 12, and 14 of  
act of May 5,  
1933 (P. L.  
284), as  
amended by act  
of July 9, 1935  
(P. L. 628),  
further amended

Imposition and  
rate of tax.

taxes shall be at the rate of one-half cent ( $\frac{1}{2}c$ ) per pint of sixteen (16) fluid ounces, or fraction thereof.

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.               |
| $\frac{1}{2}$ barrel | .62                    | 15 $\frac{1}{2}$ gal. |
| $\frac{1}{3}$ barrel | .42                    | 10 $\frac{1}{3}$ gal. |
| $\frac{1}{4}$ barrel | .31                    | 7 $\frac{3}{4}$ gal.  |
| $\frac{1}{6}$ barrel | .21                    | 5 $\frac{1}{6}$ gal.  |
| $\frac{1}{8}$ barrel | .16                    | 3 $\frac{7}{8}$ gal.  |
| 1 gallon             | .04                    |                       |
| $\frac{1}{2}$ gallon | .02                    |                       |
| 1 quart              | .01                    |                       |
| 1 pint               | .005                   |                       |

(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 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 Commonwealth shall be liable to the Commonwealth as taxpayers for the payment of the taxes imposed by this act.

Malt beverage  
tax stamps or  
crowns.

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.

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 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.

(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 within the Commonwealth.

(c) Any manufacturer or person other than a public service licensee who shall sell malt 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 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.

Penalty for  
failure to affix.

[Any manufacturer or 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.]

*(d) If any person shall fail to pay any tax imposed by this act for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.*

*(e) Promptly after the date of such assessment, the department shall send by registered mail a copy thereof to the person against whom it was made. Within thirty (30) days after the date of any such assessment, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay, and that the facts set forth therein are true. It shall be the duty of the department, within ninety (90) days after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.*

*(f) Within thirty (30) days after notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, and shall be in such form as the Board of Finance and Revenue shall prescribe. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. The Board of Finance and Revenue shall dispose of such petitions filed with it within ninety (90) days after they have been received, and in the event of the failure of said board to dispose of any such petition within ninety (90) days, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.*

(g) Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon his petition for review within ninety (90) days may, within sixty (60) days, appeal to the court of common pleas of Dauphin County from the decision of the Board of Finance and Revenue or from the decision of the department, as the case may be, in the manner now or hereafter provided by law for appeals in the case of tax settlement.

(h) In all cases of petitions for reassessment, review or appeal the burden of proof shall be upon the petitioner or appellant, as the case may be.

(i) Whenever any assessment of additional tax is not paid within thirty (30) days after the date thereof, if no petition for reassessment has been filed, or from the date of reassessment, if no petition for review has been filed, or within ninety (90) days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or the expiration of the board's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Department of Justice to collect such assessment. In such event, in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts, as aforesaid. The department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate, and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

Section 6. Stamps shall be affixed in such manner [that their removal will require continued application of steam or water] as shall be prescribed by regulations adopted and promulgated by the department.

Manner of affixing stamps.

Section 10. In case any malt or brewed beverages upon which stamps or crowns have been placed by a manufacturer have been sold [and] 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

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

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, 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.

*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; whereupon the department shall, with the approval of the Board of Finance and Revenue, issue to the manufacturer 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.

Acceptance of taxable or brewed beverages without stamps or crowns.

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 [do not appear] *are not affixed and perforated in the manner prescribed by the regulations of the department.* Such acceptance shall be a misdemeanor, and, upon conviction thereof *in a summary proceeding before a magistrate, alderman or justice of the peace,* [he] *such person* 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. *Possession of 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, shall be prima facie evidence of violation of this section.*

Penalty.

Counterfeiting or wrongful use of stamps or crowns.

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

of this act, or causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such stamp or crown, or *who* knowingly and wilfully utters, publishes, passes, or tenders as true, any such false, altered, forged, or counterfeited stamp or crown, or *who knowingly has in his possession, custody or control any such false, altered, forged, or counterfeited stamp or crown with intent to utter, publish, pass or tender such stamp or crown as true, or who* 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] *felony*, 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] *not exceeding ten (10) years, or to pay a fine not exceeding five thousand dollars (\$5,000.00), or both.*

Penalty.

Section 2. This act shall become effective immediately upon its final enactment.

When effective.

APPROVED—The 29th day of April, A. D. 1937.

GEORGE H. EARLE

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No. 120

AN ACT

To amend section one thousand fifty-seven of the act, approved the fourth day of May, one thousand nine hundred and twenty-seven (Pamphlet Laws, five hundred nineteen), entitled "An act concerning boroughs, and revising, amending, and consolidating the law relating to boroughs," further defining the powers of controllers with respect to accounts of borough departments, bureaus, and officers; and imposing certain duties in reference thereto on banks, banking institutions, and trust companies.

Section 1. Be it enacted, &c., That section one thousand fifty-seven of the act, approved the fourth day of May, one thousand nine hundred and twenty-seven (Pamphlet Laws, five hundred nineteen), entitled "An act concerning boroughs, and revising, amending, and consolidating the law relating to boroughs," is hereby amended to read as follows:

"The General Borough Act."

Section 1057, act of May 4, 1927 (P. L. 519), amended.

Section 1057. General Powers and Duties of Controller.—The borough controller shall superintend the fiscal concerns of the borough. He shall examine, audit, and settle all accounts whatsoever in which the borough is concerned either as debtor or creditor, where provisions for the settlement thereof is made by law; and, where no such provisions or an insufficient provision has been made, he shall examine such accounts and report to the borough council the facts relating thereto with his opinion thereon.

Controller shall superintend fiscal concerns of the borough.