

use of said shore lands, or any portion thereof, for any other purposes, the same shall forthwith revert to the State of Washington without suit, action or other proceedings whatsoever or the judgment of any court forfeiting the same.

Passed the Senate January 30, 1939.

Passed the House January 27, 1939.

Approved by the Governor February 3, 1939.

CHAPTER 9.

[H. B. 87.]

COMPENSATING TAX.

AN ACT relating to revenue and taxation, providing for the levy and collection of a tax or excise upon the use of tangible personal property, establishing rules of evidence, procedure, and off-sets, amending section 31, chapter 180 of the Session Laws of 1935, amending sections 31 and 35 of chapter 180 of the Session Laws of 1935 as amended by chapter 191, Session Laws of 1937, adding three new sections to chapter 180, Session Laws of 1935, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. No implication is to be drawn from this act as to the construction to be placed on the several acts amended thereby.

SEC. 2. That section 31, chapter 180, Laws of 1935, and section 31, chapter 180, Laws of 1937 [1935], as amended by section 1, chapter 191, Laws of 1937, being section 8370-31, Remington's Revised Statutes, be and the same hereby is amended to read as follows:

Section 31. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state any article of tangible personal property purchased at retail subsequent to April 30, 1935. Such

Amends
§ 8370-31
Rem. Rev.
Stat.

Purchases
subsequent
to April 30,
1935.

tax or excise shall apply to the use of every article of tangible personal property except as hereinafter provided, irrespective of whether the article or similar articles are manufactured within the State of Washington or are available for purchase within the State of Washington, and irrespective of any other condition. Such tax shall be levied and collected in an amount equal to the purchase price paid by the taxpayer multiplied by the rate of 2%.

Rate.

Use tax.

From and after the seventeenth day of March, 1937, there is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state any article of tangible personal property produced or manufactured for commercial use. Such tax or excise shall apply to the use of every article of tangible personal property except as hereinafter provided, irrespective of whether the article or similar articles are manufactured within the State of Washington or are available for purchase within the State of Washington, and irrespective of any other condition. This tax will not apply with respect to the use of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property of this state. Such tax shall be levied and collected in an amount equal to the value when so acquired of the article used by the taxpayer multiplied by the rate of two per cent. This section shall operate retroactively provided that, if such retroactive effect should be adjudged invalid, such adjudication shall not affect the act as a whole or any other section or portion thereof.

Rate.

Retroactive.

Amends
§ 8370-35,
Rem. Rev.
Stat.

SEC. 3. That section 35, chapter 180, Laws of 1935, as amended by section 4, chapter 191, Laws of 1937, being section 8370-35, Remington's Revised Stat.

utes, be and the same hereby is amended to read as follows:

Section 35. For the purposes of this title:

Definitions.

(a) The term "value of the article used" shall mean the consideration paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this title. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the cost of transportation by a common carrier. In case the article used is produced or manufactured by the person using the same or is sold under conditions wherein the purchase price, including the cost of transportation, does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the tax commission may prescribe;

(b) The terms "use," "used," "using," or "put to use" mean the first use of the article after delivery thereof is completed within the state, and shall include installation, and also storing and withdrawal from storage in this state for subsequent actual use or consumption within the state: *Provided*, That as to any article of tangible personal property purchased at retail, the first use of which in this state took place between April 30, 1935, and the effective date of this act, and as to any such article produced or manufactured for commercial use, the first use of which in this state took place between March 17, 1937, and the effective date of this act, the terms herein defined shall be construed to include the first use, installation, storing or withdrawal from storage thereof in this state after the taking effect of this act.

(c) The meaning ascribed to words and phrases in titles I, II and III and all the provisions of titles XVIII, XIX and XX of this act, in so far as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this title.

Adds to ch. 180, Laws 1935, § 35-A.

SEC. 4. That chapter 180, Laws of 1935, being sections 8370-1, *et seq.*, Remington's Revised Statutes, be and the same hereby is amended by adding thereto a new section to be known as section 35-A, to read as follows:

Use presumed to continue.

Section 35-A. The use in this state of any article acquired as provided in section 31 hereof, and thereafter actually used in this state is presumed to continue until after the use of such article shall have become taxable under the provisions of title IV of this act, and in any investigation, hearing, proceeding or trial either before the tax commission or in any court involving the question of the taxability of the use of such article under said title IV the burden shall be upon the person first using such article in this state to show that such use in this state had ceased prior to the use thereof having become taxable under the provisions of said title IV.

Burden of proof.

Adds to ch. 180, Laws 1935, § 35-B.

SEC. 5. That chapter 180, Laws of 1935, being sections 8370-1, *et seq.*, Remington's Revised Statutes, be and the same hereby is amended by adding thereto a new section to be known as section 35-B, to read as follows:

Return filed.

Section 35-B. On or before March 1, 1939, and thereafter as the times provided by existing law, all persons subject to the tax imposed by title IV shall file with the tax commission a return showing in detail the matters set forth in section 34 hereof, and in making the remittance of tax shown thereon to be due, may off-set against the amount thereof, amounts theretofore paid in compensating taxes of a kind or nature theretofore determined by the supreme court not to be collectible from said tax-

Off-set.

payer. And in any proceeding either now pending or hereafter instituted either in court or before the tax commission for the refund of any amounts claimed as refunds of compensating taxes claimed to have been theretofore unlawfully collected, the tax commission or State of Washington shall be legally entitled to off-set against said claim any unpaid compensating tax for which said claimant is liable at the time of the hearing or trial of said proceeding.

SEC. 6. That chapter 180, Laws of 1935, being sections 8370-1, *et seq.*, Remington's Revised Statutes, be and the same hereby is amended by adding thereto a new section to be known as section 35-C, to read as follows:

Adds to ch.
180, Laws
1935, § 35-c.

Section 35-C. The tax imposed by title IV is intended as an excise and not a tax on property. If therefore it be adjudged that by reason of the inclusion in section 35 hereof of that provision defining the terms "use," "used," "using" or "put to use" as including storage and withdrawal from storage the tax imposed by said title IV is a property tax and not an excise, but except for said definition would be an excise and not a property tax, then all of said portion of said definition so contained in said section 35 shall be stricken and eliminated from said section and the remaining valid portions of said title IV shall be allowed to stand with the same force and effect as though said provision had never been embodied in said section 35.

Construction.

SEC. 7. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect immediately.

Effective
immediately.

Passed the House February 2, 1939.

Passed the Senate February 6, 1939.

Approved by the Governor February 8, 1939.