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ENROLLED

SENATE BILL NO. 106

(By Mr. Cason, Mr. President, and Mr. M. Court)

PASSED February 10 1961

In Effect from passage Passage

Filed in Office of the Secretary of State
of West Virginia February 14, 1961
JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

Senate Bill No. 106

(By MR. CARSON, MR. PRESIDENT, AND MR. McCOURT)

[Passed February 10, 1961; in effect from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, ^(designated article) twenty-one, imposing a tax on personal incomes as such incomes are defined for federal income tax purposes, and providing for the administration and collection thereof.

*at the time of passage
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Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby amended by adding thereto a new article, designated article twenty-one, to read as follows:

Article 21. Personal Income Tax.

Section 1. *Legislative Findings.*—The Legislature here-
2 by finds and declares that the adoption by this state for
3 its personal income tax purposes of the provisions of the
4 laws of the United States relating to the determination of
5 income for federal income tax purposes will (1) simplify
6 preparation of state income tax returns by taxpayers, (2)
7 improve enforcement of the state income tax through
8 better use of information obtained from federal income
9 tax audits, and (3) aid interpretation of the state tax law
10 through increased use of federal judicial and administra-
11 tive determinations and precedents.

12 The Legislature does therefore declare that this article
13 twenty-one be construed so as to accomplish the forego-
14 ing purposes.

Sec. 2. *Short Title; Arrangement and Classification.*—

2 This article may be cited as the “West Virginia Personal
3 Income Tax Act.” No inference, implication or presump-
4 tion of legislative construction shall be drawn or made by
5 reason of the location or grouping of any particular sec-
6 tion or provision or portion of this article, nor shall the de-

7 scriptive matter or headings relating to any part, section,
8 subsection, or paragraph be given any legal effect.

Sec. 3. *Persons Subject to Tax.*—(a) Imposition of Tax.

2 —A tax determined in accordance with the rates set forth
3 in section four of this article is hereby imposed for each
4 taxable year on the West Virginia taxable income of every
5 individual, estate and trust.

6 (b) Partners and Partnerships.—A partnership as such
7 shall not be subject to tax under this article. Persons car-
8 rying on business as partners shall be liable for tax un-
9 der this article only in their separate or individual ca-
10 pacities.

11 (c) Associations Taxable as Corporations.—An associa-
12 tion, trust or other unincorporated organization which is
13 taxable as a corporation for federal income tax purposes,
14 shall not be subject to tax under this article.

15 (d) Exempt Trusts and Organizations.—A trust or
16 other unincorporated organization which by reason of its
17 purposes or activities is exempt from federal income tax
18 shall be exempt from tax under this article (regardless
19 of whether subject to federal income tax on unrelated

20 business taxable income).

21 (e) Cross References.—For definitions of West Vir-
22 ginia taxable income of—

23 (1) Resident individual, see section eleven.

24 (2) Resident estate or trust, see section eighteen.

25 (3) Nonresident individual, see section thirty-one.

26 (4) Nonresident estate or trust, see section thirty-
27 eight.

Sec. 4. *Rate of Tax.*—(a) Rate of Tax on Individuals.—

2 The tax imposed by section three of this article on the
3 West Virginia taxable income of every individual (other
4 than a head of a household to whom subsection (b) ap-
5 plies) and upon the West Virginia taxable income of every
6 estate and trust shall be equal to six per centum of the
7 federal income tax which would be imposed on an ident-
8 ical amount of federal taxable income under subsection
9 (a) of section one of the United States Internal Revenue
10 Code of 1954.

11 (b) Rate of Tax on Heads of Households.—The tax im-
12 posed by section three of this article on the West Virginia
13 taxable income of every individual who is a head of a

14 household in the determination of his federal income tax
15 for the taxable year shall be equal to six per centum of
16 the federal income tax which would be imposed upon an
17 identical amount of federal taxable income under sub-
18 section (b) of section one of the United States Internal
19 Revenue Code of 1954.

20 (c) Rates of Tax in Case of Joint Return or Return of
21 Surviving Spouse.—In the case of a joint return of a hus-
22 band and wife, the tax imposed by section three of this
23 article on the West Virginia taxable income shall be equal
24 to six per centum of twice the tax which would be im-
25 posed upon half the identical amount of federal taxable
26 income under subsection (a) of section one of the United
27 States Internal Revenue Code of 1954. For purposes of
28 this subsection of this article and for the purposes of sec-
29 tion five of this article, the return of an individual who is
30 entitled to file his federal income tax return for the tax-
31 able year as a surviving spouse shall be treated as a joint
32 return of a husband and wife.

Sec. 5. *Optional Tax for Certain Resident Individuals.*

2 —(a) General.—The tax commissioner may promulgate

3 tables enabling resident individuals who meet the condi-
4 tions of this section to compute their taxes under section
5 three of this article on the basis of their federal adjusted
6 gross incomes.

7 (b) Tables.—The tables promulgated under this section
8 shall show the amounts of tax due under section three of
9 this article to the nearest two dollars (or such smaller
10 amount as the tax commissioner may establish.)

11 (c) Conditions for Optional Computation.—The op-
12 tional tax computation under this section may be elected
13 only if all the following conditions are satisfied by the
14 taxpayer, or by both husband and wife whose federal in-
15 come tax is determined on a joint return:

16 (1) The taxpayer has elected to take the standard de-
17 duction for federal income tax purposes or to pay the fed-
18 eral optional tax.

19 (2) The taxpayer has no items of income or deduction
20 described in section twelve (b) or (d) as an individual,
21 as a partner, or as a beneficiary of an estate or trust.

22 (3) The taxpayer's federal income tax is not reduced
23 by operation of:

24 (a) the federal alternative tax on long term capital
25 gains, or

26 (b) a federal provision which has the effect of taxing
27 income of the taxable year as if it were partly or wholly
28 income of a prior taxable year.

29 (4) The taxpayer satisfies such other conditions, not
30 inconsistent with the purposes of this section, as may be
31 specified by the tax commissioner.

32 (d) Manner of Election.—The election by a taxpayer
33 to compute his tax under this section shall be made under
34 regulations of the tax commissioner.

35 (e) Husband and Wife Computing West Virginia Taxes
36 Separately.—

37 (1) A husband or wife who files a separate federal re-
38 turn may elect the optional tax computation under this
39 section only if the other spouse's tax under this article,
40 if any, is determined under this section.

41 (2) A husband and wife who file a joint federal re-
42 turn may not elect the optional tax computation under
43 this section if they elect to determine their West Virginia
44 taxes separately.

2 Sec. 6. *Accounting Periods and Methods.*—(a) Account-
3 ing Periods.—A taxpayer's taxable year under this article
4 shall be the same as his taxable year for federal income
5 tax purposes.

6 (b) Change of Accounting Periods.—If a taxpayer's
7 taxable year is changed for federal income tax purposes,
8 his taxable year for purposes of this article shall be sim-
9 ilarly changed. If a taxable year of less than twelve
10 months results from a change of taxable year, the West
11 Virginia standard deduction, the West Virginia personal
12 exemptions and the credits allowed under section eight
13 shall be prorated under regulations of the tax commis-
14 sioner.

15 (c) Accounting Methods.—A taxpayer's method of ac-
16 counting under this article shall be the same as his method
17 of accounting for federal income tax purposes. In the ab-
18 sence of any method of accounting for federal income tax
19 purposes, West Virginia taxable income shall be computed
20 under such method as in the opinion of the tax commis-
21 sioner clearly reflects income.

22 (d) Change of Accounting Methods.—

22 (1) If a taxpayer's method of accounting is changed
23 for federal income tax purposes, his method of accounting
24 for purposes of this article shall be similarly changed.

25 (2) If a taxpayer's method of accounting is changed,
26 other than from an accrual to an installment method, any
27 additional tax which results from adjustments determined
28 to be necessary solely by reason of the change shall not
29 be greater than if such adjustments were rateably al-
30 located and included for the taxable year of the change
31 and the preceding taxable years, not in excess of two,
32 during which the taxpayer used the method of accounting
33 from which the change is made.

34 (3) If a taxpayer's method of accounting is changed
35 from an accrual to an installment method, any additional
36 tax for the year of such change of method and for any
37 subsequent year which is attributable to the receipt of
38 installment payments properly accrued in a prior year
39 shall be reduced by the portion of tax for any prior tax-
40 able year attributable to the accrual of such installment
41 payments, in accordance with regulations of the tax com-
42 missioner.

Sec. 7. *Resident and Nonresident Defined.*—(a) Resi-

2 dent individual means an individual—

3 (1) Who is domiciled in this state, unless he maintains
4 no permanent place of abode in this state, maintains a
5 permanent place of abode elsewhere, and spends in the
6 aggregate not more than thirty days of the taxable year
7 in this state, or

8 (2) Who is not domiciled in this state but maintains
9 a permanent place of abode in this state and spends in
10 the aggregate more than one hundred eighty-three days of
11 the taxable year in this state.

12 (b) *Nonresident Individual.*—A nonresident individual
13 means an individual who is not a resident.

14 (c) *Resident Estate or Trust.*—A resident estate or
15 trust means—

16 (1) The estate of a decedent who at his death was
17 domiciled in this state,

18 (2) A trust created by will of a decedent who at his
19 death was domiciled in this state, or

20 (3) A trust created by, or consisting of property of,
21 a person domiciled in this state.

22 (d) Nonresident Estate or Trust.—A nonresident estate
23 or trust means an estate or trust which is not a resident.

24 (e) Cross Reference.—For effect of change of an indi-
25 vidual's resident status, see section fifty-four.

Section 8. *Credits Against Tax*.—(a) Business and Oc-
2 cupation Tax Credit.—A credit shall be allowed against
3 the tax imposed by section three of this article equal to
4 the amount of the liability of the taxpayer for the taxable
5 year for any tax imposed under article thirteen of chapter
6 eleven of this code. Provided, ~~That~~ that the amount of such
7 credit shall not exceed the portion of the tax imposed by
8 this article which is attributable to the West Virginia
9 taxable income derived by the taxpayer for the taxable
10 year from the business or occupation with respect to
11 which said tax under article thirteen was imposed. In
12 case the West Virginia taxable income of a taxpayer in-
13 cludes income from a partnership, estate, trust or a cor-
14 poration electing to be taxed under subchapter S of the
15 Internal Revenue Code of 1954, as amended, a part of any
16 tax liability of the partnership, estate, trust or corpora-
17 tion under said article thirteen shall be allowed to the

18 taxpayer, in computing the credit provided for by this
19 section, in an amount proportionate to the income of such
20 partnership, estate, trust or corporation, which is in-
21 cluded in the taxpayer's West Virginia taxable income.

22 (b) Transportation Privilege Tax Credit.—A credit
23 shall be allowed against the tax imposed by section three
24 of this article equal to the amount of the liability of the
25 taxpayer for the taxable year for any tax imposed on
26 the taxpayer under article twelve-A of chapter eleven
27 of this code; provided that the amount of such credit
28 shall not exceed the portion of the tax imposed by this
29 article which is attributable to the West Virginia tax-
30 able income derived by the taxpayer for the taxable
31 year from the exercise of the privilege with respect of
32 which said tax under article twelve-A was imposed. In
33 case the West Virginia taxable income of a taxpayer
34 includes income from a partnership, estate, trust or a
35 corporation electing to be taxed under subchapter S of
36 the Internal Revenue Code of 1954, as amended, a part
37 of any tax liability of the partnership, estate, trust, or
38 corporation under said article twelve-A shall be allowed

39 to the taxpayer, in computing the credit provided for by
40 this section in an amount proportionate to the income of
41 such partnership, estate, trust or corporation which is
42 included in the taxpayer's West Virginia taxable income.

43 (c) Cross Reference.—For credit in respect of—

44 (1) Taxes withheld on wages, see section seventy-
45 three,

46 (2) Taxes imposed on a resident by other states, see
47 section twenty,

48 (3) Taxes imposed on a nonresident by the state of
49 his residence, see section forty.

Section 9. *Meaning of Terms.*—Any term used in this
2 article shall have the same meaning as when used in a
3 comparable context in the laws of the United States re-
4 lating to income taxes, unless a different meaning is
5 clearly required. Any reference in this article to the laws
6 of the United States shall mean the provisions of the
7 Internal Revenue Code of 1954, as amended, and such
8 other provisions of the laws of the United States as relate
9 to the determination of income for federal income tax
10 purposes. All amendments made to the laws of the United

11 States prior to the first day of January, one thousand nine
12 hundred sixty-one shall be given effect in determining
13 the taxes imposed by this article but no amendment to
14 laws of the United States made after said date shall be
15 given effect.

Sec. 11. *West Virginia Taxable Income of a Resident*

2 *Individual.*—(a) General.—The West Virginia taxable in-
3 come of a resident individual shall be his West Virginia
4 adjusted gross income less his West Virginia deduction
5 and West Virginia personal exemptions, as determined
6 under this Part.

7 (b) Husband and Wife.—

8 (1) If the federal taxable income of husband or wife is
9 determined on a separate federal return, their West Vir-
10 ginia taxable incomes shall be separately determined.

11 (2) If the federal taxable income of husband and wife
12 is determined on a joint federal return, or if neither files
13 a federal return—

14 (A) their tax shall be determined on their joint West
15 Virginia taxable income, or

16 (B) separate taxes may be determined on their sepa-

17 rate West Virginia taxable incomes if they so elect and
18 if they comply with the requirements of the tax commis-
19 sioner in setting forth information on a single form.

20 (3) If either husband or wife is a resident and the
21 other is a nonresident, separate taxes shall be determined
22 on their separate West Virginia taxable incomes on such
23 single or separate forms as may be required by the tax
24 commissioner, unless both elect to determine their joint
25 West Virginia taxable income as if both were residents.

Sec. 12. *West Virginia Adjusted Gross Income of a Resi-*
2 *dent Individual.*—(a) General.—The West Virginia ad-
3 justed gross income of a resident individual means his
4 federal adjusted gross income as defined in the laws of
5 the United States for the taxable year with the modifi-
6 cations specified in this section.

7 (b) Modifications Increasing Federal Adjusted Gross
8 Income.—There shall be added to federal adjusted gross
9 income:

10 (1) Interest income on obligations of any state other
11 than this state, or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or se-
15 curities of any authority, commission, or instrumentality
16 of the United States, which the laws of the United States
17 exempt from federal income tax but not from state in-
18 come taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determin-
21 ing federal adjusted gross income and not credited against
22 federal income tax; and

23 (4) Interest on indebtedness incurred or continued to
24 purchase or carry obligations or securities the income
25 from which is exempt from tax under this article, to the
26 extent deductible in determining federal adjusted gross
27 income.

28 (c) Modifications Reducing Federal Adjusted Gross
29 Income.—There shall be subtracted from federal adjusted
30 gross income:

31 (1) Interest income on obligations of the United States
32 and its possessions to the extent includible in gross in-
33 come for federal income tax purposes;

34 (2) Interest or dividend income on obligations or se-

35 curities of any authority, commission or instrumentality
36 of the United States to the extent includible in gross in-
37 come for federal income tax purposes but exempt from
38 state income taxes under the laws of the United States;

39 (3) Any gain from the sale or other disposition of
40 property having a higher fair market value on the first
41 day of January one thousand nine hundred sixty-one than
42 the adjusted basis at said date for federal income tax pur-
43 poses: *Provided, however,* ~~That~~ the amount of this adjust-
44 ment is limited to that portion of any such gain which
45 does not exceed the difference between such fair market
46 value and such adjusted basis; Provided further, ~~That~~ if
47 such gain is considered a long-term capital gain for fed-
48 eral income tax purposes, the modification shall be limited
49 to fifty percentum of such portion of the gain.

50 (4) The amount of any refund or credit for overpay-
51 ment of income taxes imposed by this state, or any other
52 taxing jurisdiction, to the extent properly included in
53 gross income for federal income tax purposes.

54 (d) Modification for West Virginia Fiduciary Adjust-
55 ment.—There shall be added to or subtracted from federal
56 adjusted gross income (as the case may be) the taxpay-

57 er's share, as beneficiary of an estate or trust, of the West
58 Virginia fiduciary adjustment determined under section
59 nineteen.

60 (e) Partners.—The amounts of modifications required
61 to be made under this section by a partner, which relate
62 to items of income, gain, loss or deduction of a partner-
63 ship, shall be determined under section seventeen.

64 (f) Husband and Wife.—If husband and wife deter-
65 mine their federal income tax on a joint return but de-
66 termine their West Virginia income taxes separately,
67 they shall determine their West Virginia adjusted gross
68 incomes separately as if their federal adjusted gross in-
69 comes had been determined separately.

Sec. 13. *West Virginia Deduction of a Resident Indi-*
2 *vidual.*—The West Virginia deduction of a resident indi-
3 vidual shall be his West Virginia standard deduction un-
4 less he elects to deduct his West Virginia itemized deduc-
5 tion under the conditions set forth in section fifteen.

Sec. 14. *West Virginia Standard Deduction of a Resi-*
2 *dent Individual.*—(a) General.—The West Virginia stand-
3 ard deduction of a resident individual, or of husband and

4 wife whose West Virginia taxable income is determined
5 jointly, shall be ten per centum of West Virginia adjusted
6 gross income or one thousand dollars, whichever is less.

7 (b) Husband and Wife Determining Income Sepa-
8 rately.—The West Virginia standard deductions of hus-
9 band and wife whose West Virginia taxable incomes are
10 determined separately (whether or not on a single form)
11 shall not exceed ten per centum of the aggregate of their
12 separate West Virginia adjusted gross incomes or one
13 thousand dollars, whichever is less, but may be taken by
14 either or divided between them in such proportions as
15 they may elect.

Sec. 15.—*West Virginia Itemized Deduction of a Resi-*
2 *dent Individual.*—(a) General.—If federal taxable income
3 of a resident individual is determined by itemizing de-
4 ductions from his federal adjusted gross income, he may
5 elect to deduct his West Virginia itemized deduction in
6 lieu of his West Virginia standard deduction. The West
7 Virginia itemized deduction of a resident individual means
8 the total amount of his deductions from federal adjusted
9 gross income, other than federal deductions for personal

10 exemptions, as provided in the laws of the United States
11 for the taxable year with the modifications specified in
12 this section.

13 (b) Husband and wife.—

14 (1) A husband and wife, both of whom are required to
15 file returns under this article, shall be allowed West Vir-
16 ginia itemized deductions only if both elect to take West
17 Virginia itemized deductions.

18 (2) The total of the West Virginia itemized deductions
19 of a husband and wife whose federal taxable income is
20 determined on a joint return, but whose West Virginia
21 taxable incomes are determined separately, may be taken
22 by either or divided between them in such proportions as
23 they may elect.

24 (c) Modifications reducing federal itemized deduc-
25 tions.—The total amount of deductions from federal ad-
26 justed gross income shall be reduced by the amount of
27 such federal deductions for—

28 (1) Income taxes imposed by this State or any other
29 taxing jurisdiction; and

30 (2) Interest on indebtedness incurred or continued to
31 purchase or carry obligations or securities the income

32 from which is exempt from tax under this article.

33 (d) Partners.—The amounts of modifications under
34 subsection (c) required to be made by a partner with re-
35 spect to items of deduction of a partnership shall be de-
36 termined under section seventeen.

Sec. 16. *West Virginia Personal Exemptions of a Resi-*
2 *dent Individual.*—(a) General.—A resident individual
3 shall be allowed a West Virginia exemption of six hun-
4 dred dollars for each exemption for which he is entitled
5 to a deduction for the taxable year for federal income tax
6 purposes.

7 (b) Husband and wife.—If the West Virginia income
8 taxes of a husband and wife are separately determined
9 but their federal income tax is determined on a joint re-
10 turn, each of them shall be separately entitled to a West
11 Virginia exemption of six hundred dollars for each federal
12 exemption to which he would be separately entitled for
13 the taxable year if their federal income taxes had been
14 determined on separate returns.

Sec. 17. *Resident Partners.*—(a) Partner's modifica-
2 tions.—In determining West Virginia adjusted gross in-

3 come and West Virginia taxable income of a resident
4 partner, any modification described in section twelve (b),
5 (c) or (d) or section fifteen (c), which relates to an item
6 of partnership income, gain, loss or deduction shall be
7 made in accordance with the partner's distributive share,
8 for federal income tax purposes, of the items to which the
9 modifications relate. Where a partner's distributive share
10 of any such item is not required to be taken into account
11 separately for federal income tax purposes, the partners
12 distributive share of such item shall be his distributive
13 share for federal income tax purposes of partnership taxa-
14 ble income or loss generally.

15 (b) Character of Items.—Each item of partnership in-
16 come, gain, loss, or deduction shall have the same charac-
17 ter for a partner under this article as for federal income
18 tax purposes. Where an item is not characterized for fed-
19 eral income tax purposes, it shall have the same character
20 for a partner as if realized directly from the source from
21 which realized by the partnership, or incurred in the same
22 manner as incurred by the partnership.

23 (c) West Virginia Tax Avoidance or Evasion.—Where
24 a partner's distributive share of an item of partnership

25 income, gain, loss or deduction is determined for federal
26 income tax purposes by special provision in the partner-
27 ship agreement with respect to such item, and where the
28 principal purpose of such provision is the avoidance or
29 evasion of tax under this article, the partner's distributive
30 share of such item, and any modification required with
31 respect thereto shall be determined as if the partnership
32 agreement made no special provision with respect to such
33 item.

Sec. 18. *West Virginia Taxable Income of a Resident*

2 *Estate or Trust.*—The West Virginia taxable income of a
3 resident estate or trust means its federal taxable income
4 as defined in the laws of the United States for the taxable
5 year, with the following modifications:

6 (1) There shall be subtracted six hundred dollars as
7 the West Virginia exemption of the estate or trust, and
8 there shall be added the amount of its federal deduction
9 for a personal exemption.

10 (2) There shall be subtracted the modification de-
11 scribed in section twelve (c) (3), with respect to gains
12 from the sale or other disposition of property, to the ex-
13 tent such gains are excluded from distributable net in-

14 come of the estate or trust for federal income tax pur-
15 poses.

16 (3) There shall be added or subtracted (as the case may
17 be) the share of the estate or trust in the West Virginia
18 fiduciary adjustment determined under section nineteen.

Sec. 19. Share of Resident Estate, Trust or Beneficiary

2 *in West Virginia Fiduciary Adjustment.*—(a) General.—

3 An adjustment shall be made in determining West Vir-
4 ginia taxable income of a resident estate or trust under
5 section eighteen, or West Virginia adjusted gross income
6 of a resident beneficiary of any estate or trust under sec-
7 tion twelve (d), in the amount of the share of each in the
8 West Virginia fiduciary adjustment as determined in
9 this section.

10 (b) Definition.—The West Virginia fiduciary adjust-
11 ment shall be the net amount of the modifications de-
12 scribed in section twelve (b), (c) and (d), and section
13 fifteen (c) which relate to items of income, gain, loss or
14 deduction of an estate or trust. Such net amount shall not
15 include any modification described in section twelve (c)
16 (3), with respect to gains from the sale or other disposi-
17 tion of property, to the extent such gains are excluded

18 from distributable net income of the estate or trust for
19 federal income tax purposes.

20 (c) Shares of West Virginia Fiduciary Adjustment.—

21 (1) The respective shares of an estate or trust and its
22 beneficiaries (including, solely for the purpose of this
23 allocation, nonresident beneficiaries) in the West Vir-
24 ginia fiduciary adjustment shall be in proportion to their
25 respective shares of distributable net income of the
26 estate or trust for federal income tax purposes.

27 (2) If the distributable net income for the taxable
28 year of the estate or trust is zero, the share of each bene-
29 ficiary in the West Virginia fiduciary adjustment shall be
30 in proportion to his share of the estate or trust income for
31 such year, under local law or the governing instrument,
32 which is distributed within such year, or is required to
33 be distributed currently. Any balance of the West Vir-
34 ginia fiduciary adjustment shall be allocated to the estate
35 or trust.

36 (d) Alternate Attribution of Modifications.—The tax
37 commissioner may, on application, authorize the use of
38 such other methods of determining to whom the items
39 comprising the fiduciary adjustment shall be attributed,

40 as may be appropriate and equitable, on such terms and
41 conditions as he may require.

Sec. 20. *Credit for Income Tax of Another State.*—(a)

2 General.—A resident shall be allowed a credit against
3 the tax otherwise due under this article for any income
4 tax imposed for the taxable year by another state of the
5 United States or by the District of Columbia, upon income
6 both derived therefrom and subject to tax under this
7 article.

8 (b) Limitations.—(1) The credit under this section
9 shall not exceed the percentage of the tax otherwise due
10 under this article determined by dividing the portion of
11 the taxpayer's West Virginia income subject to taxation
12 by such other jurisdiction by the total amount of the
13 taxpayer's West Virginia income.

14 (2) The credit under this section shall not reduce the
15 tax otherwise due under this article to an amount less
16 than would have been due if the income subject to tax-
17 ation by such other jurisdiction were excluded from the
18 taxpayer's West Virginia income.

19 (c) Exception.—No credit shall be allowed under this

20 section for² tax of a jurisdiction which allows residents of
 21 this state a credit against the taxes imposed by such other
 22 jurisdiction for the tax under this article, if such other
 23 credit is substantially similar to the credit granted by
 24 section forty.

25 (d) Definition.—For purposes of this section West Vir-
 26 ginia income means—

27 (1) the West Virginia adjusted gross income of an
 28 individual, or

29 (2) the amount of the income of an estate or trust, de-
 30 termined as if the estate or trust were an individual com-
 31 puting his West Virginia adjusted gross income under
 32 section twelve.

Sec. 31. *West Virginia Taxable Income of a Nonresi-*
 2 *dent Individual.*—(a) General.—The West Virginia tax-
 3 able income of a nonresident individual shall be his West
 4 Virginia adjusted gross income less his West Virginia de-
 5 duction and West Virginia personal exemptions, as de-
 6 termined under this part.

7 (b) Husband and Wife.—

8 (1) If the federal taxable income of husband or wife,

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9 both of whom are nonresidents, is determined on a sep-
10 arate federal return, their West Virginia taxable incomes
11 shall be separately determined.

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12 (2) If the federal ^{taxable} income of husband and wife, both of
13 whom are nonresidents, is determined on a joint federal
14 return, or if neither files a federal return:

15 (A) Their tax shall be determined on their joint West
16 Virginia taxable income, or

17 (B) Separate taxes may be determined on their sep-
18 arate West Virginia taxable incomes if they so elect and if
19 they comply with the requirements of the tax commis-
20 sioner in setting forth information on a single form.

21 (3) If either husband or wife is a resident and the other
22 is a nonresident, separate taxes shall be determined on
23 their separate West Virginia taxable incomes on such
24 single or separate forms as may be required by the tax
25 commissioner, unless both elect to determine their joint
26 West Virginia taxable income as if both were residents.

Sec. 32. *West Virginia Adjusted Gross Income of a Non-*

2 *resident Individual.*—(a) General.—The West Virginia

3 adjusted gross income of a nonresident individual shall be
4 the sum of the following:

5 (1) The net amount of items of income, gain, loss and
6 deduction entering into his federal adjusted gross income,
7 as defined in the laws of the United States for the taxable
8 year, derived from or connected with West Virginia
9 sources, including:

10 (A) His distributive share of partnership income, gain,
11 loss and deduction, determined under section thirty-seven,
12 and

13 (B) His share of estate or trust income, gain, loss and
14 deduction, determined under section thirty-nine; and

15 (2) The portion of the modifications described in sub-
16 sections (b) and (c) of section twelve which relate to
17 income derived from West Virginia sources (including
18 any modifications attributable to him as a partner).

19 (b) Income and Deductions from West Virginia
20 Sources.—

21 (1) Items of income, gain, loss and deduction derived
22 from or connected with West Virginia sources shall be
23 those items attributable to:

45 as determined under regulations of the tax commissioner
46 the items of income, gain, loss and deduction derived
47 from or connected with West Virginia sources shall be
48 determined by apportionment and allocation under such
49 regulation.

50 (d) Purchase and Sale for Own Account.—A nonresi-
51 dent, other than a dealer holding property primarily for
52 sale to customers in the ordinary course of his trade or
53 business, shall not be deemed to carry on a business, trade,
54 profession or occupation in this state solely by reason of
55 the purchase and sale of property for his own account.

56 (e) Husband and Wife.—If husband and wife deter-
57 mine their federal income tax on a joint return but de-
58 termine their West Virginia income taxes separately, they
59 shall determine their West Virginia adjusted gross in-
60 comes separately as if their federal adjusted gross incomes
61 had been determined separately.

Sec. 33. *West Virginia Deduction of a Nonresident In-*
2 *dividual.*—The West Virginia deduction of a nonresident
3 individual shall be his West Virginia standard deduction
4 unless he elects to deduct his West Virginia itemized de-

5 duction under the conditions set forth in section thirty-
6 five.

Sec. 34. *West Virginia Standard Deduction of a Non-*
2 *resident Individual.*—The West Virginia standard deduc-
3 tion of a nonresident individual shall be ten per centum
4 of his West Virginia adjusted gross income, or one thou-
5 sand dollars, whichever is less. The West Virginia stand-
6 ard deduction of a nonresident husband or wife shall be
7 determined under the rules of section fourteen.

Sec. 35. *West Virginia Itemized Deduction of a Non-*
2 *resident Individual.*—(a) General.—If federal taxable
3 income of a nonresident individual is determined by item-
4 izing deductions from his federal adjusted gross income,
5 he may elect to deduct his West Virginia itemized deduc-
6 tion in lieu of his West Virginia standard deduction. The
7 West Virginia itemized deduction of a nonresident indi-
8 vidual shall be the same as the total amount of the fol-
9 lowing of his deductions from federal adjusted gross in-
10 come, as provided in the laws of the United States for the
11 taxable year (including any items attributable to him as
12 a partner):

13 (1) Deductions for contributions or gifts to this state
14 or to any political subdivision thereof, or to any corpora-
15 tion, trust, community chest, fund, foundation, or other
16 entity organized or operated under the laws of this state;

17 (2) Deductions for alimony or separate maintenance
18 payments includible in the West Virginia adjusted gross
19 income of the recipient;

20 (3) Deductions for losses of real or tangible personal
21 property having an actual situs in this state, arising from
22 fire, storm, shipwreck or other casualty, or from theft;

23 (4) Deductions, with respect to real or tangible per-
24 sonal property having an actual situs in this state, for
25 losses (other than capital losses) incurred in any trans-
26 action entered into for profit but not connected with the
27 taxpayer's trade or business; and

28 (5) Deductions determined under regulations of the
29 tax commissioner to be connected with his West Virginia
30 adjusted gross income, except deductions for income taxes
31 imposed by this state or any other taxing jurisdiction.

32 (b) Husband and Wife.—

33 (1) A husband and wife, both of whom are required

34 to file returns under this article, shall be allowed West
35 Virginia itemized deductions only if both elect to take
36 West Virginia itemized deductions.

37 (2) The total of the West Virginia itemized deductions
38 of a husband and wife whose federal taxable income is
39 determined on a joint return but whose West Virginia
40 taxable incomes are determined separately may be taken
41 by either or divided between them as they may elect.

Sec. 36. *West Virginia Personal Exemptions of a Non-*
2 *resident Individual.*—A nonresident individual shall be
3 allowed the same West Virginia exemptions as are al-
4 lowed by section sixteen to a resident individual.

Sec. 37. *Nonresident Partners.*—(a) *Portion Derived*
2 *from West Virginia Sources.*—In determining West Vir-
3 ginia adjusted gross income of a nonresident partner of
4 any partnership, there shall be included only the portion
5 derived from or connected with West Virginia sources of
6 such partner's distributive share, for federal income tax
7 purposes, of items of partnership income, gain, loss and
8 deduction, as such portion shall be determined under reg-
9 ulations of the tax commissioner consistent with the ap-

10 plicable rules of section thirty-two. In determining West
11 Virginia taxable income of a nonresident partner of any
12 partnership, there shall be attributed to him his distribu-
13 tive share, for federal income tax purposes, of those partne~~r~~^r
14 ship items of deduction which are deductible by him un-
15 der the applicable rules of section thirty-five.

*Ed. Washburn
10/2/88*

16 (b) Special Rules As to West Virginia Sources.—In de-
17 termining the sources of a nonresident partner's income,
18 no effect shall be given to a provision in the partnership
19 agreement which:

20 (1) Characterizes payments to the partner as being for
21 services or for the use of capital, or

22 (2) Allocates to the partner, as income or gain from
23 sources outside West Virginia, a greater proportion of his
24 distributive share of partnership income or gain than the
25 ratio of partnership income or gain from sources outside
26 West Virginia to partnership income or gain from all
27 sources, except as authorized in subsection (d), or

28 (3) Allocates to the partner a greater proportion of a
29 partnership item of loss or deduction connected with West
30 Virginia sources than his proportionate share, for federal

31 income tax purposes, of partnership loss or deduction
32 generally, except as authorized in subsection (d).

33 (c) Partner's Modifications.—Any modification de-
34 scribed in subsection (b) or (c) of section twelve, which
35 relates to an item of partnership income, gain, loss or de-
36 duction, shall be made in accordance with the partner's
37 distributive share for federal income tax purposes of the
38 item to which the modification relates, but limited to the
39 portion of such item derived from or connected with
40 West Virginia sources.

41 (d) Alternate Methods.—The tax commissioner may,
42 on application, authorize the use of such other methods
43 of determining a nonresident partner's portion of partner-
44 ship items derived from or connected with West Virginia
45 sources, and the modifications related thereto, as may be
46 appropriate and equitable, on such terms and conditions
47 as he may require.

48 (e) Cross Reference.—

49 (1) For a partner's distributive share of items, see sub-
50 section (a) of section seventeen.

51 (2) For character of partnership items for a partner,

52 see subsection (b) of section seventeen.

53 (3) For effect of special provision in partnership agree-
54 ment, other than a provision referred to in subsection (b)
55 of this section, having the principal purpose of avoidance
56 of evasion of tax under this article, see subsection (c) of
57 section seventeen.

Sec. 38. *West Virginia Taxable Income of a Nonresident*

2 *Estate or Trust.*—(a) General.—The West Virginia tax-
3 able income of a nonresident estate or trust shall be de-
4 termined as follows:

5 (1) Items in Distributable Net Income.—There shall
6 be determined its share of income, gain, loss and deduction
7 from West Virginia sources under section thirty-nine (re-
8 lating to items entering into the definition of distributable
9 net income).

10 (2) Items Not in Distributable Net Income.—There
11 shall be added or subtracted (as the case may be) the
12 amount derived from or connected with West Virginia
13 sources of any income, gain, loss and deduction recognized
14 for federal income tax purposes, but excluded from the
15 definition of federal distributable net income of the estate

16 or trust. The source of such income, gain, loss and deduc-
17 tion shall be determined in accordance with the applicable
18 rules of section thirty-two and thirty-five as in the case
19 of a nonresident individual.

20 (3) Modifications.—There shall be subtracted the
21 amount of any modifications described in paragraph (3)
22 of subsection (c) of section twelve with respect to in-
23 come or gain referred to in paragraph (2) of this sub-
24 section.

25 (4) Exemption.—There shall be subtracted the amount
26 of six hundred dollars as a West Virginia exemption.

27 (b) Special West Virginia Source Rules.—Deductions
28 with respect to capital losses, net long-term capital gains
29 and net operating losses shall be based solely on income,
30 gains, losses and deductions derived from or connected
31 with West Virginia sources, under regulations of the tax
32 commissioner, but otherwise determined in the same
33 manner as the corresponding federal deductions.

Sec. 39. *Share of a Nonresident Estate, Trust or Bene-*
2 *ficiary in Income From West Virginia Sources.*—(a)
3 *General.*—The share of a nonresident estate or trust under

4 paragraph (1) of subsection (a) of section thirty-eight,
5 and the share of a nonresident beneficiary of any estate
6 or trust under subsection (a) of section thirty-two, in
7 estate or trust income, gain, loss and deduction from West
8 Virginia sources shall be determined as follows:

9 (1) Items of Distributable Net Income from West
10 Virginia Sources.—There shall be determined the items
11 of income, gain, loss and deduction, derived from or con-
12 nected with West Virginia sources, which enter into the
13 definition of federal distributable net income of the estate
14 or trust for the taxable year. Such determination of
15 source shall be made in accordance with the applicable
16 rules of sections thirty-two and thirty-five as in the case
17 of a nonresident individual.

18 (2) Addition or Subtraction of Modifications.—There
19 shall be added or subtracted (as the case may be) the
20 modifications described in subsections (b) and (c) of sec-
21 tion twelve, to the extent relating to items of income, gain,
22 loss and deduction, derived from or connected with West
23 Virginia sources, which enter into the definition of federal
24 distributable net income. No modification shall be made

25 under this subsection which has the effect of duplicating
26 an item already reflected in the definition of federal dis-
27 tributable net income.

28 (3) Allocation Among Estate or Trust and Benefici-
29 aries.—

30 (A) The amounts determined under paragraphs (1)
31 and (2) shall be allocated among the estate or trust and
32 its beneficiaries (including, solely for the purpose of this
33 allocation, resident beneficiaries) in proportion to their
34 respective shares of federal distributable net income.

35 (B) The amounts so allocated shall have the same
36 character under this article as for federal income tax pur-
37 poses. Where an item entering into the computation of
38 such amounts is not characterized for federal income tax
39 purposes, it shall have the same character as if realized
40 directly from the source from which realized by the
41 estate or trust, or incurred in the same manner as incurred
42 by the estate or trust.

43 (b) Alternate Methods of Determining Shares.—

44 (1) If the estate or trust has no federal distributable
45 net income for the taxable year, the share of each bene-

46 ficiary (including, solely for the purpose of this allocation,
47 resident beneficiaries) in the net amount determined
48 under paragraphs (1) and (2) of subsection (a) shall be
49 in proportion to his share of the estate or trust income for
50 such year, under local law or the governing instrument,
51 which is required to be distributed currently and any
52 other amounts of such income distributed in such year.
53 Any balance of such net amounts shall be allocated to
54 the estate or trust.

55 (2) The tax commissioner may, on application, author-
56 ize the use of such other methods of determining the re-
57 spective shares of the beneficiaries and of the estate or
58 trust in its income derived from West Virginia sources,
59 and the modifications related thereto, as may be appro-
60 priate and equitable, on such terms and conditions as he
61 may require.

Sec. 40. *Credit for Income Tax of State of Residence.*—

2 (a) General.—A nonresident shall be allowed a credit
3 against the tax otherwise due under this article for any
4 income tax imposed for the taxable year by another state

5 of the United States or by the District of Columbia, of
6 which the taxpayer is a resident.

7 (b) Limitation.—The credit under this section shall
8 not exceed either—

9 (1) The percentage of the other tax determined by
10 dividing the portion of the taxpayer's West Virginia in-
11 come which is also subject to the other tax by the total
12 amount of his income subject to such other tax, or

13 (2) The percentage of the tax otherwise due under
14 this article, determined by dividing the portion of the
15 taxpayer's West Virginia income which is also subject to
16 the other tax by the total amount of the taxpayer's West
17 Virginia income.

18 (c) Exceptions.—No credit shall be allowed under
19 this section unless the jurisdiction of which the taxpayer
20 is a resident—

21 (1) Grants a substantially similar credit to residents
22 of this state, or

23 (2) Imposes an income tax on its own residents with
24 respect to income derived from this state, and exempts
25 from income tax the income of residents of this state.

26 (d) Definition.—For purposes of this section West
27 Virginia income means—

28 (1) The West Virginia adjusted gross income of an in-
29 dividual, or

30 (2) The income derived from West Virginia sources
31 by an estate or trust, determined in accordance with the
32 applicable rules of section thirty-two as in the case of a
33 nonresident individual.

Sec. 51. *Returns and Liabilities.*—(a) General.—On or
2 before the fifteenth day of the fourth month following the
3 close of a taxable year, an income tax return under this
4 article shall be made and filed by or for:

5 (1) every resident individual required to file a federal
6 income tax return for the taxable year, or having West
7 Virginia adjusted gross income for the taxable year, de-
8 termined under section twelve in excess of the sum of his
9 West Virginia personal exemptions.

10 (2) every resident estate or trust required to file a
11 federal income tax return for the taxable year, or having
12 any West Virginia taxable income for the taxable year,
13 determined under section eighteen.

14 (3) every nonresident individual having any West Vir-
15 ginia adjusted gross income for the taxable year, de-
16 termined under section thirty-two, in excess of the sum of
17 his West Virginia personal exemptions; and

18 (4) every nonresident estate or trust having items of
19 income or gain derived from West Virginia sources, de-
20 termined in accordance with the applicable rules of sec-
21 tion thirty-two as in the case of a nonresident individual,
22 in excess of its West Virginia exemption.

23 (b) Husband and Wife.—

24 (1) If the federal income tax liability of husband or
25 wife is determined on a separate federal return, their
26 West Virginia income tax liabilities and returns shall be
27 separate.

28 (2) If the federal income tax liabilities of husband and
29 wife other than a husband and wife described in para-
30 graph (3) of this subsection (b) are determined on a
31 joint federal return, or if neither files a federal return:

32 (A) they shall file a joint West Virginia income tax
33 return, and their tax liabilities shall be joint and several,
34 or

35 (B) they may elect to file separate West Virginia in-
36 come tax returns on a single form if they comply with the
37 requirements of the tax commissioner in setting forth in-
38 formation, and in such event their tax liabilities shall
39 be separate.

40 (3) If either husband or wife is a resident and the other
41 is a nonresident, they shall file separate West Virginia
42 income tax returns on such single or separate forms as
43 may be required by the tax commissioner, and in such
44 event their tax liabilities shall be separate.

45 (c) Decedents.—The return for any deceased indi-
46 vidual shall be made and filed by his executor, adminis-
47 trator, or other person charged with his property.

48 (d) Individuals Under a Disability.—The return for an
49 individual who is unable to make a return by reason of
50 minority or other disability shall be made and filed by his
51 guardian, committee, fiduciary or other person charged
52 with the care of his person or property (other than a
53 receiver in possession of only a part of his property), or
54 by his duly authorized agent.

55 (e) Estates and Trusts.—The return for an estate or

56 trust shall be made and filed by the fiduciary.

57 (f) Joint Fiduciaries.—If two or more fiduciaries are
58 acting jointly, the return may be made by any one of
59 them.

60 (g) Tax a Debt.—Any tax under this article, and any
61 increase, interest or penalty thereon, shall, from the time
62 it is due and payable, be a personal debt of the person
63 liable to pay the same, to the State of West Virginia.

64 (h) Cross Reference.—For provisions as to information
65 returns by partnerships, employers and other persons, see
66 section fifty-eight.

Sec. 52. *Time and Place for Filing Returns and Paying*
2 *Tax.*—A person required to make and file a return under
3 this article shall, without assessment, notice or demand,
4 pay any tax due thereon to the tax commissioner on or
5 before the date fixed for filing such return (determined
6 without regard to any extension of time for filing the re-
7 turn). The tax commissioner shall prescribe by regulation
8 the place for filing any return, declaration, statement, or
9 other document required pursuant to this article and for
10 payment of any tax.

Sec. 53. *Signing of Returns and Other Documents.*—

2 (a) General.—Any return, declaration, statement or other
3 document required to be made pursuant to this article
4 shall be signed in accordance with regulations or instruc-
5 tions prescribed by the tax commissioner. The fact that
6 an individual's name is signed to a return, declaration,
7 statement, or other document, shall be prima facie evi-
8 dence for all purposes that the return, declaration, state-
9 ment or other document was actually signed by him.

10 (b) Partnerships.—Any return, statement or other
11 document required of a partnership shall be signed by one
12 or more partners. The fact that a partner's name is signed
13 to a return, statement, or other document, shall be prima
14 facie evidence for all purposes that such partner is au-
15 thorized to sign on behalf of the partnership.

16 (c) Certifications.—The making or filing of any re-
17 turn, declaration, statement or other document or copy
18 thereof required to be made or filed pursuant to this
19 article, including a copy of a federal return, shall con-
20 stitute a certification by the person making or filing such
21 return, declaration, statement or other document or copy

22 thereof that the statements contained therein are true
23 and that any copy filed is a true copy.

Sec. 54. *Change of Resident Status During Year.*—(a)

2 General.—If an individual changes his status during his
3 taxable year from resident to nonresident, or from non-
4 resident to resident, he shall file one return as a resident
5 for the portion of the year during which he is a resident,
6 and one return as a nonresident for the portion of the year
7 during which he is a nonresident, subject to such excep-
8 tions as the tax commissioner may prescribe by regula-
9 tion.

10 (b) *West Virginia Taxable Income As Resident and*
11 *Nonresident.*—The West Virginia taxable income for the
12 portion of the year during which he is a resident shall be
13 determined under Part II of this article as if his taxable
14 year for federal income tax purposes were limited to the
15 period of his resident status. The West Virginia taxable
16 income for the remaining portion of his taxable year dur-
17 ing which he is a nonresident shall be determined under
18 Part III of this article as if his taxable year for federal

19 income tax purposes were limited to the period of his
20 nonresident status.

21 (c) Special Accruals.—

22 (1) If an individual changes his status from resident
23 to nonresident, he shall, regardless of his method of ac-
24 counting, accrue for the portion of the taxable year prior
25 to such change of status any items of income, gain, loss
26 or deduction accruing prior to the change of status, if not
27 otherwise properly includible (whether or not because of
28 an election to report on an installment basis) or allowable
29 for West Virginia income tax purposes for such portion of
30 the taxable year or for a prior taxable year. The amounts
31 of such accrued items shall be determined with the ap-
32 plicable modifications described in sections twelve and
33 fifteen as if such accrued items were includible or allow-
34 able for federal income tax purposes.

35 (2) If an individual changes his status from nonresi-
36 dent to resident, he shall, regardless of his method of ac-
37 counting, accrue for the portion of the taxable year prior
38 to such change of status any items of income, gain, loss or
39 deduction accruing prior to the change of status, other

40 than items derived from or connected with West Virginia
41 sources, if not otherwise properly includible (whether or
42 not because of an election to report on an installment
43 basis) or allowable for federal income tax purposes for
44 such portion of the taxable year or for a prior taxable
45 year. The amounts of such accrued items shall be de-
46 termined with the applicable modifications described in
47 sections twelve and fifteen as if such accrued items were
48 includible or allowable for federal income tax purposes.

49 (3) No item of income, gain, loss or deduction which
50 is accrued under this subsection shall be taken into ac-
51 count in determining West Virginia adjusted gross in-
52 come or the West Virginia itemized deduction for any
53 subsequent taxable period.

54 (4) The accruals under this subsection shall not be re-
55 quired if the individual files with the tax commissioner a
56 bond or other security acceptable to the tax commissioner,
57 conditioned upon the inclusion of amounts accruable
58 under this subsection in West Virginia adjusted gross in-
59 come for one or more subsequent taxable years as if the
60 individual had not changed his resident status.

61 (d) Minimum Tax.—Where two returns are required
62 under this section, the total of the taxes due thereon shall
63 not be less than would be due if the West Virginia taxable
64 incomes reportable on the two returns were includible in
65 one return.

66 (e) Prorations.—Where two returns are required under
67 this section, the West Virginia standard deduction allow-
68 able under sections fourteen and thirty-four, the West
69 Virginia personal exemptions allowable under sections
70 sixteen and thirty-six shall be prorated, under regulations
71 of the tax commissioner, between the two returns to re-
72 flect the portions of the entire taxable year during which
73 the individual was a resident and a nonresident.

Sec. 55. *Declarations of Estimated Tax.*—(a) Require-
2 ment of Declaration.—Every resident and nonresident in-
3 dividual shall make a declaration of his estimated tax for
4 the taxable year, containing such information as the tax
5 commissioner may prescribe by regulations or instruc-
6 tions, if his West Virginia adjusted gross income, other
7 than from wages on which tax is withheld under this
8 article, can reasonably be expected to exceed four hun-

9 dred dollars plus the sum of the West Virginia personal
10 exemptions to which he is entitled.

11 (b) Definition of Estimated Tax.—The term “estimated
12 tax” means the amount which an individual estimates
13 to be his income tax under this article for the taxable
14 year, less the amount which he estimates to be the sum of
15 any credits allowable against the tax.

16 (c) Joint Declaration of Husband and Wife.—A hus-
17 band and Wife.—A husband and wife may make a joint
18 declaration of estimated tax as if they were one taxpayer,
19 in which case the liability with respect to the estimated
20 tax shall be joint and several. No joint declaration may
21 be made if husband and wife are separated under a decree
22 of divorce or of separate maintenance, or if they have
23 different taxable years. If a joint declaration is made but
24 husband and wife elect to determine their taxes under
25 this article separately, the estimated tax for such year
26 may be treated as the estimated tax of either husband or
27 wife, or may be divided between them, as they may elect.

28 (d) Time for Filing Declaration.—A declaration of
29 estimated tax of an individual other than a farmer shall

30 be filed on or before the fifteenth day of April of the tax-
31 able year, except that if the requirements of subsection
32 (a) are first met—

33 (1) after the first day of April and before the second
34 day of June of the taxable year, the declaration shall be
35 filed on or before the fifteenth day of June, or

36 (2) after the first day of June and before the second
37 day of September of the taxable year, the declaration shall
38 be filed on or before the fifteenth day of September, or

39 (3) after the first day of September, of the taxable
40 year, the declaration shall be filed on or before the fif-
41 teenth day of January of the succeeding year.

42 (e) Declaration of Estimated Tax By a Farmer.—A
43 declaration of estimated tax of an individual having an
44 estimated West Virginia adjusted gross income from
45 farming for the taxable year which is at least two-thirds
46 of his total estimated West Virginia adjusted gross income
47 for the taxable year may be filed at any time on or before
48 the fifteenth day of January of the succeeding year, in
49 lieu of the time otherwise prescribed.

50 (f) Declaration of Estimated Tax of Forty Dollars or

51 Less.—A declaration of estimated tax of an individual
52 having a total estimated tax for the taxable year of forty
53 dollars or less may be filed at any time on or before the
54 fifteenth day of January of the succeeding year under
55 regulations of the tax commissioner.

56 (g) Amendments of Declaration.—An individual may
57 amend a declaration under regulations of the tax com-
58 missioner.

59 (h) Return As Declaration or Amendment.—If on or
60 before the fifteenth day of February of the succeeding
61 taxable year an individual files his return for the taxable
62 year for which the declaration is required, and pays there-
63 with the full amount of the tax shown to be due on the
64 return:

65 (1) such return shall be considered as his declaration,
66 if no declaration was required to be filed during the tax-
67 able year, but is otherwise required to be filed on or be-
68 fore the fifteenth day of January.

69 (2) such return, if filed on or before the fifteenth day
70 of January, shall be considered an amendment permitted
71 by subsection (g) if the tax shown on the return is greater

72 than the estimated tax shown in a declaration previously
73 made.

74 (i) Fiscal Year.—This section shall apply to a taxable
75 year other than a calendar year by the substitution of the
76 months of such fiscal year for the corresponding months
77 specified in this section.

78 (j) Short Taxable Year.—An individual having a tax-
79 able year of less than twelve months shall make a declara-
80 tion in accordance with regulations of the tax commis-
81 sioner.

82 (k) Declaration for Individual Under a Disability.—
83 The declaration of estimated tax for an individual who is
84 unable to make a declaration by reason of minority or
85 other disability shall be made and filed by his guardian,
86 committee, fiduciary or other person charged with the
87 care of his person or property, (other than a receiver in
88 possession of only a part of his property), or by his duly
89 authorized agent.

Sec. 56. *Payments of Estimated Tax.*—(a) General.—

2 The estimated tax with respect to which a declaration is
3 required shall be paid as follows:

4 (1) If the declaration is filed on or before the fifteenth
5 day of April of the taxable year, the estimated tax shall
6 be paid in four equal installments. The first installment
7 shall be paid at the time of the filing of the declaration,
8 and the second, third and fourth installments shall be
9 paid on the following fifteenth day of June, fifteenth day
10 of September, and fifteenth day of January, respectively.

11 (2) If the declaration is filed after the fifteenth day of
12 April and not after the fifteenth day of June of the tax-
13 able year, and is not required to be filed on or before the
14 fifteenth day of April of the taxable year, the estimated
15 tax shall be paid in three equal installments. The first
16 installment shall be paid at the time of the filing of the
17 declaration, and the second and third installments shall
18 be paid on the following fifteenth day of September and
19 fifteenth day of January, respectively.

20 (3) If the declaration is filed after the fifteenth day of
21 June and not after the fifteenth day of September of the
22 taxable year, and is not required to be filed on or before
23 the fifteenth day of June of the taxable year, the estimated
24 tax shall be paid in two equal installments. The first in-

25 stallment shall be paid at the time of the filing of the
26 declaration, and the second shall be paid on the following
27 fifteenth day of January.

28 (4) If the declaration is filed after the fifteenth day of
29 September of the taxable year, and is not required to be
30 filed on or before the fifteenth day of September of the
31 taxable year, the estimated tax shall be paid in full at the
32 time of the filing of the declaration.

33 (5) If the declaration is filed after the time prescribed
34 therefor, or after the expiration of any extension of time
35 therefor, paragraphs (2), (3), and (4) of this subsection
36 shall not apply, and there shall be paid at the time of
37 such filing all installments of estimated tax payable at or
38 before such time, and the remaining installments shall be
39 paid at the times at which, and in the amounts in which,
40 they would have been payable if the declaration had been
41 filed when due.

42 (b) Farmers.—If an individual referred to in section
43 55(e) (relating to income from farming) makes a declara-
44 tion of estimated tax after the fifteenth day of September
45 of the taxable year and on or before the following fifteenth

46 day of January, the estimated tax shall be paid in full at
47 the time of the filing of the declaration.

48 (c) Amendments of Declaration.—If any amendment
49 of a declaration is filed, the remaining installments, if any,
50 shall be rateably increased or decreased (as the case may
51 be) to reflect any increase or decrease in the estimated
52 tax by reason of such amendment, and if any amendment
53 is made after fifteenth day of September of the taxable
54 year, any increase in the estimated tax by reason thereof
55 shall be paid at the time of making such amendment.

56 (d) Application to Short Taxable Year.—This section
57 shall apply to a taxable year of less than twelve months
58 in accordance with regulations of the tax commissioner.

59 (e) Fiscal Year.—This section shall apply to a taxable
60 year other than a calendar year by the substitution of the
61 months of such fiscal year for the corresponding months
62 specified in this section.

63 (f) Installment Paid in Advance.—An individual may
64 elect to pay any installment of his estimated tax prior to
65 the date prescribed for its payment.

Sec. 57. *Extensions of Time.*—(a) General.—The tax

2 commissioner may grant a reasonable extension of time
3 for payment of tax or estimated tax (or any installment),
4 or for filing any return, declaration, statement, or other
5 document required pursuant to this article, on such terms
6 and conditions as he may require. Except for a taxpayer
7 who is outside the United States, no such extension shall
8 exceed six months.

9 (b) Amount Determined As Deficiency.—The tax com-
10 missioner may, under regulations, extend the time for
11 payment of an amount determined as a deficiency for a
12 period not to exceed eighteen months from the date
13 designated for payment of the deficiency, and under ex-
14 ceptional circumstances, for a further period not to ex-
15 ceed twelve months. An extension under this subsection
16 may be granted only where it is established to the satisfac-
17 tion of the tax commissioner that the payment of a de-
18 ficiency upon the date designated for payment would
19 result in undue hardship. No extension shall be granted
20 if any part of the deficiency is due to ~~international~~ ^{intentional} dis-
21 regard of rules and regulations or to fraud.

22 (c) Claims in Bankruptcy or Receivership Proceedings.

*of the bankruptcy
receivership
corp*

23 Extension of time for payment of any portion of a claim
24 for tax allowed in bankruptcy, receivership or similar
25 proceedings, which is unpaid, may be granted subject to
26 the same provisions and limitations as in the case of a
27 deficiency in such tax.

28 (d) *Furnishing of Security.*—If any extension of time
29 is granted for payment of any tax or deficiency, the tax
30 commissioner may require the taxpayer to furnish a bond
31 or other security in an amount not exceeding twice the
32 amount for which the extension of time for payment is
33 granted on such terms and conditions as the tax commis-
34 sioner may require.

Sec. 58. *Requirements concerning Returns, Notices,*
2 *Records and Statements.*—(a) *General.*—The tax com-
3 missioner may prescribe regulations as to the keeping of
4 records, the content and form of returns and statements,
5 and the filing of copies of federal income tax returns and
6 determinations. The tax commissioner may require any
7 person, by regulation or notice served upon such person,
8 to make such returns, render such statements, or keep
9 such records, as the tax commissioner may deem sufficient

10 to show whether or not such person is liable under this
11 article for tax or for collection of tax.

12 (b) Partnerships.—Every partnership having a resident
13 partner or having any income derived from West Virginia
14 sources, determined in accordance with the applicable
15 rules of section thirty-two as in the case of a nonresident
16 individual, shall make a return for the taxable year setting
17 forth all items of income, gain, loss and deduction and
18 such other pertinent information as the tax commissioner
19 may by regulations and instructions prescribe.

20 (c) Information At Source.—The tax commissioner
21 may prescribe regulations and instructions requiring re-
22 turns of information to be made and filed on or before
23 the twenty-eighth day of February of each year as to the
24 payment or crediting in any calendar year of amounts of
25 six hundred dollars or more to any taxpayer under this
26 article. Such returns may be required of any person,
27 including lessees or mortgagors of real or personal prop-
28 erty, fiduciaries, employers, and all officers and employees
29 of this state, or of any municipal corporation or political
30 subdivision of this state, having the control, receipt, cus-

31 tody, disposal or payment of interest, rents, salaries,
32 wages, premiums, annuities, compensations, remunera-
33 tions, emoluments or other fixed or determinable gains,
34 profits or income, except interest coupons payable to
35 bearer. A duplicate of the statement as to tax withheld
36 on wages, required to be furnished by an employer to an
37 employee, shall constitute the return of information re-
38 quired to be made under this section with respect to such
39 wages.

40 (d) Notice of Qualification As Receiver, etc.—Every
41 receiver, trustee in bankruptcy, assignee for benefit of
42 creditors, or other like fiduciary shall give notice of his
43 qualification as such to the tax commissioner, as may be
44 required by regulation.

Sec. 59. *Report of Change in Federal Taxable Income.*—

2 If the amount of a taxpayer's federal taxable income re-
3 ported on his federal income tax return for any taxable
4 year is changed or corrected by the United States Internal
5 Revenue Service or other competent authority, or as the
6 result of a renegotiation of a contract or subcontract with
7 the United States, the taxpayer shall report such change

8 or correction in federal taxable income within ninety days
9 after the final determination of such change, correction,
10 or renegotiation, or as otherwise required by the tax
11 commissioner, and shall concede the accuracy of such
12 determination or state wherein it is erroneous. Any tax-
13 payer filing an amended federal income tax return shall
14 also file within ninety days thereafter an amended return
15 under this article, and shall give such information as the
16 tax commissioner may require. The tax commissioner
17 may by regulation prescribe such exceptions to the re-
18 quirements of this section as he deems appropriate.

Sec. 60. *Change of Election.*—Any election expressly
2 authorized by this article may be changed on such terms
3 and conditions as the tax commissioner may prescribe by
4 regulation.

Sec. 71. *Requirement of Withholding Tax From Wages.*
2 --(a) General.—Every employer maintaining an office
3 or transacting business within this state and making pay-
4 ment of any wages taxable under this article to a resident
5 or nonresident individual shall deduct and withhold from
6 such wages for each payroll period a tax computed in such

7 manner as to result, so far as practicable, in withholding
8 from the employee's wages during each calendar year an
9 amount substantially equivalent to the tax reasonably
10 estimated to be due under this article resulting from the
11 inclusion in the employee's West Virginia adjusted gross
12 income of his wages received during such calendar year.
13 The method of determining the amount to be withheld
14 shall be prescribed by regulations of the tax commissioner,
15 with due regard to the West Virginia withholding exemp-
16 tions of the employee; such method for the year one thou-
17 sand nine hundred sixty-one shall prescribe rates of with-
18 holding estimated by the tax commissioner to result in
19 the withholding during the portion of said year during
20 which withholding is in effect of an amount substantially
21 equivalent to the tax due for the entire year one thousand
22 nine hundred hundred sixty-one. This section shall not
23 apply to payments by the United States for service in the
24 armed forces of the United States.

25 (b) Withholding exemptions.—For purposes of this
26 section:

27 (1) An employee shall be entitled to the same number

28 of West Virginia withholding exemptions as the number
29 of withholding exemptions to which he is entitled for fed-
30 eral income tax withholding purposes. An employer may
31 rely upon the number of federal withholding exemptions
32 claimed by the employee, except where the employee
33 claims a higher number of West Virginia withholding
34 exemptions.

35 (2) The amount of each West Virginia exemption shall
36 be six hundred dollars whether the individual is a resi-
37 dent or a nonresident.

38 (c) Exception for certain nonresidents.—If the in-
39 come tax law of another state of the United States or of
40 the District of Columbia results in its residents being al-
41 lowed a credit under section forty sufficient to offset all
42 taxes required by this article to be withheld from the
43 wages of an employee, the tax commissioner may by reg-
44 ulation relieve the employers of such employees from the
45 withholding requirements of this article with respect to
46 such employees.

Sec. 72. *Information Statement for Employee.*—Every
2 employer required to deduct and withhold tax under this

3 article from the wages of an employee, or who would have
4 been required so to deduct and withhold tax if the em-
5 ployee had claimed no more than one withholding exemp-
6 tion, shall furnish to each such employee in respect of the
7 wages paid by such employer to such employee during
8 the calendar year on or before the fifteenth day of Feb-
9 ruary of the succeeding year, or, if his employment is
10 terminated before the close of such calendar year, on the
11 date on which the last payment of the wages is made, a
12 written statement as prescribed by the tax commissioner
13 showing the amount of wages paid by the employer to the
14 employee, the amount deducted and withheld as tax, and
15 such other information as the tax commissioner shall
16 prescribe.

Sec. 73. *Credit for Tax Withheld.*—Wages upon which
2 tax is required to be withheld shall be taxable under this
3 article as if no withholding were required, but any amount
4 of tax actually deducted and withheld under this article
5 in any calendar year shall be deemed to have been paid
6 to the tax commissioner on behalf of the person from
7 whom withheld, and such persons shall be credited with

8 having paid that amount of tax for the taxable year begin-
9 ning in such calendar year. For a taxable year of less
10 than twelve months, the credit shall be made under regu-
11 lations of the tax commissioner.

Sec. 74. *Employer's Return and Payment of Withheld*
2 *Taxes.*—(a) General.—Every employer required to de-
3 duct and withhold tax under this article shall, for each
4 calendar quarter, on or before the last day of the month
5 following the close of such calendar quarter, file a with-
6 holding return as prescribed by the tax commissioner and
7 pay over to the tax commissioner the taxes so required to
8 be deducted and withheld; but the tax commissioner may,
9 by regulation, provide that every such employer shall on
10 or before the fifteenth day of each month pay over to the
11 tax commissioner, or a depository designated by the tax
12 commissioner, the taxes so required to be deducted and
13 withheld if such taxes aggregate one hundred dollars or
14 more for the preceding calendar month. Where the ag-
15 gregate amount so deducted and withheld by any em-
16 ployer is less than twenty-five dollars in a calendar quar-
17 ter and the aggregate for the calendar year can reasonably

18 be expected to be less than one hundred dollars, the tax
19 commissioner may by regulation permit an employer to
20 file an annual return. The tax commissioner may, if he
21 believes such action necessary for the protection of the
22 revenues, require any employer to make such return and
23 pay to him the tax deducted and withheld at any time, or
24 from time to time.

25 (b) Deposit in Trust for Tax Commissioner.—When-
26 ever any employer fails to collect, truthfully account for,
27 pay over the tax, or make returns of the tax as required
28 in this section, the tax commissioner may serve a notice
29 requiring such employer to collect the taxes which become
30 collectible after service of such notice, to deposit such
31 taxes in a bank approved by the tax commissioner, in a
32 separate account, in trust for and payable to the tax com-
33 missioner, and to keep the amount of such tax in such
34 account until payment over to the tax commissioner.
35 Such notice shall remain in effect until a notice of can-
36 cellation is served by the tax commissioner.

Sec. 75. *Employer's Liability for Withheld Taxes.*—

2 Every employer required to deduct and withhold tax un-

3 der this article is hereby made liable for such tax. To the
4 extent not inconsistent with the provisions of this article,
5 all the provisions of sections eighty to ninety-three
6 of this article relating to assessment and collection of
7 taxes, and to penalties, additions to tax, and interest in
8 respect thereto, shall apply to every employer required
9 to withhold tax under this article. For such purposes any
10 amount required to be withheld and paid over to the tax
11 commissioner shall be considered the tax of the employer.
12 Any amount of tax actually deducted and withheld under
13 this article shall be held to be a special fund in trust for
14 the tax commissioner. No employee shall have any right
15 of action against his employer in respect to any moneys
16 deducted and withheld from his wages and paid over to
17 the tax commissioner in compliance or in intended com-
18 pliance with this article.

Sec. 76. *Employer's Failure to Withhold.*—If an em-
2 ployer fails to deduct and withhold tax as required, and
3 thereafter the tax against which such tax may be credited
4 is paid, the tax so required to be deducted and withheld
5 shall not be collected from the employer, but the em-

6 ployer shall not be relieved from liability for any penal-
7 ties, interest, or additions to the tax otherwise applicable
8 in respect of such failure to deduct and withhold.

Sec. 80. *General Provisions.*—(a) *Regulations.*—The
2 tax commissioner shall administer and enforce the tax
3 herein imposed and shall issue all needful regulations,
4 rules, and interpretations thereof. All regulations, rules
5 and interpretations issued by the tax commissioner shall
6 be filed with the secretary of state of West Virginia as
7 provided in section three of article two of chapter five of
8 this code, provided that all such regulations, rules and
9 interpretations originally issued by the tax commissioner
10 during the year one thousand nine hundred sixty-one shall
11 take effect immediately upon the filing of copies thereof
12 in the office of the secretary of state.

13 (b) *Investigations.*—The tax commissioner for the
14 purpose of ascertaining the correctness of any returns or
15 for the purpose of making an estimate of taxable income
16 of any person shall have the power to examine or cause
17 to be examined, by any agent or any representative desig-
18 nated by the tax commissioner, any books, papers, records

19 or memoranda bearing upon the matters required to be
20 included in the return and may require the attendance of
21 the person rendering the return or the attendance of any
22 other person having knowledge in the premises and may
23 take testimony and may require material proof with pow-
24 er to administer oath to such person or persons.

25 (c) Returns by Tax Commissioner.—If any taxpayer
26 fails to file a return at the time required by law or by reg-
27 ulation made under authority of law, the tax commissioner
28 may proceed to make a return from any information
29 available.

30 (d) Secrecy of Returns.—Except when required in an
31 official investigation or proceedings in court involving
32 taxes payable under this article and except as provided in
33 subparagraph (e) of this section, it shall be unlawful for
34 any officer or employee of the state to divulge or make
35 known in any manner the amount of income or any par-
36 ticulars set forth or disclosed in any report, declaration or
37 return required to be filed with the tax commissioner by
38 this article or any regulation of the tax commissioner
39 issued hereunder.

40 (e) Reciprocal Exchange.—The tax commissioner may
41 permit the proper officer of the United States or any state,
42 territory or political subdivision of the United States, or
43 his authorized representative, to inspect reports, declara-
44 tions, or returns filed with the tax commissioner or may
45 furnish to such officer or representative a copy of any such
46 document provided such other jurisdiction grants sub-
47 stantially similar privileges to the tax commissioner or to
48 the attorney general of this state. Subsection (d) of this
49 section shall not be construed to prohibit the publication
50 of statistics so classified as to prevent the identification of
51 particular reports and the items thereof.

Sec. 81. *Assessment.*—(a) *Taxes Shown On Return.*—

2 The tax commissioner shall assess all taxes determined
3 by the taxpayer or the tax commissioner to be due as
4 shown by any return filed under this article and may at
5 any time within the period prescribed for assessment
6 make a supplemental assessment whenever it is ascer-
7 tained that any assessment is imperfect or incomplete in
8 any material respect.

9 (b) *Assessment of Deficiencies.*—Whenever the tax
10 commissioner shall determine that any tax due under this

11 article has not been paid in full, the tax commissioner
12 shall make an assessment against the taxpayer of such
13 deficiency in tax, addition to tax, interest or penalties as
14 he may find to be due, and shall give the taxpayer written
15 notice of such assessment.

16 (c) Abatement of Assessments.—The tax commis-
17 sioner may abate in whole or in part any assessment
18 which he shall determine to be erroneous.

Sec. 82. *Deficiency Procedure.*—(a) Informal Proceed-
2 ings.—Prior to assessing a deficiency as provided in sec-
3 tion eighty-one the tax commissioner may notify the tax-
4 payer in writing that he proposes to assess a deficiency
5 and afford the taxpayer in person or by his representative
6 an opportunity to be heard with respect to the proposed
7 deficiency, either by the filing of a written protest against
8 the proposed deficiency or by informal conference or both.

9 (b) Judicial Review of Proposed Assessments.—At
10 least ninety days prior to assessing a deficiency (except a
11 deficiency occurring as the result of a mathematical error
12 on the face of the return) the tax commissioner shall no-
13 tify the taxpayer in writing of the amount of the de-

14 ficiency to be assessed and the reasons therefor. Such
15 notice shall advise the taxpayer that the assessment will
16 be made unless the taxpayer within said ninety day period
17 either pays the amount to be assessed or commences suit
18 for a declaratory judgment or decree as to his liability
19 therefor. If the taxpayer neither pays the amount of the
20 deficiency proposed nor commences a suit for a declara-
21 tory judgment or decree within said ninety day period,
22 the assessment shall be made. A taxpayer who has been
23 notified of the determination of a deficiency under this
24 article may apply to a circuit court for a declaratory
25 judgment or decree under article thirteen, chapter fifty-
26 five of this code. In the case of a resident taxpayer, appli-
27 cation may be made to the circuit court of the county of
28 the taxpayer's residence. In the case of a nonresident tax-
29 payer, such application may be made to the circuit court
30 of the county in which the taxpayer is employed or if the
31 taxpayer is not employed within the state, to the circuit
32 court of the county in which income producing property
33 of the taxpayer is situated. In all other cases, such appli-
34 cations shall be made to the circuit court of the county in

35 which the seat of the state government is located. No as-
36 sessment shall be made of any proposed deficiency while
37 proceedings to secure a declaratory judgment or decree
38 are pending. In any such proceedings all questions re-
39 lating to the liability of the taxpayer for the taxable year
40 or years shall be determined. The tax commissioner shall
41 have the burden of proof on any issue raised by him sub-
42 sequent to the commencement of the proceedings.

Sec. 83. *Collection.*—The tax commissioner shall collect
2 the taxes, additions to tax, interest and penalties imposed
3 by this article. In addition to all other remedies available
4 for the collection of debts due the state, the tax commis-
5 sioner may proceed by foreclosure of the lien provided in
6 section eighty-four or by distraint and sale under section
7 eighty-five. Every assessment made by the tax commis-
8 sioner under this article shall constitute a judgment and
9 may be collected as judgments are collected.

Sec. 84. *Lien.*—If any person liable to pay any tax as-
2 sessed under this article, neglects or refuses to pay the
3 same within ten days after written notice of assessment
4 of the same, the amount of said tax, including any addi-

5 tions to tax, interest and penalties, together with any
6 costs that may accrue, shall become a lien in the favor of
7 the State of West Virginia upon all property and rights
8 to property whether real or personal belonging to such
9 person.

10 The lien imposed by this section shall arise at the time
11 the assessment is made and shall continue until the lia-
12 bility for the amount so assessed shall be satisfied or be-
13 comes unenforceable by reason of lapse of time.

14 The lien imposed by this section shall be subject to the
15 restrictions and conditions embodied in article ten-c,
16 chapter thirty-eight of this code and any amendment
17 made or which may hereafter be made thereto.

18 The tax commissioner, pursuant to regulations pre-
19 scribed by him, may issue his certificate of release of any
20 lien imposed pursuant to this section upon finding that
21 the liability for the amount assessed has been fully satis-
22 fied or has become legally unenforceable or is adequately
23 secured by bond or other security.

Sec. 85. *Distrain.*—If any tax imposed by this article
2 required to be paid at the time a return is filed or any

3 portion of such tax be not so paid or if an assessment of
4 the tax be made by the tax commissioner and notice
5 thereof be given as required by this article or if any in-
6 stallment of a tax be not paid within thirty days after the
7 same becomes due, the tax commissioner may issue a war-
8 rant directed to the sheriff of any county of the state com-
9 manding him to levy upon and sell the real and personal
10 property of the person owing the same found within his
11 county for the payment of the amount thereof with the
12 added penalties, interest, and the cost of executing the
13 warrant, and to return such warrant to the tax commis-
14 sioner and pay to him the money collected by virtue
15 thereof by a time to be therein specified and not less than
16 sixty days from the date of such warrant. In case the tax
17 commissioner shall find that the collection of a tax would
18 be jeopardized by the delay of thirty days as above pro-
19 vided he may issue his warrant within said period. The
20 sheriff shall within five days after the receipt of the war-
21 rant file with the clerk of the county court a copy thereof
22 and thereupon the clerk shall enter in the judgment
23 docket the name of the taxpayer mentioned in the war-

24 rant and the amount of the tax or portion thereof and
25 penalties for which the warrant is issued and the date
26 when such copy is filed and thereupon the amount so
27 docketed shall become a lien upon the title to and interest
28 in real property or chattels real of the person against
29 whom it is issued in the same manner as a judgment duly
30 docketed in the office of such clerk. The said sheriff shall
31 thereupon proceed upon the same in all respects, with like
32 effect, and in the same manner prescribed by law in re-
33 spect to executions issued against property upon judg-
34 ments of a court of record, and shall be entitled to the
35 same fees for his services in executing the warrant, to be
36 collected in the same manner. In the discretion of the tax
37 commissioner a warrant of like terms, force and effect
38 may be issued and directed to any officer or employee of
39 the tax commissioner and in the execution thereof such
40 officer or employee shall have all the powers conferred by
41 law upon sheriffs, but shall be entitled to no fee or com-
42 pensation in excess of actual expenses paid in the per-
43 formance of such duty. If a warrant be returned not satis-
44 fied in full, the tax commissioner shall have the same

45 remedies to enforce the claim for taxes against the tax-
46 payer as if the state had recovered judgment against the
47 taxpayer for the amount of the tax.

Sec. 86. *Overpayments, Credits and Refunds.*—(a) Re-
2 funding of Overpayments.—In the case of any overpay-
3 ment of any tax, addition to tax, interest or penalties im-
4 posed by this article, whether by reason of error on the
5 part of the taxpayer, excessive withholding, or an er-
6 roneous assessment of tax, the tax commissioner shall re-
7 fund the amount of the overpayment to the taxpayer. If
8 any overpayment is not refunded within six months from
9 the date a claim for the refund thereof is filed by the tax-
10 payer, interest shall be paid upon the amount of such
11 overpayment at the rate of six per centum from the date
12 of the filing of the claim for the refund thereof. The tax
13 commissioner may prescribe by regulation the form and
14 content of a claim for refund.

15 (b) Credits.—At the election of the taxpayer, the
16 amount of any overpayment may be applied by the tax-
17 payer as a credit against his liability for taxes under this
18 article for the subsequent year.

19 (c) Petitions for Refund.—In the event that any over-
20 payment of tax, addition to tax, interest or penalty paid
21 under this article is not refunded or credited pursuant to
22 subsection (a) or (b) of this section within six months
23 after the filing of a claim for the refund thereof, or in the
24 event such claim is denied by the tax commissioner, the
25 taxpayer may file a petition for refund pursuant to sec-
26 tion two (a) of article one, chapter eleven of this code. Not-
27 withstanding the period of limitations prescribed in said
28 section, a taxpayer may file a petition for refund at the
29 latest within six months after a final determination by
30 the United States Internal Revenue Service or other com-
31 petent authority of an overpayment in the taxpayer's fed-
32 eral income tax liability.

Sec. 87. *Limitations On Assessment.*—(a) General Rule.

2 —The amount of any tax imposed by this article shall be
3 assessed within three years after the due date of the re-
4 turn, provided that in the case of a false or fraudulent
5 return filed with the intent to evade tax or in the case no
6 return is filed the tax may be assessed or a proceeding in
7 court for the collection of such tax may be begun at any

8 time, provided further that in the event the tax commis-
9 sioner notifies the taxpayer of a deficiency pursuant to
10 section eighty-two (b) of this article, within three years
11 after the due date of the return, the deficiency may be
12 assessed within ninety days from the date of such notice
13 or from the final determination of any declaratory judg-
14 ment proceeding brought by the taxpayer.

15 (b) Extension By Agreement.—The tax commissioner
16 and the taxpayer may by a written agreement extend the
17 period within which the tax may be assessed in accordance
18 with regulations promulgated by the state tax commis-
19 sioner.

20 (c) Deficiency In Federal Tax.—In the event of a final
21 determination by the United States Internal Revenue
22 Service or other competent authority of a deficiency in
23 the taxpayer's federal income tax liability, the period of
24 limitation upon assessment of a deficiency reflecting said
25 final determinations in the tax imposed by this article
26 shall not expire until ninety days after the tax commis-
27 sioner is advised of the determination by the taxpayer
28 as provided in section fifty-nine.

Sec. 88. *Limitations On Collection.*—No proceeding
2 shall be maintained in any court to collect any tax im-
3 posed by this article or to subject any property to sale
4 under the lien provided for in section eighty-four of this
5 article after the expiration of the period of limitation on
6 assessment provided in section eighty-seven, unless the
7 tax was assessed prior to the expiration of such period.

Sec. 89. *Interest.*—Taxes imposed by this article, if not
2 paid when due, shall bear interest at the rate of six per
3 centum per annum from the due date of the return. Each
4 assessment made by the tax commissioner shall bear in-
5 terest at the rate of six per centum per annum from the
6 date thereof if not paid within ten days from receipt of
7 notice thereof by the taxpayer.

Sec. 90. *Additions to Tax.*—(a) *Delinquency.*—In the
2 case of any failure to make or file a return or whenever
3 the full amount of the tax or any portion or deficiency
4 thereof has not been paid, as required by this article, un-
5 less it be shown that such failure be due to reasonable
6 cause and not due to willful neglect there shall be added
7 to the tax five per centum if a failure is not for more than

8 thirty days with an additional five per centum for each
9 additional thirty days or fraction thereof during which
10 failure shall continue not to exceed twenty-five per
11 centum in the aggregate. The amount so added to any tax
12 shall be collected at the same time and in the same man-
13 ner and as a part of the tax unless the tax has been paid
14 before the discovery of the neglect by the tax commis-
15 sioner in which case the amount so added shall be col-
16 lected in the same manner as the tax; provided, that in
17 all cases of delinquency, interest shall be assessed.

18 (b) **Fraud.**—In the case of the filing of any false or
19 fraudulent return with intent to evade the tax imposed
20 by this article, or in the case of a willful failure to file a
21 return with intent to evade the tax, there shall be added
22 to the tax an amount equal fifty per centum thereof which
23 shall be in lieu of the addition to tax provided for in sec-
24 tion ninety (a) of this article. The burden of proving
25 fraud, willfulness, or intent to evade tax shall be upon
26 the tax commissioner.

Sec. 91. *Penalties.*—(a) **Failure to Collect, Account**
2 **For, And Pay Over Tax, or Attempt to Defeat or Evade**

3 Tax.—Any person required under this article to collect,
4 account for, and pay over any tax imposed by this article,
5 who willfully fails to truthfully account for and pay over
6 such tax, and any person who willfully attempts in any
7 manner to evade or defeat any tax imposed by this article
8 or the payment thereof, shall, in addition to other penal-
9 ties provided by law, be liable to a money penalty equal
10 to the total amount evaded, or not collected, or not ac-
11 counted for and paid over.

12 (b) Fraudulent Statement or Failure to Furnish State-
13 ment to Employee.—Any person required under the pro-
14 visions of section seventy-two of this article to furnish a
15 statement to an employee who willfully furnishes a false
16 or fraudulent statement, or who willfully fails to furnish
17 a statement in the manner, at the time, and showing the
18 information required by said section, or regulations pre-
19 scribed thereunder, shall for each such failure be subject
20 to a money penalty of fifty dollars.

21 (c) Person Defined.—The term “person” as used in this
22 section includes, but is not limited to, an officer or em-
23 ployee of a corporation, or a member or employee of a

24 partnership, who, as such officer, employee or member, is
25 under a duty to perform the act in respect of which the
26 violation occurs.

27 (d) Collection of Penalty.—Any money penalty may
28 be collected in the same way as the tax imposed by this
29 article.

Sec. 92. *Crimes.*—(a) Failure to File Returns, Submit
2 Information, or Pay Tax.—Any person required under
3 this article to pay any tax or estimated tax, or required
4 by law to make a return or declaration, keep any records,
5 or supply any information, for the purposes of the com-
6 putation, assessment, withholding, or collection of any
7 tax or estimated tax imposed by this article, who, at the
8 time or times required by law, willfully fails to pay such
9 tax or estimated tax, make such return or declaration,
10 keep such records, or supply such information, or willfully
11 furnishes false and fraudulent information, shall, in addi-
12 tion to other penalties provided by law, be guilty of a
13 misdemeanor and, upon conviction thereof, be fined not
14 more than one thousand dollars or imprisoned for not
15 more than one year, or both, together with the costs of

16 prosecution.

17 (b) Failure to Collect and Pay Over Tax, or Attempt
18 to Defeat or Evade Tax.—Any person required under this
19 article to collect, account for, and pay over any tax im-
20 posed by this article, who willfully fails to collect or with-
21 hold or truthfully to account for and pay over such tax,
22 and any person who willfully attempts in any manner to
23 evade or defeat any tax imposed by this article or the pay-
24 ment thereof, shall, in addition to other penalties provided
25 by law, be guilty of a misdemeanor and, upon conviction
26 thereof, be fined not more than one thousand dollars or
27 imprisoned for not more than one year, or both, together
28 with the costs of prosecution.

29 (c) False Returns or Certification.—Any person who
30 willfully makes and subscribes a return which he does
31 not believe to be true and correct as to every material
32 matter, or who willfully makes a certification (as defined
33 in subsection (c) of section fifty-three of this article) that
34 is false, shall be guilty of a misdemeanor, and, upon con-
35 viction thereof, shall be fined not more than one thousand
36 dollars or imprisoned for not more than one year, or both,

37 together with ^{the} costs of prosecution. *Col. Blumenthal*

38 (d) Person Defined.—The term “person” as used in
39 this section includes, but is not limited to, an officer or
40 employee of a corporation, or a member or employee of
41 a partnership, who, as such officer, employee or member,
42 is under a duty to perform the act in respect of which the
43 violation occurs.

44 (e) State Officers or Employees.—Any officer or em-
45 ployee of the state who violates section eighty (d) of this
46 article shall be guilty of a misdemeanor, and, upon con-
47 viction thereof, shall be fined not more than one thousand
48 dollars or imprisoned for not more than one year, or both,
49 together with the costs of prosecution.

50 (f) Prima Facie Evidence.—The certificate of the tax
51 commissioner signed by his own hand to the effect that a
52 tax has not been paid, that a return has not been filed, or
53 that information has not been supplied as required by or
54 under the provisions of this article shall be prima facie
55 evidence that such tax has not been paid, that such return
56 has not been filed, or that such information has not been
57 supplied.

58 (g) Venue.—The tax commissioner or any other public
59 officer initiating proceedings against any person under
60 this section shall do so in the county wherein such person
61 resides, or if such person be a nonresident, then in the
62 county wherein such nonresident is employed, or, if such
63 nonresident is not employed in this state then in the
64 county in which the seat of the State government is
65 located.

Sec. 93. *Disposition of Revenue.*—Of the revenue col-
2 lected under this article the state treasurer shall retain
3 in his hands such amount as the tax commissioner may
4 determine to be necessary for refunds to which taxpayers
5 shall be entitled under this article. The state treasurer
6 shall, after reserving such refund fund, on or before the
7 tenth day of each month pay all interest, penalties and
8 taxes collected under this article and remaining to his
9 credit in banks, banking houses or trust companies at the
10 close of business on the last day of the preceding month,
11 into the general fund of the state treasury.

Sec. 94. *Effective Date; Severability.*—(a) Effective
2 Date.—The provisions of this article shall take effect im-

3 mediate. Such provisions shall apply to all taxable
4 years ending on or after the thirty-first day of December
5 one thousand nine hundred sixty-one, and to the entirety
6 of each such year, including that part which has elapsed
7 prior to the effective date of this article. Such provisions
8 shall also apply to taxable years beginning prior to and
9 ending in the year one thousand nine hundred sixty-one,
10 but the tax imposed for any such year shall be one-
11 twelfth of a tax for the full year multiplied by the num-
12 ber of months elapsed from the first day of January nine-
13 teen hundred sixty-one until the end of the taxable year.

14 (b) Severability.—If any provision of this article or
15 the application thereof shall for any reason be adjudged
16 by any court of competent jurisdiction to be invalid, such
17 judgment shall not affect, impair or invalidate the re-
18 mainder of said article, but shall be confined in its opera-
19 tion to the provision thereof directly involved in the con-
20 troversy in which such judgment shall have been ren-
21 dered, and the applicability of such provision to other
22 persons or circumstances shall not be affected thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Samuel Davis, 2nd
Chairman Senate Committee

Mrs. H. H. Withrow
Chairman House Committee

Originated in the Senate.

Takes effect from passage passage.

Howard Meyer
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard Beaman
President of the Senate

Julius W. Singleton
Speaker House of Delegates

The within approved this the 14th
day of February, 1961.

Tom Barrow
Governor

