WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1935

ENROLLED

HOUSE BILL No. 441

(By Mr. Pelton)

PASSED March 9th, 1935

In Effect 90 days from Passage
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto article thirteen-A, relating to a personal net income tax.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended by the addition thereto of article thirteen-A, to read as follows:

ARTICLE XIII-A.

Section 1. Short Title. This act shall be known and may be cited as the "Personal Income Tax Act."

Sec. 2. Definitions. For the purpose of this act, the word:

"Commissioner" means the state tax commissioner.

"Taxpayer" includes any individual or fiduciary, subject to
4 a tax imposed by this article, or whose income is in whole or
5 in part subject to a tax imposed by this article.
6 "Individual" means a natural person.
7 "Person" includes individuals, fiduciaries and partnerships.
8 "Fiduciary" means a guardian, trustee, executor, administrator,
9 or receiver, conservator, or any person, whether individual
10 or corporate, acting in any fiduciary capacity, for any person,
11 trust or estate.
12 "Resident" applies only to natural persons and includes for
13 the purpose of determining liability to the tax imposed by this
14 article upon or with reference to the income of any taxable
15 year, any person domiciled in the state of West Virginia, and
16 any other person who maintains a permanent place of abode
17 within the state, and spends in the aggregate more than six
18 months of the taxable year within the state.
19 "Non-resident" when used in connection with this article
20 shall apply only to natural persons whose domicile is without
21 the state of West Virginia, or who maintains a place of abode
22 without the state, and spends in the aggregate more than six
23 months of the taxable year without the state.
“Tax year” means the calendar year in which the tax is payable.

“Income year” means the calendar year or the fiscal year, upon the basis of which the net income is computed under this article, if no fiscal year has been established it means the calendar year.

“Fiscal year” means an accounting period of twelve months, ending the last day of any month other than December.

“Paid” for the purpose of the deductions under this article means “paid or accrued” or “paid or incurred” and the words “paid or accrued”, “paid or incurred” shall be construed according to the methods of accounting upon the basis of which the net income is computed under this article.

“Received” for the purpose of the computation of the net income under this article means “received or accrued” and the words “received or accrued” shall be construed according to the methods of accounting upon the basis of which the net income is computed under this article.

“Net income” shall mean the gross income as defined in sections twenty-one and twenty-four less the deductions allowed by section twenty-five.
"Gross income" means such income as defined in sections twenty-one and twenty-four of this article.

"Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

"Stock dividends" means new stock issued for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

"Withholding agent" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, renumerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income taxable under this article.

"Includes" and "including" when used in a definition con-
tained in this article shall not be deemed to exclude other
things otherwise within the meaning of the term defined.

Sec. 3. Every resident of this state, annually shall pay, upon
his entire net income, after deducting the exemptions provided
in section thirty-three of this article, a tax computed on the
following rates:

5 On the first one thousand dollars of net income or any part
6 thereof one per cent.

7 On the second one thousand dollars of net income or any
8 part thereof one and one-fourth per cent.

9 On the third one thousand dollars of net income or any part
10 thereof one and one-half per cent.

11 On the fourth one thousand dollars of net income or any
12 part thereof one and three-fourths per cent.

13 On the fifth one thousand dollars of net income or any part
14 thereof two per cent.

15 On all net income in excess of the sixth thousand, three
16 per cent.

Sec. 4. Every individual not a resident of this state, an-
2 nually, shall pay upon his entire net income from all tangible
3 property owned and all intangible property having a business
4 situs within the state and from every business, trade, pro-
5 fession or occupation carried on in this state, after deducting
6 the exemptions provided in section thirty-three of this article,
7 a tax at the rates specified in section three of this article.

Sec. 5. The tax imposed by this article shall first be levied,
2 collected and paid in the year one thousand nine hundred
3 thirty-six with respect to the taxable income for the calendar
4 year one thousand nine hundred thirty-five, or in the case of
5 any taxable year ending during the year one thousand nine
6 hundred thirty-five, the portion of such taxable year beginning
7 January first, one thousand nine hundred thirty-five.

Sec. 6. The tax imposed by this article shall apply to estates
2 and trusts, and shall be levied, collected and paid annually upon
3 the net income of estates or any kind of property held in trust,
4 including net income:
5 1. Received by estates of deceased persons during the period
6 of administration or settlement of the estate.
7 2. Accumulated in trust for the benefit of unborn or un-
8 ascertained persons or persons with contingent interests.
9 3. Held for future distribution under the terms of a will or
10 trust.
4. To be distributed to the beneficiaries periodically whether 12 or not at regular intervals.

5. Collected by a guardian of an infant to be held or dis- 14 tributed as the court may direct.

6. Of an estate during the period of administration or settle- 16 ment which section ten of this article permits to be deducted 17 from the net income upon which the tax is to be paid by the 18 fiduciary.

Sec. 7. The fiduciary shall make the return of income for 2 the estate of trust for which he acts, whether such income be 3 taxable to the estate or trust or to the beneficiaries.

Sec. 8. The net income of an estate or trust shall be com- 2 puted in the same manner and on the same basis as provided 3 in this article for individual taxpayers, except that there shall 4 also be allowed as a deduction, any part of the gross income 5 which pursuant to the terms of the will or deed creating the 6 trust, is paid to or held for:

1. The United States, any state, territory or any political 8 subdivision thereof, or the District of Columbia.

2. Any corporation or association organized and operated 10 exclusively for religious, charitable, scientific or educational
purposes, no part of the net income of which inures to the
benefit of any private stockholder or individual.

Sec. 9. In cases under subdivisions four, five and six of
section six, the fiduciary shall include in the return a state-
ment of each beneficiary’s distributive share of such net in-
come, whether or not distributed before the close of the taxable
year for which the return is made.

Sec. 10. In cases under subdivisions one, two and three of
section six, the tax shall be imposed upon the estate or trust
with respect to the net income of the estate or trust and shall
be paid by the fiduciary, except that in determining the net
income of the estate of any deceased person during the period
of administration or settlement there may be deducted the
amount of any income property held for or credited to any
legatee, heir or other beneficiary. In such cases the estate or
trust shall be allowed the exemptions allowed to single per-
sons under section thirty-three, and in such cases an estate
or trust created by a person not a resident or for the benefit
of a person not a resident shall be subject to tax only to the
extent to which individuals other than residents are liable
under section twenty-five.
Sec. 11. In cases under subdivisions four, five and six of section six, if the distribution of income is in the discretion of the fiduciary, either as to the beneficiaries to whom payable or as to the amounts to which any beneficiary is entitled, the tax shall be imposed upon the estate or trust in the manner provided in section ten but without the deduction of any amounts of income paid or credited to any such beneficiary. In all other cases under subdivisions four, five and six of section six, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share whether distributed or not, of the net income of the estate or trust for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the income of a beneficiary not a resident, derived through such estate
or trust, shall be taxable only to the extent provided in section
twenty-two, for individuals other than residents.

Sec. 12. A trust created by an employer as a part of a stock
bonus, pension or profit-sharing plan for the exclusive benefit
of some or all of his employees, to which contributions are
made by such employer, or employees, or both, for the purpose
of distributing to such employees the earnings and principal
of the fund accumulated by the trust in accordance with such
plan, shall not be taxable under section six, but any amount
actually distributed or made available to any distributee shall
be taxable to him in the year in which so distributed or made
available to the extent that it exceeds the amounts paid in by
the employee, whether he, his designee or successor be the
distributee.

Sec. 13. Where at any time the power to revest in the
settler title to any part of the corpus of the trust is vested
in the settler alone, or in a person not having a substantial
adverse interest in the disposition of such part of the corpus
or the income therefrom, then the income of that part of the
trust shall be included in computing the net income of the
settler.
Sec. 14. The net income or that part of the net income of a trust shall be computed as a part of the income of the settler if in the discretion of the settler it is or may be:

1. Held or accumulated for future distribution to the settler.
2. Distributed to the settler.
3. Applied to the payment of premiums of policies of insurance upon the life of the settler (except policies of insurance irrevocably payable for the purposes and in the manner specified in subdivision two, section eight of this article).

Sec. 15. As used in sections thirteen and fourteen, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

Sec. 16. Individuals carrying on business in partnerships shall be liable for income tax only as individuals. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of
Sec. 17. The commissioner may require taxpayers who are members of partnerships to make a return, stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as the net income of individuals, except that the personal exemptions provided for in section thirty-three shall be allowed only to the individual partners.

Sec. 18. Net income shall be computed upon the basis of the taxpayer's annual accounting period and shall be made: 1. In accordance with the method of accounting regularly employed by the taxpayer in keeping his books; unless no method of accounting has been employed or if the method employed does not clearly reflect the income, then 2. Upon such basis and in such manner as in the opinion
8 of the commissioner clearly and fairly reflects the taxpayer’s income.

Sec. 19. If the taxpayer’s annual accounting period is other than a fiscal year, or if the taxpayer has no annual accounting period or does not keep books, net income shall be computed on the basis of the calendar year.

Sec. 20. If the taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the commissioner and subject to the provisions of section eighteen be computed on the basis of the new accounting period.

Sec. 21. “Gross income” includes gains, profits, and income derived from:

1. Salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid.

2. Professions, vocations, trades, businesses, commerce or sales.

3. Dealings in property, whether real or personal, growing out of the ownership, use of, or interest in such property.

4. Interest, rent, dividends, securities.
The transaction of any business, carried on for gain or profit.

6. Any source whatever, including gain, profit or income derived through estates or trusts by the beneficiaries thereof, whether as distributed or distributable shares.

Sec. 22. In the case of non-resident tax-payers, "gross income" includes only the gross income from sources set forth in section four of this article.

Sec. 23. The taxpayer shall include all items of gross income in his return for the tax year in which the items were received, unless under the methods of accounting permitted by this article such items may be accounted for at a different period.

Sec. 24. The following items shall not be included in gross income and shall be exempt from taxation under this article:

1. Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

2. The amount received by the insured as a return of pre-
9 mium paid by him under life insurance, endowment or annuity
10 contract either during the term or at the maturity of the term
11 mentioned in the contract or upon the surrender of the con-
12 tract.
13 3. The value of property acquired by gift, bequest, devise
14 or descent (but the income from such property shall be in-
15 cluded in gross income).
16 4. Interest upon the obligations of the United States or its
17 possessions, the District of Columbia, or upon obligations of
18 the state of West Virginia or any political subdivision thereof.
19 5. Salaries, wages, and other compensation received from the
20 United States.
21 6. Any amount received through accident, or health insur-
22 ance, or under workman’s compensation acts, as compensation
23 for personal injury or sickness, plus the amount of damages
24 received whether by suit or agreement on account of such
25 injury or sickness; or through the war risk insurance act or
26 any law for the benefit or relief of injured or disabled mem-
27 bers of the military or naval forces of the United States.
28 7. Stock dividends when received by a shareholder, unless
29 before or after the distribution of the dividend the corporation
30 proceeds to cancel or redeem its stock so as to make the distri-
31 bution and cancellation or redemption in whole or in part
32 essentially equivalent to the distribution of a taxable dividend
33 in which case the amount so distributed shall be treated as a
34 taxable dividend and included in gross income; and stock
35 dividends shall be considered in computing gain, profit or
36 income upon the sale, exchange, or other disposition of stock
37 upon which a stock dividend has been declared or of the stock
38 included in such stock dividend.

39 8. Money and property received or derived from suit,
40 settlement or compromise because of injury to reputation,
41 property or person.

42 9. The value of food and goods produced by the taxpayer
43 and consumed or used by his immediate family.

Sec. 25. In computing net income the taxpayer may
2 deduct:
3 1. Ordinary and necessary expenses (including a reason-
4 able allowance for salaries and other compensation for
5 personal services actually rendered, and rentals or other pay-
6 ments required to be made as a condition to the continued
7 use or possession of property to which the taxpayer has
8 not taken or is not taking title or in which he has no equity)
9 if paid for or incurred during the tax year in
10 (a) Carrying on a trade or business
11 (b) The production of income required to be included in
12 gross income under this article.
13 2. All interest paid or accrued during the taxable year on
14 indebtedness.
15 3. Income taxes payable to the United States upon income
16 earned in West Virginia; property taxes upon real and per-
17 sonal property situated in this state, except those assessed
18 against local benefits of a kind tending to increase the value
19 of the property assessed.
20 4. Losses sustained during the tax year and not compen-
21 sated for by insurance or otherwise, if incurred in trade or
22 business. The basis for determining the amount of the deduc-
23 tion under this subdivision or under subdivisions five and
24 six of this section shall be the same as is provided in section
25 thirty-one of this article.
26 5. Losses sustained during the tax year and not compen-
27 sated for by insurance or otherwise, if incurred in any
28 transaction entered into for profit, except wagering trans-
29 actions though not connected with trade or business; but in
30 the case of a taxpayer other than a resident of the state, only
31 as to such transactions in real property or in tangible per-
32 sonal property having an actual situs within the state.
33 6. Losses sustained during the tax year on property not
34 connected with the trade or business (but in case of a tax-
35 payer other than a resident, only of real property or tangible
36 personal property having an actual situs within the state)
37 if arising from fires, storms, or other casualty or from theft,
38 and not compensated for by insurance or otherwise.
39 7. Debts ascertained to be worthless and charged off
40 within the tax year. In the case of a debt existing on Janu-
41 ary first, one thousand nine hundred and thirty-five, no more
42 than its fair market value on that date shall be deducted.
43 A worthless debt arising since January first, one thousand
44 nine hundred and thirty-five, from unpaid wages, salary,
45 rent, or any other similar item of taxable income, is not an
46 allowable deduction, unless the income which such item repre-
47 sents has been included as income by the taxpayer in a return
48 rendered under this article, or under chapter thirty-three, acts
of the first extraordinary session of one thousand nine hun-
dred and thirty-three.

8. A reasonable allowance for the exhaustion, wear and
tear of property, in income from which is required to be in-
cluded in gross income under this article, used in the trade
or business, including a reasonable allowance for obsolescence.

In case of property held by one person with remainder to
another person, the deduction shall be computed as if the life
tenant were the absolute owner of the property and shall be
allowed to the life tenant. In the case of property held in
trust the allowable deduction shall be apportioned between
the income beneficiaries and the trustee in accordance with
the pertinent provisions of the instrument creating the trust
or in the absence of such provisions, on the basis of the trust
income allocable to each.

9. In the case of timber, mines, and other natural deposits,
except oil and gas wells, a reasonable allowance for depletion
and for depreciation of improvements, according to the
peculiar conditions in each case, based upon cost including
cost of development not otherwise deducted. In case of such
properties acquired prior to January first, one thousand nine
hundred and thirty-five, the fair market value of the taxpayer's interest in the property on that date shall be taken in lieu of cost up to that date except in the case of mines discovered by the taxpayer on or after January first, one thousand nine hundred and thirty-five, and not acquired as the result of a purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of discovery or within thirty days thereafter; but such depletion allowance based on discovery value shall not exceed fifty per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained in veins or deposits discovered in an existing mine or mining tract by the taxpayer after January first, one thousand nine hundred and thirty-five, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing com-
mmercial vein or deposit already known to exist, and if the
discovered minerals are of sufficient value and quantity that
they could be separately mined and marketed at a profit.

In the case of oil and gas wells the allowance for depletion
shall be twenty-five per centum of the gross income from the
property during the tax year. Such allowance shall not ex-
ceed fifty per centum of the net income of the taxpayer (com-
puted without allowance for depletion) from the property,
except that in no case shall the depletion allowance be less
than it would be if computed without reference to this para-
graph. Such reasonable allowance in all the above cases to
be made under rules and regulations to be prescribed by the
commissioner. In the case of leases the deductions allowed
by this subdivision shall be equitably apportioned between
the lessor and the lessee.

10. In the case of a taxpayer other than a resident of the
state the deduction allowed in this section shall be allowed
only if, and to the extent that, they are connected with in-
come arising from sources within the state and taxable under
this chapter to a non-resident taxpayer; the apportionment
and allocation of deductions with respect to sources of income
112 within and without the state shall be determined under the
113 rules and regulations to be prescribed by the commissioner.

Sec. 25-(a). In the case of any loss claimed to have been
2 sustained from any sale or other disposition of shares of stock
3 or securities where it appears that, within a period beginning
4 thirty days before the date of such sale or disposition and
5 ending thirty days after such date, the taxpayer has acquired
6 by purchase or by an exchange upon which the entire amount
7 of gain or loss was recognized by law, or has entered into a
8 contract or option so to acquire, substantially identical stock
9 or securities, then no deduction for the loss shall be allowed
10 under section 25 (5). If the amount of stock or securities
11 acquired or covered by contract or option to acquire is less
12 than the amount of stock or securities sold or otherwise dis-
13 posed of, then the particular shares of stock or securities, the
14 loss from the sale or other disposition of which is not de-
15 ductible, shall be determined under rules and regulations
16 prescribed by the commissioner. If the amount of stock or
17 securities acquired or covered by a contract or option to ac-
18 quire is less than the amount of stock or securities sold or
19 otherwise disposed of, then the particular shares of stock or
20 securities, the acquisition of which or the contract or option
21 to acquire which resulted in the non-deductibility of the loss,
22 shall be determined under rules and regulations prescribed by
23 the commissioner.

Sec. 26. In computing net income no deduction shall in any
case be allowed in respect of:
1 1. Personal living or family expenses;
2 2. An amount paid out for new buildings or for permanent
3 improvements or betterments made to increase the value of
4 any property or estate;
5 3. An amount expended in restoring property or in making
6 good the exhaustion thereof for which an allowance is or has
7 been made.
8 4. Premiums paid on any life insurance policy, covering the
9 life of any officer or employee, or of any person financially
10 interested in any trade or business carried on by the taxpayer,
11 when the taxpayer is directly or indirectly a beneficiary under
12 such policy.

Sec. 27. A taxpayer who regularly sells or otherwise dis-
1poses of personal property on the installment plan may return
2 as income therefrom in any tax year that proportion of the
4 installment payments actually received in that year which the
5 total profit realized or to be realized when the payment is com-
6 pleted, bears to the total contract price.

Sec. 28. In the case of a casual sale or other casual dis-
2 position of personal property for a price exceeding five hundred
3 dollars, or of a sale or other disposition of real property, if in
4 either case the initial payments do not exceed one-fourth of
5 the purchase price, the income may be returned on the basis
6 and in the manner prescribed in section twenty-seven.

Sec. 29. As used in section twenty-eight the term "initial
2 payments" means the payments received in case or property
3 at the time of sale, or other disposition, plus all payments
4 made up to and at the time of transfer of title, provided that
5 both the sale, or other disposition, and the transfer of title
6 occur in the same taxable period. The term "initial payments"
7 shall not include evidence of indebtedness of the purchaser of
8 amounts secured by the property sold or otherwise disposed of.

Sec. 30. The basis for determining the gain or loss from
2 the sale or other disposition of property, real or personal or
3 mixed, shall be, in the case of property:
4 1. Acquired before January first, one thousand nine hun-
5. Dred thirty-five, the fair market price or value as of that date, if the price or value exceeds the original cost, and in all other cases the cost.

2. Included in the last preceding inventory used in determining net income in a return under this article, the inventory value.

The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him and the gain or loss shall be computed accordingly.

Sec. 31. When property is exchanged for other property, the property received in exchange, for the purpose of determining gain or loss, shall be treated as the equivalent of cash to the amount of its fair market value, if a market exists in which all the property so received can be disposed of at the time of exchange for a reasonably certain and definite price in cash; otherwise, such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of
12 property transferred therefor and no gain or loss shall be
13 deemed to arise therefrom.
14 Where in connection with the reorganization, merger or con-
15 solidation of a corporation, a taxpayer receives, in the place of
16 stock or securities owned by him new stock or securities, the
17 basis of computing the gain or loss, if any, shall be, in case
18 the stock or securities owned were acquired before January
19 first, one thousand nine hundred thirty-five, the fair market
20 price or value thereof as of that date, if such price or value
21 exceeds the original cost, and in all other cases the cost thereof.

Sec. 32. The commissioner may direct a taxpayer to prepare
2 an inventory, conforming to the best accounting practice of
3 the trade or business and clearly reflecting the taxpayer’s in-
4 come when he believes an inventory is necessary to determine
5 the income of the taxpayer.

Sec. 33. There shall be deducted from net income the fol-
2 lowing exemptions:
3 1. In the case of a single individual, a personal exemption
4 of six hundred dollars;
5 2. In the case of the head of a family or a married person
6 living with husband or wife, a personal exemption of one thou-
7 and three hundred dollars. A husband and wife living to-
8 gether shall receive but one personal exemption. If such hus-
9 band and wife make separate returns, the personal exemption
10 may be taken by either or divided between them;
11 3. Two hundred dollars for each individual (other than hus-
12 band or wife) dependent upon and receiving his chief support
13 from the taxpayer, if such dependent individual is under
14 eighteen years of age or is incapable of self-support because
15 mentally or physically defective;
16 4. If the status of the taxpayer, in so far as it affects the
17 exemptions allowed by this section, changes during the tax
18 year, and exemptions shall be apportioned, under rules and
19 regulations prescribed by the tax commissioner.

Sec. 34. If the law of the domicile of a non-resident tax-
2 payer:
3 1. Grants a credit to residents of this state which is sub-
4 stantially similar to the one granted by this section, or
5 2. Imposes a tax upon the personal income of its residents
6 derived from sources in this state and exempts from taxation
7 the personal incomes of residents of this state, the tax commis-
8 sioner shall credit the amount of income tax payable by him
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9 under this article with such proportion of the tax payable by
10 him to the state or county of his domicile as his income subject
11 to taxation under this article bears to his entire income upon
12 which the tax payable to the state or county of his domicile was
13 imposed.

Sec. 35. Every person whose gross income, annually, exceeds
2 the amount of the exemption of net income under section thirty-
3 three of this article, except for exemptions for dependents,
4 shall make under oath a return stating specifically the items
5 of his gross income and the deductions and credits allowed
6 by this article.

Sec. 36. In the case of husband and wife living together
2 each shall make such a return, or the income of each shall be
3 included in a single joint return, in which case the tax shall be
4 computed on the aggregate income. But no return shall be
5 required in the following cases:
6 1. In the case of a married person living with husband or
7 wife on the last day of the tax year whose income was included
8 in a joint return.
9 2. In the case of a married woman living with her husband
10 on the last day of the tax year, who had no separate gross
11 income for the tax year.
12 3. Dependent individuals who receive their chief support
13 from a head of a family and who are under twenty-one years
14 of age or incapable of self-support because mentally or physi-
15 cally defective and whose income, if any, is included in the
16 gross income of such head of a family.
17 4. Minor or incompetent individuals whose income, if any,
18 would be taxable to or subject to a return by a head of a
19 family, guardian or other fiduciary.

Sec. 37. If a taxpayer is unable to make his own return the
2 return shall be made by his authorized agent or by his guardian
3 or other person charged with the care of his person or property.

Sec. 38. A non-resident taxpayer shall not be entitled to
2 the deductions authorized by section twenty-five unless he
3 makes under oath a complete return of his gross income from
4 sources both within and without the state.

Sec. 39. Every partnership shall make a return for each tax
2 year, stating the items of its gross income and the deductions
3 allowed by this article, and shall include in the return the
4 names and addresses of the individuals who would be entitled
to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by at least one of the partners.

Sec. 40. Every fiduciary (except a receiver legally in possession of part only of the property of a taxpayer) shall make under oath a return for the individual or estate or trust for whom he acts, as follows:

1. If he acts for an individual whose entire income from whatever sources derived is in his charge.

2. If he acts (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of the estate during the period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests; or (c) for an estate or trust the income of which is held for future distribution or is distributable in the discretion of the fiduciary under the terms of a will or trust.

3. If he acts (a) for an estate or trust the income of which
is to be distributed to the beneficiaries periodically; or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct.

The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions, and credits allowed by this article. Under such regulations as the tax commissioner may prescribe, a return made by one or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of the individual, estate or trust for whom or which he acts, to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to taxpayers.

Sec. 41. Returns shall be in the form the commissioner may prescribe, and shall be filed with the commissioner on or before the fifteenth day of March of each year, if the return is made on the basis of the calendar year, or if the return is made on the basis of a fiscal year, then within thirty days following
6 the close of the fiscal year. On application, the tax commis-
7 sioner may grant a reasonable extension of time, not exceeding
8 two months, for filing returns whenever in his judgment good
9 cause exists therefor.

Sec. 42. In order to aid in the effective administration of
2 this article and the procurement of a complete set of returns,
3 the tax commissioner, under such reasonable rules and regula-
4 tions as are necessary, may require a person who pays during
5 the calendar year to another person within this state, six hun-
6 dred dollars or more, as salary, compensation for personal serv-
7 ices, or for fixed or determinable gain, profit or income, to
8 report every such payment and the name and address of the
9 recipient, if known.

Sec. 43. If the commissioner shall be of the opinion that
2 any taxpayer has failed to file a return, or to include in a
3 return filed, either intentionally or through error, items of
4 taxable income, he may require from such taxpayer a return,
5 or a supplementary return, under oath, in such form as he
6 shall prescribe, of all the items of income which the taxpayer
7 received during the year for which the return is made, whether
8 or not taxable under the provisions of this article. If from a
9 supplementary return, or otherwise, the commissioner finds
10 that any items of income, taxable under this article, have been
11 omitted from the original return, he may require the taxpayer
12 to add the item to his original return. The supplementary
13 return and the correction of the original return, shall not re-
14 lieve the taxpayer from any of the penalties to which he may
15 be liable under any provision of this article. The commissioner
16 may proceed under the provisions of section forty-six of this
17 article whether or not he requires a return or a supplementary
18 return under this section.

Sec. 44. The full amount of the tax shall be paid to the
2 commissioner at the time fixed by section forty-one for filing
3 the return. If the time for filing the return is extended,
4 interest at the rate of six per cent per year, from the time
5 when the return was originally due shall be added and paid.
6 Under such regulations as the commissioner may prescribe
7 the tax may be paid with uncertified check, but if such a check
8 is not paid by the bank on which it is drawn, the taxpayer by
9 whom the check is tendered shall remain liable for the payment
10 of the tax and for all legal penalties, the same as if such check
11 had not been tendered.
Sec. 45. As soon as practicable after the return is filed, the commissioner shall examine it and compute the tax, and the amount so computed by the commissioner shall be the tax. If the tax found due shall be greater than the amount paid, the excess shall be paid to the commissioner within thirty days after notice of the amount is mailed by the commissioner.

If the return is made in good faith and the understatement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such understatement, but interest shall be added to the amount of the deficiency at the rate of one per cent for each month or fraction of a month.

If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency five per cent thereof, and in addition, interest at the rate of one per cent per month or fraction of a month shall be added.

If the understatement is false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and an additional one per cent per month or fraction of a month shall be added.
The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

If the amount of the tax found due shall be less than the amount paid, the excess shall be refunded by the commissioner out of the proceeds of the tax retained by him.

Sec. 46. If the commissioner discovers that the income of a taxpayer, or a portion thereof, has not been assessed, at any time within five years after the time when the return was due, he may assess the same and give notice to the taxpayer of such assessment, and such taxpayer shall thereupon have an opportunity, within thirty days, to confer with the commissioner as to the proposed assessment. The limitation of two years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. After the expiration of thirty days from such notification the commissioner shall assess the income of such taxpayer or any portion thereof which he believes has not theretofore been assessed and shall give notice to the taxpayers so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within
thirty days from the date of the mailing of such notice. The
provisions of this article with respect to revision and appeal
shall apply to a tax so assessed.

Sec. 47. If any tax imposed by this article or any portion of
such tax be not paid within sixty days after it becomes due, the
commissioner shall issue a warrant directed to the sheriff of
any county of the state commanding him to levy upon and
sell the real and personal property found within his county
of the person owing the tax, for the payment of the amount
thereof, with the added penalties, interests and the cost of
executing the warrant, and to return such warrant to the
commissioner and pay to him the money collected by virtue
thereof within sixty days after the receipt of such warrant.

The sheriff shall within five days after the receipt of the
warrant, file with the clerk of the circuit court a copy thereof,
and thereupon the clerk shall enter in the judgment docket,
in the column for judgment debtors the name of the taxpayer
mentioned in the warrant, and in appropriate columns the
amount of the tax or portion thereof and penalties for which
the warrant is issued and the date when such copy is filed, and
thereupon the amount of such warrant so docketed shall become
19 a lien upon the title to and interest in real property or chattels
20 real of the person against whom it is issued in the same manner
21 as a judgment duly docketed in the office of such clerk. The
22 said sheriff shall thereupon proceed upon the same in all re-
23 spects, with like effect, and in the same manner prescribed by
24 law in respect to executions issued against properties upon
25 judgment of a court of record, and shall be entitled to the
26 same fees for his services, in executing the warrant, to be
27 collected in the same manner. If a warrant be returned not
28 satisfied in full, the commissioner shall have the same remedies
29 to enforce the claim for taxes against the taxpayer as if the
30 state had recovered judgment against the taxpayer for the
31 amount of the tax.

Sec. 48. Every tax imposed by this article and all increases,
2 interest and penalties thereon, shall become, from the time it is
3 due and payable, a personal debt, from the person liable to pay
4 the same, to the state of West Virginia.

Sec. 49. Action may be brought at any time by the attorney
2 general at the instance of the commissioner, in the name of the
3 state to recover the tax, penalty or interest due under this
4 article.
Sec. 50. Upon a record of his reasons therefor, the commis-

tioner may waive or reduce any of the additional taxes or inter-

cest provided for in section forty-five of this article.

Sec. 51. If a person without fraudulent intent fails to pay

t a tax or to make a return or supply information within the

time required by this article, he shall be liable to a penalty,

in addition to all other taxes, interests and penalties, provided

for by this article, of not more than one hundred dollars, to be

assessed by the commissioner and collected in the same manner

as an additional tax found due under section forty-six.

If a person with intent to evade a requirement of this article

or a lawful requirement of the commissioner thereunder, fails

to pay a tax or to make a return or supply information re-

quired by this article, or with like intent, makes a false or

fraudulent return or statement, or supplies false or fraudulent

information, he shall be liable to a penalty of not more than

one thousand dollars. This penalty shall be recovered by the

attorney general in the name of the state, by action in a court

of competent jurisdiction.

In addition to such penalty, the taxpayer shall be guilty of

a misdemeanor and, upon conviction, shall be fined not to
19 exceed one thousand dollars or be imprisoned not to exceed one
20 year, or both, in the discretion of the court.
21 The failure to do any act required by or under the pro-
22 visions of this article shall be deemed to be an act committed
23 in part at the office of the tax commissioner in Charleston.
24 The certificate of the commissioner that a taxpayer has not
25 complied with the provisions of this section shall be prima facie
26 evidence of that fact.

Sec. 52. If a taxpayer, who has failed to file a return or
2 has filed an incorrect or insufficient return and has been notified
3 by the commissioner of his delinquency, refuses or neglects
4 within twenty days after such notice to file a proper return,
5 or files a fraudulent return, the commissioner shall determine
6 the income of such taxpayer according to his best information
7 and belief and assess the same at not more than double the
8 amount so determined. The commissioner may in his discretion
9 allow further time for the filing of a return in such case.

Sec. 53. A taxpayer may apply to the commissioner for
2 revision of the tax assessed against him, at any time within
3 one year from the time of the filing of the return or from the
4 date of the notice of the assessment of an additional tax. The
5 commissioner shall grant a hearing thereon and if, upon such
6 hearing, he determines that the tax is excessive or incorrect,
7 he shall resettle the same according to the law and the facts
8 and adjust the computation of tax accordingly. The commis-
9 sioner shall notify the taxpayer of his determination and shall
10 refund to the taxpayer the amount, if any, paid in excess of
11 the tax found by him to be due. If the taxpayer has failed,
12 without good cause, to file a return within the time prescribed
13 by section forty-one, or has filed a fraudulent return, or, having
14 filed an incorrect return, has failed, after notice, to file a proper
15 return, the commissioner shall not reduce the tax below double
16 the amount for which the taxpayer is found to be properly
17 assessed.

Sec. 54. A taxpayer may appeal from the determination
2 of the commissioner any time within thirty days after the
3 determination. He shall file a complaint in the circuit court
4 of the county in which he resides, or if not a resident, in which
5 he conducts his business, trade or occupation, or has taxable
6 income. Thereupon, appropriate proceedings shall be had and
7 the relief, if any, to which the taxpayer may be entitled may
8 be granted and any taxes, interest or penalties found by the
court to be in excess of those legally assessed shall be ordered refunded to the taxpayer, with interest from time of payment.

Sec. 55. The commissioner, for the purpose of ascertaining the correctness of a return or for the purpose of making an estimate of the taxable income of a taxpayer, may by an agent:

1. Examine books, papers, records or memoranda, bearing upon the matters required to be included in the return.

2. Require the attendance of the taxpayer or of any other person having knowledge of his income.

3. Take testimony and require proof material for his information.

4. Administer oath necessary for the administration of this article.

Sec. 56. The commissioner may, with the approval of the governor, appoint such officers, agents and employees as are necessary for the administration of this article; and he may delegate to them such duties and powers as he may from time to time prescribe.

The commissioner may require such of the officers, agents and employees as he may designate, to take the constitutional oath and to give bond for the faithful performance of their
duties. All premiums on such bonds shall be paid by the commissioner out of money appropriated for the purpose of this article.

Sec. 57. The commissioner or any officer, agent or employee, except when necessary to the enforcement of this article or as required by judicial or legislative process, shall not divulge or make known:

1. The business affairs, operations or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty.

2. The amount or sources of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return.

3. Permit any return or copy thereof to be seen or examined by any person except as provided by law.

However, the commissioner may authorize examination of such returns by other state officers, or if a reciprocal arrangement exists, by tax officials of another state, or the federal government.

A person violating a provision of this section shall be guilty of a misdemeanor, and upon conviction, punished by a fine
not to exceed one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court.

Sec. 58. The commissioner may make such rules and regulations, not inconsistent with this article, as are necessary to enforce its provisions.

Sec. 59. The commissioner shall pay all taxes, fees, interest, and penalties collected under this article into the state treasury.

Sec. 60. If any part of this article shall, for any reason, be adjudged by a court to be invalid, such judgment shall not affect, impair or invalidate the remainder of this article, but shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment was rendered.

Sec. 61. This article shall take effect as of January first, one thousand nine hundred thirty-five, and the first tax to be assessed under this article shall be computed upon income received during the calendar year one thousand nine hundred thirty-five.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton L. Howard  
Chairman Senate Committee

Arnold M. Vickers  
Chairman House Committee

Originated in the __________  

Takes effect __________  

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the __________  

day of __________, 1935.

Governor

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

MAR 15, 1935

Wm. S. O'Brien,  
Secretary of State