

Recd May 31

1/1

ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

Com. Sub. for

Senate Bill No. 1

(By Mr. Mathews, Mr. President)

Passed May 26, 1933

In Effect from Passage

Passage.

Takes effect..

Originating in the.

Clerk of the House of Delegates.

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Chairman Senate Committee.

Chairman House Committee.

(Com. Sub. for S. B. No. 1)

[Passed May 26, 1933; in effect from passage.]

Be it enacted by the Legislature of West Virginia:

That sections one through seventeen, inclusive, article thirteen,

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chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and are hereby repealed and sections one through twenty-three, inclusive, be and are hereby enacted in lieu thereof; and that sections eighty-one through eighty-four, inclusive, article twelve, chapter eleven of said code be and are hereby repealed and article twelve-(a) be and is hereby enacted and added to chapter eleven.

Section 1. When used in this article, the term "person" or the term "company" herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commissioner to use same as the tax period in lieu of the calendar year.

"Sale" or "sales" includes the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale.

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15 "Taxpayer" means any person liable for any tax here-
16 under.

17 "Gross income" means the gross receipts of the taxpayer
18 received as compensation for personal services and the gross
19 receipts of the taxpayer derived from trade, business, com-
20 merce or sales and the value proceeding or accruing from
21 the sale of tangible property (real or personal), or service,
22 or both, and all receipts by reason of the investment of the
23 capital of the business engaged in, including interest, discount,
24 rentals, royalties, fees or other emoluments however designated
25 and without any deductions on account of the cost of property
26 sold, the cost of materials used, labor costs, taxes, royalties, in-
27 terest or discount paid or any other expense whatsoever.

28 "Business," as used in this article, shall include all activi-
29 ties engaged in or caused to be engaged in with the object
30 of gain or economic benefit either direct or indirect. The
31 production of raw materials or manufactured products,
32 which are used or consumed in the main business, shall be
33 deemed business engaged in taxable in the class in which
34 it falls.

35 "Gross proceeds of sales" means the value actually pro-

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36 ceeding from the sale of tangible property without any deduc-
37 tion on account of the cost of property sold or expenses of
38 any kind. The words "gross income" and "gross
39 proceeds of sales" shall not be construed to include cash
40 discounts allowed and taken on sales; the proceeds of sale
41 of goods, wares or merchandise returned by customers when
42 the sale price is refunded either in cash or by credit; or the
43 sale price of any article accepted as part payment on any
44 new article sold, if the full sale price of the new article is
45 included in the "gross income" or "gross proceeds of sales".

46 "Service business or calling" shall include all nonprofes-
47 sional activities engaged in for other persons for a consid-
48 eration, which involve the rendering of a service as distin-
49 guished from the production or sale of tangible property, but
50 shall not include the services rendered by an employee to his
51 employer.

52 The classification of "wholesaler" or "jobber" shall apply
53 only to a person doing a regularly organized jobbing business,
54 known to the trade as such, selling to licensed retail merchants
55 or jobbers, or to others in wholesale quantities and at wholesale
56 prices.

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Sec. 2. There is hereby levied and shall be collected
2 annual privilege taxes against the persons, on account of
3 the business and other activities, and in the amounts to be
4 determined by the application of rates against values or
5 gross income, as follows:

6 (a) Upon every person engaging or continuing within
7 this state in the business of producing for sale, profit or
8 commercial use any natural resource products, the amount
9 of such tax to be equal to the value of the articles pro-
10 duced as shown by the gross proceeds derived from the sale
11 thereof by the producer, except as hereinafter provided,
12 multiplied by the respective rates as follows: Coal, one per
13 cent; limestone or sandstone, quarried or mined, one and one-
14 half per cent; oil, three per cent; natural gas, in excess of the
15 value of five thousand dollars, six per cent; blast furnace slag,
16 three per cent; sand, gravel or other mineral product, not
17 quarried or mined, three per cent; timber, one and one-half
18 per cent; other natural resource products, two per cent. The
19 measure of this tax is the value of the entire production in this
20 state, regardless of the place of sale or the fact that delivery
21 may be made to points outside the state.

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22 (b) Upon every person engaging or continuing within
23 this state in the business of manufacturing, compounding,
24 or preparing for sale, profit, or commercial use, either di-
25 rectly or through the activity of others in whole or part,
26 any article or articles, substance or substances, commodity
27 or commodities, or electric power not produced by public
28 utilities taxable under other provisions of this section, the
29 amount of the tax to be equal to the value of the articles, sub-
30 stance, commodities or electric power manufactured, com-
31 pounded or prepared for sale, as shown by the gross pro-
32 ceeds derived from the sale thereof by the manufacturer
33 or person compounding or preparing the same (ex-
34 cept as hereinafter provided), multiplied by a rate
35 of three-tenths of one per cent. The measure of
36 this tax is the value of the entire product manufactured,
37 compounded, or prepared in this state for sale, profit or
38 commercial use, regardless of the place of sale or the fact
39 that deliveries may be made to points outside the state.

40 If any person liable for any tax under subdivisions (a)
41 or (b) shall ship or transport his products or any part
42 thereof out of the state without making sale of such products,

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43 the value of the products in the condition or form in which
44 they exist immediately before transportation out of the state
45 shall be the basis for the assessment of the tax imposed in said
46 subdivisions; and the tax commissioner shall prescribe equita-
47 ble and uniform rules for ascertaining such value.

48 In determining value, however, as regards sales from one
49 to another of affiliated companies or persons, or under other
50 circumstances where the relation between the buyer and
51 seller is such that the gross proceeds from the sale are not
52 indicative of the true value of the subject matter of the
53 sale, the tax commissioner shall prescribe uniform and
54 equitable rules for determining the value upon which such
55 privilege tax shall be levied, corresponding as nearly as pos-
56 sible to the gross proceeds from the sale of similar products
57 of like quality or character where no common interest exists
58 between the buyer and seller but the circumstances and
59 conditions are otherwise similar;

60 (c) Upon every person engaging or continuing within this
61 state in the business of selling any tangible property whatso-
62 ever, real or personal, except sales by any person engaging or
63 continuing in the business of horticulture, agriculture or graz-

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64 ing, stocks, bonds or other evidences of indebtedness, there is
65 likewise hereby levied, and shall be collected, a tax equivalent
66 to three-fourths of one per cent of the gross income of the
67 business, except that in the case of a wholesaler or jobber, the
68 tax shall be equal to fifteen one-hundredths of one per cent of
69 the gross income of the business;

70 '(d) Upon any person engaging or continuing within this
71 state in any public service or utility business, except rail-
72 road, railroad car, express, pipe line, telephone and tele-
73 graph companies, water carriers by steamboat or steamship
74 and motor vehicle carriers, there is likewise hereby levied and
75 shall be collected taxes on account of the business engaged in
76 equal to the gross income of the business multiplied by the
77 respective rates as follows: Street and interurban and electric
78 railways, one per cent; water companies, four per cent, except
79 as to income from municipally owned water plants; electric
80 light and power companies, four per cent on sales and demand
81 charges for domestic purposes and commercial lighting and
82 three per cent on sales and demand charges for all other pur-
83 poses, except as to income from municipally owned plants pro-
84 ducing or purchasing electricity and distributing same;

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85 natural gas companies, three per cent on the gross income, said
86 gross income for this purpose to be determined by deducting
87 from gross income from all sales to consumers the amount of
88 the tax paid by the taxpayer under subdivision (a) of this
89 section; toll bridge companies, three per cent; and upon
90 all other public service or utility business, two per
91 cent. The measure of this tax shall not include gross in-
92 come derived from commerce between this state and other
93 states of the United States or between this state and foreign
94 countries.

95 (e) Upon every person engaging or continuing within
96 this state in the business of contracting, the tax shall be equal
97 to two per cent of the gross income of the business;

98 (f) Upon every person engaging or continuing within this
99 state in the business of banking, the tax shall be equal to five-
100 tenths of one per cent of the gross income of the business;

101 (g) Upon every person engaging or continuing within this
102 state in the business of operating a theater, opera house,
103 moving picture show, vaudeville, amusement park, dance hall,
104 skating rink, race track, radio broadcasting station or any
105 other place at which amusements are offered to the public, the

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106 tax shall be equal to one and one-half per cent of the gross in-
107 come of the business;

108 (h) Upon every person engaging or continuing within
109 this state in any service business or calling not otherwise
110 specifically taxed under this act, there is likewise hereby levied
111 and shall be collected a tax equal to one per cent of the gross
112 income of any such business;

113 (i) Upon every person engaging or continuing within
114 this state in any business, profession, trade, occupation or
115 calling not included in the preceding subdivisions or any other
116 provision of this act (but not including a person engaging or
117 continuing in the business of horticulture, agriculture or graz-
118 ing) there is likewise hereby levied and shall be collected, a
119 tax equal to one per cent of the gross income of any such
120 activity. This subdivision shall apply to the gross incomes of
121 persons taxable under other subdivisions hereof not derived
122 from the exercise of privileges taxable thereunder.

123 Gross income included in the measure of the tax under sub-
124 divisions (a) and (b) hereof, except in the case of production
125 of natural gas, shall neither be added nor deducted in com-
126 puting the tax levied under the other subdivisions of this
127 article.

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128 A person exercising any privilege taxable under subdivi-
129 sions (a) or (b) of this section and engaging in the business
130 of selling his natural resource or manufactured products at
131 retail in this state shall be required to make returns of the
132 gross proceeds of such retail sales and pay the tax imposed in
133 subdivision (c) of this section for the privilege of engaging
134 in the business of selling such natural resource or manufac-
135 tured products at retail in this state. But any person exercis-
136 ing any privilege taxable under subdivisions (a) or (b) of this
137 section and engaging in the business of selling his natural re-
138 source or manufactured products to manufacturers, whole-
139 salers or jobbers, and in the case of limestone, sand, gravel or
140 other mineral product, to commercial consumers, shall not
141 be required to pay the tax imposed in subdivision (c) of this
142 section for the privilege of selling such natural resource prod-
143 ucts or manufactured products at wholesale.

144 Manufacturers exercising any privilege taxable under sub-
145 division (b) of this section shall not be required to pay the
146 tax imposed in subdivision (c) of this section for the priv-
147 ilege of selling their manufactured products for delivery out-
148 side of this state, but the gross income derived from the sale

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149 of such manufactured products outside of this state shall be
150 included in determining the measure of the tax imposed on
151 such manufacturer in said subdivision (b).

152 A person exercising privileges taxable under the other
153 subdivisions of this section, producing coal, oil, natural gas,
154 minerals, timber or other natural resource products the pro-
155 duction of which is taxable under subdivision (a), and using
156 or consuming same in his business, shall be deemed to be en-
157 gaged in the business of mining and producing coal, oil,
158 natural gas, minerals, timber or other natural resource
159 products for sale profit or commercial use, and shall be re-
160 quired to make returns on account of the production of the
161 business showing the gross proceeds or equivalent in accord-
162 ance with uniform and equitable rules for determining the
163 value upon which such privilege tax shall be levied, corre-
164 sponding as nearly as possible to the gross proceeds from the
165 sale of similar products of like quality or character by other
166 taxpayers, which rules the tax commissioner shall prescribe.

Sec. 3. There shall be an exemption in every case, except as
2 to the privileges taxable under section two (i) of this article,
3 of twenty-five dollars in amount of tax computed under the

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4 provisions of this article. A person exercising a privilege
5 taxable hereunder for a fractional part of a tax year shall
6 be entitled to an exemption of the sum bearing the proportion
7 to twenty-five dollars that the period of time the privilege is
8 exercised bears to a whole year. Only one exemption shall
9 be allowed to any one person, whether he exercise one or more
10 privileges taxable hereunder.

11 In computing the tax levied under section two (i) of this
12 article, there shall be deducted from gross income an exemption
13 of six dollars in amount of tax, plus an exemption of four
14 dollars in the case of a married person living with a spouse
15 actually dependent upon such person for support, and an addi-
16 tional exemption of two dollars for each person actually de-
17 pendent upon the taxpayer; but the maximum exemption in
18 every case shall be twenty-four dollars. A person exercising
19 any privilege taxable under section two-(i) of this article,
20 whose gross income exceeds six hundred dollars, if single or
21 if married and not living with husband or wife, or whose
22 gross income exceeds one thousand dollars, if married and
23 living with husband or wife dependent upon such person for
24 support, shall file a return or returns as required by sections
25 four and five of this article.

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26 The provisions of this article shall not apply to: (a) In-
27 surance companies which pay the state of West Virginia a
28 tax upon premiums; (b) mutual savings banks not having a
29 capital stock represented by shares and nonprofit mutual
30 building and loan associations operated for the exclusive
31 benefit of their members; (c) nonprofit cemetery companies
32 organized and operated for the exclusive benefit of their
33 members; (d) societies, organizations and associations organ-
34 ized and operated for the exclusive benefit of their members
35 and not for profit; and (e) corporations, associations and
36 societies organized and operated exclusively for religious or
37 charitable purposes.

Sec. 4. The taxes levied hereunder shall be payable in
2 quarterly installments on or before the expiration of thirty
3 days from the end of the quarter in which they accrue. The
4 taxpayer shall, within thirty days from the expiration of each
5 quarter, make out an estimate of the tax for which he is liable
6 for such quarter, verify the same by oath, and mail the same
7 together with a remittance in the form required by section
8 eleven of this article for the amount of the tax, to the office
9 of the tax commissioner. The tax commissioner, if he deems it

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10 necessary to insure payment of the tax, may require return
11 and payment under this section for other than quarter year
12 periods. In estimating the amount of the tax due for each
13 quarter the taxpayer may deduct one-fourth of the total ex-
14 emption allowed for the year. When the total tax for which
15 any person is liable under this article does not exceed the sum
16 of one hundred dollars in any year, the taxpayer may pay the
17 same quarterly as aforesaid or pay the same at the end of the
18 month next following the close of the tax year.

Sec. 5. On or before thirty days after the end of the tax
2 year each person liable for the payment of a tax under section
3 two of this article shall make a return showing the gross
4 proceeds of sales or gross income of business, trade or calling,
5 and compute the amount of tax chargeable against him in
6 accordance with the provisions of this article and deduct the
7 amount of quarterly payments (as hereinbefore provided),
8 if any, and transmit with his report a remittance in the form
9 required by section eleven of this article covering the residue
10 of the tax chargeable against him to the office of the tax com-
11 sioner; such return shall be verified by the oath of the
12 taxpayer, if made by an individual, or by the oath of the

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13 president, vice president, secretary or treasurer of a corpora-
14 tion, if made on behalf of a corporation. If made on behalf
15 of a partnership, joint adventure, association, trust, or any
16 other group or combination acting as a unit, any individual
17 delegated by such firm, copartnership, joint adventure,
18 association, trust or any other group or combination acting
19 as a unit shall make the oath on behalf of the taxpayer. If
20 for any reason it is not practicable for the individual tax-
21 payer to make the oath, the same may be made by any duly
22 authorized agent. The tax commissioner, for good cause
23 shown, may extend the time for making the annual return
24 on the application of any taxpayer and grant such reasonable
25 additional time within which to make the same as may, by
26 him, be deemed advisable.

Sec. 6. If the taxpayer shall make any error in computing
2 the tax assessable against him, the tax commissioner shall
3 correct such error or reassess the proper amount of taxes,
4 and notify the taxpayer of his action by mailing to him
5 promptly a copy of the corrected assessment, and any addi-
6 tional tax for which such taxpayer may be liable shall be
7 paid within ten days after the receipt of such statement.

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8 If the amount already paid exceeds that which should
9 have been paid on the basis of the tax so recomputed, the
10 excess so paid shall be immediately refunded to the taxpayer
11 upon the requisition of the tax commissioner to the state auditor,
12 who shall issue his warrant on the treasurer, which shall be
13 payable out of any funds available for the purpose. The tax-
14 payer may, at his election, apply an overpayment credit to
15 taxes subsequently accruing hereunder.

Sec. 7. If any person fail or refuse to make a return,
2 either in whole or in part, or if the tax commissioner has
3 reasonable ground to believe that any return made is so
4 deficient as not to form the basis of a satisfactory assessment
5 of the tax, he may proceed as he deems best to obtain infor-
6 mation on which to base the assessment of the tax. The tax
7 commissioner may by himself or his duly appointed agent,
8 make examination of the books, records and papers, and
9 audit the accounts of any such person, and may take the
10 evidence, administered by himself or his agent, on oath, of
11 any person who he may believe shall be in possession of
12 any relevant information. As soon as possible after procur-
13 ing such information as he may be able to obtain as to any

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14 person failing or refusing to make a return, the tax commis-
15 sioner shall proceed to assess the tax and shall notify the
16 person assessed of the amount of the tax. The assessment of
17 the tax by the tax commissioner shall be final as to any person
18 who refused to make a return.

Sec. 8. If any person, having made the return and paid
2 the tax as provided by this article, feels aggrieved by the
3 assessment so made upon him for any year by the tax com-
4 missioner, he may apply to the board of public works by peti-
5 tion, in writing, within thirty days after notice is mailed to
6 him by the tax commissioner, for a hearing and a correction of
7 the amount of the tax so assessed upon him by the tax com-
8 missioner, in which petition shall be set forth the reasons why
9 such hearings should be granted and the amount such tax
10 should be reduced. The board shall promptly consider such
11 petition, and may grant such hearing or deny the same. If
12 denied, the petitioner shall be forthwith notified thereof; if
13 granted, the board shall notify the petitioner of the time and
14 place fixed for such hearing. After such hearing, the board
15 may make such order in the matter as may appear to it just
16 and lawful, and shall furnish a copy of such order to the peti-

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17 tioner. Any person improperly charged with any tax and
18 required to pay the same may recover the amount paid, to-
19 gether with interest, in any proper action or suit against the
20 tax commissioner, and the circuit court of the county in
21 which the taxpayer resides or is located shall have original
22 jurisdiction of any action to recover any tax improperly col-
23 lected. It shall not be necessary for the taxpayer to protest
24 against the payment of the tax or to make any demand to
25 have the same refunded in order to maintain such suit. In
26 any suit to recover taxes paid or to collect taxes, the court
27 shall adjudge costs to such extent and in such manner as
28 may be deemed equitable. Upon presentation of a certified
29 copy of a judgment so obtained, the auditor shall issue his
30 warrant upon any funds in the treasury available for the pay-
31 ment thereof.

32 No injunction shall be awarded by any court or judge to
33 restrain the collection of the taxes imposed by this article,
34 or any part of them, due from any person, except upon the
35 ground that the assessment thereof was in violation of the
36 constitution of the United States, or of this state; or that
37 the same were fraudulently assessed; or that there was a

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38 mistake made in the amount of taxes assessed upon such
39 person. In the latter case, no such injunction shall be
40 awarded, unless application shall first have been made to the
41 board of public works to correct the alleged mistake and the
42 board shall have refused to do so, which fact shall be stated
43 in the bill, and unless the complainant shall have paid into
44 the treasury of the state all taxes appearing by the bill of
45 complaint to be owing.

Sec. 9. The assessment of taxes herein made and the re-
2 turns required therefor shall be for the year ending on the
3 thirty-first day of December. If the taxpayer, in exercising a
4 privilege taxable under this article, keeps the books reflecting
5 the same on a basis other than the calendar year, he may, with
6 the assent of the tax commissioner, make his annual returns
7 and pay taxes for the year covering his accounting period, as
8 shown by the method of keeping his books.

Sec. 10. The tax imposed by this article shall be in addition
2 to all other licenses and taxes levied by law as a condition
3 precedent to engaging in any business, trade or calling. A
4 person exercising a privilege taxable under this article, subject
5 to the payment of all licenses and charges which are condition

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6 precedent to exercising the privilege taxed, may exercise the
7 privilege for the current tax year upon the condition that he
8 shall pay the tax accruing under this article.

Sec. 11. All remittances of taxes imposed by this article
2 shall be made to the tax commissioner, by bank draft, certified
3 check, cashier's check, money order, or certificate of deposit,
4 who shall issue his receipts therefor to the taxpayers and
5 shall pay the moneys into the state treasury to be kept and
6 accounted for as provided by law.

Sec. 12. A tax due and unpaid under this article shall be
2 a debt due the state and shall be a lien upon the property
3 used in the business or occupation upon which it is imposed.
4 The lien shall have the same priority as the lien of the general
5 property tax. A penalty of five per cent of the tax shall be
6 added for any default for thirty days or less and for each
7 succeeding thirty days elapsing before payment there
8 shall be added an additional penalty of one per cent. The
9 additional one per cent penalty shall not apply until a ten day
10 notice of delinquency shall have been sent to the taxpayer.

Sec. 13. The tax commissioner may by himself, or a duly
2 appointed agent mentioned in section twenty-two of this article,

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3 collect taxes due and unpaid under this article, together with all
4 accrued penalties, by action in assumpsit, motion for judgment,
5 or other appropriate proceeding in the circuit court of the
6 county in which the privilege taxed had been exercised. After
7 delinquency shall have continued sixty days, the tax commis-
8 sioner may proceed, by himself or agent, in the circuit court of
9 the county in which the privilege taxed had been exercised to
10 obtain an injunction restraining the further exercise of the
11 privilege until full payment shall have been made of all taxes
12 and penalties due under this article. In any proceeding under
13 this section upon judgment or decree for the plaintiff he shall
14 be awarded his costs.

Sec. 14. The tax imposed by this article shall be a lien
2 upon the property of any person subject to the provisions
3 hereof who shall sell out his business or stock of goods, or
4 shall quit business, and such person shall be required to make
5 the return provided for under section five of this article with-
6 in thirty days after the date he sold out his business or stock
7 of goods, or quit business, and his successor in business shall
8 be required to withhold sufficient of the purchase money to
9 cover the amount of such taxes due and unpaid until such

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10 time as the former owner shall produce a receipt from the
11 tax commissioner showing that the taxes have been paid. If
12 the purchaser of a business or stock of goods shall fail to
13 withhold purchase money as above provided, and the taxes
14 shall be due and unpaid after the thirty day period allowed,
15 he shall be personally liable for the payment of the taxes
16 accrued and unpaid on account of the operation of the business
17 by the former owner.

Sec. 15. The secretary of state shall withhold the issuance
2 of any certificate of dissolution or withdrawal in the case of
3 any corporation organized under the laws of this state, or
4 organized under the laws of another state and admitted to do
5 business in this state, until the receipt of a notice from the
6 tax commissioner to the effect that the tax levied under this
7 article against any such corporation has been paid or pro-
8 vided for, if any such corporation is a taxpayer under this
9 article, or until he shall be notified by the tax commissioner
10 that the applicant is not subject to pay a tax hereunder.

Sec. 16. All state, county and district officers and agents
2 making contracts on behalf of the state of West Virginia or
3 any political subdivision thereof shall withhold payment in

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4 the final settlement of such contracts until the receipt of a
5 certificate from the tax commissioner to the effect that all
6 taxes levied or accrued under this act against the contractor
7 with respect to such contracts have been paid.

Sec. 17. In the distribution, voluntary or compulsory, in
2 receivership, bankruptcy or otherwise, of the estate of any
3 person, firm or corporation, all taxes due and unpaid under
4 this article shall be paid from the first money available for
5 distribution in priority to all claims, except taxes and debts
6 due the United States. Any person charged with the admin-
7 istration of an estate who shall violate the provisions of this
8 section shall be personally liable for any taxes accrued and
9 unpaid under this article, which are chargeable against the
10 person, firm or corporation whose estate is in administration.

Sec. 18. The tax commissioner may, with the approval of
2 the governor, appoint not more than twelve agents for the
3 entire state for the collection of delinquent taxes, delinquent
4 license taxes and all penalties; all delinquent taxes, delinquent
4-a license taxes and all penalties so collected shall be, by the tax
5 commissioner, covered into the state treasury to the credit of
6 the state general fund. The salary of every such agent ap-

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7 pointed shall be determined by the state tax commissioner by
8 and with the approval of the governor.

Sec. 19. The tax commissioner for the more effective collec-
2 tion of the tax may file with the clerk of the county court of
3 any county a certified copy of an assessment of taxes under
4 this article. A certificate so filed shall be recorded in a book
5 provided for the purpose and thereafter shall constitute bind-
6 ing notice of the lien created by this article upon all lands of
7 the taxpayer located in the county as against all parties whose
8 interest arose after such recordation. Upon payment of taxes
9 delinquent under this article the lien of which shall have been
10 recorded the tax commissioner shall certify in duplicate the
11 fact and amount of payment and the balance due, if any, and
12 shall forward the certificates, one to the taxpayer and one to
13 the clerk of the county court of the county where the taxpayer
14 shall have been listed as delinquent. The clerk of the county
15 court shall record the certificate in the book in which releases
16 are recorded, without payment of any additional fee. From
17 the date that such a certificate is admitted to record the land
18 of the taxpayer in the county shall be free from any lien for

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19 taxes under this article accrued to the date that the certificate
20 was issued.

Sec. 20. The tax commissioner may distrain upon any
2 goods, chattels, or intangibles represented by negotiable evi-
3 dences of indebtedness, of any taxpayer delinquent under
4 this article for the amount of all taxes and penalties accrued
5 and unpaid hereunder. The commissioner may require the
6 assistance of the sheriff of any county of the state in levying
7 such distress in the county of which such sheriff is an officer.
8 A sheriff so collecting taxes due hereunder shall be entitled
9 to compensation in the amount of all penalties collected over
10 and above the principal amount of the tax due, but in no
11 case shall such compensation exceed twenty-five dollars. All
12 taxes and penalties so collected shall be reported within ten
13 days after collection to the tax commissioner, who shall pre-
14 scribe by general regulation the manner of remittance of
15 such funds and of allowing the collecting officer the com-
16 pensation due him under this section.

Sec. 21. It shall be unlawful for any person to refuse to
2 make the return provided to be made in section five of this
3 article; or to make any false or fraudulent return or false

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4 statement in any return, with intent to defraud the state or
5 to evade the payment of the tax, or any part thereof, im-
6 posed by this article; or for any person to aid or abet another
7 in any attempt to evade the payment of the tax, or any part
8 thereof, imposed by this article; or for the president, vice
9 president, secretary or treasurer of any corporation to make
10 or permit to be made for any corporation or association any
11 false return, or any false statement in any return required
12 in this article, with the intent to evade the payment of any
13 tax hereunder. And any person violating any of the pro-
14 visions of this section shall be guilty of a misdemeanor and,
15 on conviction thereof, shall be fined not more than one thou-
16 sand dollars or imprisoned not exceeding one year in the
17 county jail or punished by both fine and imprisonment, at
18 the discretion of the court, within the limitations aforesaid.
19 In addition to the foregoing penalties, any person who shall
20 knowingly swear to or verify any false or fraudulent return,
21 or any return containing any false or fraudulent statement,
22 with the intent aforesaid, shall be guilty of the offense of
23 false swearing, and, on conviction thereof, shall be punished
24 in the manner provided by law. Any corporation for which

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25 a false return, or a return containing a false statement, as
26 aforesaid, shall be made, shall be guilty of a misdemeanor
27 and shall be punished by a fine of not more than one thousand
28 dollars. The circuit and criminal courts of the county in
29 which the offender resides, or, if a corporation, in which it
30 carries on business, shall have concurrent jurisdiction to en-
31 force this section.

Sec. 22. The administration of this article is vested in
2 and shall be exercised by the tax commissioner who shall pre-
3 scribe forms and reasonable rules of procedure in conformity
4 with this article for the making of returns and for the ascer-
5 tainment, assessment and collection of the taxes imposed
6 hereunder; and the enforcement of any of the provisions of
7 this article in any of the courts of the state shall be under
8 the exclusive jurisdiction of the tax commissioner, who shall
9 require the assistance of and act through the prosecuting
10 attorney of any county where suit is brought; but the prose-
11 cuting attorney of any county shall receive no fees or com-
12 pensation for services rendered in enforcing this article in
13 addition to the salary paid by the county to such officer.

Sec. 23. If a part of this article is for any reason declared

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2 unconstitutional, or otherwise invalid, the decision of the
3 court shall not affect the validity of any remaining portion.

ARTICLE 12-A.

Section 1. When used in this article the term "company"
2 shall include any partnership, joint adventure, joint stock
3 company or association.

4 The phrase "motor vehicle carrier" shall mean any person
5 engaged in the transportation of passengers or property, or
6 both, for compensation by motor propelled vehicle for the
7 operation of which a permit or certificate of convenience or
8 convenience and necessity is required by law.

9 The term "ton-mile" shall be a unit of transportation
10 meaning transportation of one net ton in weight a distance
11 of one mile.

12 The term "passenger-mile" means the transportation of
13 one passenger a distance of one mile.

14 The term "car-mile" means the operation of a railroad car
15 over a distance of one mile.

16 The term "barrel-mile" means the transportation of the
17 equivalent of a barrel of oil a distance of one mile.

18 The phrase "one thousand cubic feet-mile" means the

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19 transportation of one thousand cubic feet of gas, measured
20 at sixty degrees Fahrenheit and a pressure of thirty inches
21 of mercury a distance of one mile.

22 The term "wire-mile" means the equivalent of a single
23 metallic telephone or telegraph conductor one mile in length.

Sec. 2. Every railroad corporation doing business in the
2 state shall pay an annual privilege tax for each calendar year
3 for the privilege of doing business in the state. The tax shall
4 be five-tenths of one per cent of the value of the total prop-
5 erty, tangible and intangible, of the corporation in the state as
6 determined by the assessment made during the calendar year
7 by the board of public works for the purposes of the general
8 property tax.

9 It is the purpose of this section to levy a privilege tax upon
10 railroad corporations for the privilege of engaging in busi-
11 ness conducted entirely within this state, and it is not intended
12 to impose any tax or charge upon interstate or foreign com-
13 merce. The return required for purposes of the general prop-
14 erty tax shall suffice for purposes of this section.

15 No public corporation of the state shall levy a license or
16 privilege tax on the business taxed under this section.

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Sec. 3. Every person or corporation operating a steamboat,
2 steamship or other floating property for the transportation
3 of passengers or freight, and doing business within the state
4 shall pay to the state an annual privilege tax for each calendar
5 year. The tax shall be two and one-half per cent of the gross in-
6 come from business beginning and ending entirely within the
7 state and a like percentage of its remaining gross income earned
8 within the state, to be determined as follows:

9 Ascertain the total gross income from all business not con-
10 fined to this state which begins, ends or passes through the
11 state and determine both the total ton-miles of freight so
12 hauled and the ton-miles of such business actually done within
13 the limits of this state. The tax shall be assessed against a
14 sum bearing the proportion to the amount of gross income
15 so determined that the ton-miles of such business done in this
16 state bear to the total ton-miles of such business. This tax
17 shall be in addition to all other license taxes or charges to
18 which such taxpayers are subject under the law of this state,
19 and shall be measured in terms of gross income for the year
20 ending December thirty-first preceding.

Sec. 4. Every motor vehicle carrier operating on the

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2 public highways of this state and every railroad car corpora-
3 tion, express corporation or company, pipe line corporation,
4 telephone and telegraph corporation doing business in the
5 state shall pay to the state an annual privilege tax for each
6 calendar year for the privilege of doing business in the state.

7 This tax shall be equal to the gross income from all business
8 beginning and ending within the state multiplied by the
9 respective rates as follows: Motor vehicle carriers, railroad
10 car corporations, express corporations or companies, one and
11 one half per cent; pipe line corporations, three and one-half
12 per cent; telephone corporations two and three-fourths per
13 cent; and telegraph corporations, five per cent.

Sec. 5. In addition to the tax imposed in the preceding
2 sections, every motor vehicle carrier operating on the public
3 highways of the state and every railroad corporation, rail-
4 road car corporation, express corporation or company, pipe
5 line corporation, telephone and telegraph corporation doing
6 business in this state shall pay an annual privilege tax for
7 each calendar year for the privilege of doing business in the
8 state, to be determined as follows:

9 (a) The tax as to motor vehicle carriers shall be equal

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10 to one and one-half per cent of the net income earned within
11 the state, such income to be determined by ascertaining a
12 sum bearing the proportion to the total net income from
13 passenger and freight traffic that the business done in West
14 Virginia, measured in passenger-miles of passengers carried in
15 the state as to passenger traffic, and in ton-miles as to freight
16 traffic, bears to all business done, measured in like fashion;

17 (b) The tax as to railroad corporations shall be equal to
18 four per cent of the net income earned within the state, such
19 income to be determined by ascertaining a sum bearing the
20 proportion to total net income of the corporation that its busi-
21 ness done in West Virginia, measured in ton-miles, bears to
22 all business done, measured in like fashion;

23 (c) The tax as to railroad car corporations and as to ex-
24 press corporations or companies shall be one and one-half per
25 cent of net income earned within the state, such income to be
26 determined by ascertaining a sum bearing the proportion to
27 the total net income of the corporation or company that its
28 business done in West Virginia, measured in car-miles of car
29 operation, bears to all business done, measured in like fashion;

30 (d) The tax as to pipe line corporations shall be three and

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31 one-half per cent of net income earned within the state, such
32 income to be determined by ascertaining a sum bearing the pro-
33 portion to the total net income of the corporation that its busi-
34 ness done in West Virginia, measured in barrel-miles in the
35 case of oil and of thousand cubic feet-miles in the case of gas,
36 bears to all business done, measured in like fashion;

37 (e) The tax as to telephone and telegraph corporations shall
38 be two and three-fourths per cent of net income earned within
39 the state as to telephone corporations, and five per cent as to
40 telegraph corporations, such income to be determined by
41 ascertaining a sum bearing the proportion to the total net
42 income of the corporation that its business done in West Vir-
43 ginia, measured in wire-miles, bears to all business done,
44 measured in like fashion;

45 (f) In computing the tax imposed by this section the total
46 net income of a taxpayer, who shall have been taxed under
47 the preceding section, shall be reduced by an amount bearing
48 the proportion to such total net income that the gross income
49 of the taxpayer which is the measure of the tax under the pre-
50 ceding section bears to its total gross income from all business
51 done wherever conducted. This section shall not apply to a

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52 taxpayer taxed under the preceding section and engaged exclu-
53 sively in business within this state.

Sec. 6. The taxpayer under this article shall file an annual
2 return with the state tax commissioner upon a form pre-
3 scribed by the commissioner setting out the following and
4 such other information as that officer may deem necessary
5 or useful in aid of the assessment and computation of the tax:

6 (1) The gross income, from all business done within the
7 state, namely, business beginning and ending entirely within
8 the state;

9 (2) The total gross income of the business wherever con-
10 ducted;

11 (3) The net income of the business wherever conducted.
12 For this purpose the determination of net income for purposes
13 of the net income tax due the government of the United States
14 under the laws of the United States shall be taken as final;

15 (4) The total amount of business done in this state, meas-
16 ured in the units hereinbefore prescribed. The tax commissioner
17 may designate a single month in the tax year as the period for
18 which the amount of business done in this state, measured in
19 the units hereinbefore prescribed, shall be reported and shall

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20 fix the total amount of business done in the state for the whole
21 tax year by multiplying the amount determined for the desig-
22 nated month by twelve. For the tax period from the date
23 this act takes effect through December thirty-first, one thou-
24 sand nine hundred thirty-three, the tax commissioner may
25 designate any month in that period for purposes hereof;

26 (5) The total amount of business done, wherever con-
27 ducted, measured in the units hereinbefore prescribed.

28 Every return shall be signed and sworn to by the taxpayer,
29 if a natural person, and if a corporation, shall be signed and
30 sworn to by its president, vice president, secretary or principal
31 accounting officer. A return may be made at the same time
32 and as a supplement to the return required for purposes of
33 the general property tax and the tax commissioner may make
34 use of relevant information in both in assessing the tax im-
35 posed by this article.

Sec. 7. The assessment of taxes under this article and the
2 returns required therefor shall be for the year ending on the
3 thirty-first day of December. If the taxpayer in exercising
4 a privilege taxable under this article, keeps the books reflect-
5 ing the same on a basis other than the calendar year, he may,

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6 with the assent of the tax commissioner, make his annual
7 returns and pay taxes for the year covering his accounting
8 period as shown by the method of keeping his books. In
9 case of the exercise of a privilege taxable hereunder for a
10 fractional part of a tax year, the tax shall be computed in
11 like proportion to the tax for a full year.

Sec. 8. The total amount of tax imposed by this article
2 shall be paid on or before the first day of April following
3 the close of the calendar year, or if the return should be
4 made on the basis of a taxpayer's fiscal year, then, on the
5 first day of the fourth month following the close of the fiscal
6 year. The taxpayer may by writing, filed with the tax com-
7 missioner, elect to pay the tax in four equal quarterly install-
8 ments in which case the first installment shall be paid on the
9 date hereinabove prescribed, the second installment shall be
10 paid on the first day of the fourth month, the third install-
11 ment shall be paid on the first day of the seventh month, and
12 the fourth installment on the first day of the tenth month,
13 after such date.

Sec. 9. The tax imposed under this article shall be in
2 addition to all license taxes or charges to which the privileges

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3 taxed herein are subject under the law of this state. It is
4 the purpose of this article to rest a fair share of the tax
5 burden, commensurate with the benefits received, upon those
6 exercising privileges taxed hereby within this state.

Sec. 10. The amount of the tax imposed by this article
2 shall be a debt due the state and shall be a lien on all the
3 property and assets of the taxpayers within the state prior
4 to all other liens and charges except the lien of property
5 taxes with which the lien hereby created shall be on a parity.
6 A penalty of one per cent per month shall be added to the
7 amount of the tax for each month of delinquency and shall be
8 secured by the lien herein provided.

Sec. 11. The tax commissioner shall, between the first
2 and fifteenth day of February in every year, mail a notice
3 of delinquency, together with a statement of the total amount
4 of taxes and penalties due, to the last known post office
5 address of each delinquent taxpayer. The cost of publication
6 hereunder shall be paid by the tax commissioner, when al-
7 lowed by the board of public works, out of the moneys in the
8 treasury.

9 Not less than thirty days after giving notice of delinquency

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10 as provided in the preceding paragraph the tax commis-
11 sioner shall certify to the secretary of state a list of all
12 taxpayers delinquent under this article. The secretary of
13 state shall preserve the list in his office and a certificate
14 from him that any taxpayer mentioned in such certificate is
15 delinquent in the payment of the tax imposed by this article
16 shall be prima facie evidence thereof. Within thirty days
17 after receipt of such certificate by the secretary of state it
18 shall be the duty of the attorney general to institute a suit
19 in equity in Kanawha county, in the name of the state, in
20 which such delinquent taxpayers shall be made defendants.
21 In the bill so filed it shall be sufficient to allege that the de-
22 fendants have failed to pay taxes hereunder, and that each
23 of them justly owes the state the amount of privilege tax and
24 penalties stated therein, which amount shall be computed up
25 to the first day of the month succeeding that in which the
26 bill was filed. No such defendant shall plead that the tax
27 commissioner failed to give notice as prescribed in this section.
28 If upon the hearing of such suit it shall appear to the
29 court that any defendant has failed to pay any such tax and
30 accrued penalties, the court shall enter a decree against such

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31 defendant for the amount due, including the costs of the
32 proceeding or such portion thereof as the court shall appor-
33 tion to be paid by such defendant. If the decree be not paid
34 when made the court shall enter a decree forfeiting the
35 charter, rights and franchise of such defendant, if it be a
36 domestic corporation, revoking the franchises and privileges
37 to hold property and transact business in the state, if it be
38 a foreign corporation, and revoking all franchises, licenses
39 and privileges to conduct the business engaged in if such
40 defendant be an individual. The money decreed may be col-
41 lected by the tax commissioner as other claims due the state
42 are collected.

43 The court may on motion of the attorney general grant an
44 injunction against any such defendant restraining the exer-
45 cise of any privilege or the transaction of any business within
46 the state until such decree including the costs be paid. When
47 two or more taxpayers are included in one suit the court
48 shall apportion the cost thereof among them as it may deem
49 just.

Sec. 12. It shall be unlawful for any person to refuse to
2 make the return required to be made by section six of this

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3 article; or to make any false or fraudulent return or false
4 statement in any return, with intent to defraud the state or
5 to evade the payment of the tax, or any part thereof, im-
6 posed by this article; or for any person to aid or abet another
7 in any attempt to evade the payment of the tax, or any part
8 thereof, imposed by this article; or for the president, vice
9 president, secretary or treasurer of any corporation to make,
10 or permit to be made, for any corporation or association any
11 false return or any false statement in any return required
12 in this article, with the intent to evade the payment of any
13 tax hereunder. A person violating any of the provisions
14 of this section shall be guilty of a misdemeanor, and, on
15 conviction thereof, shall be fined not more than one thousand
16 dollars or imprisoned not exceeding one year in the county
17 jail or punished by both fine and imprisonment, at the dis-
18 cretion of the court, within the limitations aforesaid. In
19 addition to the foregoing penalties, any person who shall
20 knowingly swear to or verify any false or fraudulent return,
21 or any return containing any false or fraudulent statement,
22 with the intent aforesaid, shall be guilty of the offense of
23 false swearing, and, on conviction thereof, shall be punished

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24 in the manner provided by law. Any corporation for which
25 a false return, or a return containing a false statement as
26 aforesaid shall be made, shall be guilty of a misdemeanor
27 and may be punished by a fine of not more than one thou-
28 sand dollars. The circuit and criminal courts of the county
29 in which the offender resides, or, if a corporation, in which
30 it carries on business, shall have concurrent jurisdiction to
31 enforce this section.

Sec. 13. If a part of this article is for any reason de-
2 clared unconstitutional, or otherwise invalid, the decision of
3 the court shall not affect the validity of any remaining
4 portion.

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Quia D. H. 12
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B. M. Spier
Speaker of the House of Delegates.

Geo. S. Hall
Clerk of the House of Delegates.

A. B. Matthews
President of the Senate.

Samuel D. Smith
Clerk of the Senate.

James D. Smith
Chairman House Committee.

The within is *approved*

this *25* day of *June*, 1933.

Filed in the office of the Secretary of State
of West Virginia.

JUN 3 1933

Wm. S. O'BRIEN,
Secretary of State

H. S. Kump
Governor.