WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935

ENROLLED

HOUSE BILL No. 441

(By Mr. Pelter)

PASSED March 9th 1935

In Effect 90 Days from Passage

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House Bill No. 441

(By Mr. Speaker, Mr. Pelter)

[Passed March 9, 1935; in effect ninety 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 a tax imposed by this article, or whose income is in whole or in part subject to a tax imposed by this article.

"Individual" means a natural person.

"Person" includes individuals, fiduciaries and partnerships.

"Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity, for any person, trust or estate.

"Resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this article upon or with reference to the income of any taxable year, any person domiciled in the state of West Virginia, and any other person who maintains a permanent place of abode within the state, and spends in the aggregate more than six months of the taxable year within the state.

"Non-resident" when used in connection with this article shall apply only to natural persons whose domicile is without the state of West Virginia, or who maintains a place of abode without the state, and spends in the aggregate more than six 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 leasees, 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 contained 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:

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

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

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

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

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

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

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

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

Sec. 6. The tax imposed by this article shall apply to estates and trusts, and shall be levied, collected and paid annually upon the net income of estates or any kind of property held in trust, including net income:

1. Received by estates of deceased persons during the period of administration or settlement of the estate.

2. Accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests.

3. Held for future distribution under the terms of a will or trust.

4. To be distributed to the beneficiaries periodically whether or not at regular intervals.

5. Collected by a guardian of an infant to be held or distributed as the court may direct.

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

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

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

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

2. Any corporation or association organized and operated 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 statement of each beneficiary's distributive share of such net income, 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 persons 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 a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed.

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

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.

5. 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-

mium paid by him under life insurance, endowment or annuity contract either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract.

3. The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

4. Interest upon the obligations of the United States or its possessions, the District of Columbia, or upon obligations of the state of West Virginia or any political subdivision thereof.

5. Salaries, wages, and other compensation received from the United States.

6. Any amount received through accident, or health insurance, or under workman's compensation acts, as compensation for personal injury or sickness, plus the amount of damages received whether by suit or agreement on account of such injury or sickness; or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

7. Stock dividends when received by a shareholder, unless before or after the distribution of the dividend the corporation

proceeds to cancel or redeem its stock so as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend in which case the amount so distributed shall be treated as a taxable dividend and included in gross income; and stock dividends shall be considered in computing gain, profit or income upon the sale, exchange, or other disposition of stock upon which a stock dividend has been declared or of the stock included in such stock dividend.

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

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

Sec. 25. In computing net income the taxpayer may deduct:

1. Ordinary and necessary expenses (including a reasonable allowance for salaries and other compensation for personal services actually rendered, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the taxpayer has

not taken or is not taking title or in which he has no equity) if paid for or incurred during the tax year in

(a) Carrying on a trade or business

(b) The production of income required to be included in gross income under this article.

2. All interest paid or accrued during the taxable year on indebtedness.

3. Income taxes payable to the United States upon income earned in West Virginia; property taxes upon real and personal property situated in this state, except those assessed against local benefits of a kind tending to increase the value of the property assessed.

4. Losses sustained during the tax year and not compensated for by insurance or otherwise, if incurred in trade or business. The basis for determining the amount of the deduction under this subdivision or under subdivisions five and six of this section shall be the same as is provided in section thirty-one of this article.

5. Losses sustained during the tax year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, except wagering trans-

actions though not connected with trade or business; but in the case of a taxpayer other than a resident of the state, only as to such transactions in real property or in tangible personal property having an actual situs within the state.

6. Losses sustained during the tax year on property not connected with the trade or business (but in case of a taxpayer other than a resident, only of real property or tangible personal property having an actual situs within the state) if arising from fires, storms, or other casualty or from theft, and not compensated for by insurance or otherwise.

7. Debts ascertained to be worthless and charged off within the tax year. In the case of a debt existing on January first, one thousand nine hundred and thirty-five, no more than its fair market value on that date shall be deducted. A worthless debt arising since January first, one thousand nine hundred and thirty-five, from unpaid wages, salary, rent, or any other similar item of taxable income, is not an allowable deduction, unless the income which such item represents has been included as income by the taxpayer in a return rendered under this article, or under chapter thirty-three, acts

of the first extraordinary session of one thousand nine hundred and thirty-three.

8. A reasonable allowance for the exhaustion, wear and tear of property, in income from which is required to be included 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 commercial 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 exceed fifty per centum of the net income of the taxpayer (computed 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 paragraph. 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 income 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

within and without the state shall be determined under the rules and regulations to be prescribed by the commissioner.

Sec. 25-(a). In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning thirty days before the date of such sale or disposition and ending thirty days after such date, the taxpayer has acquired by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law, or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 25 (5). If the amount of stock or securities acquired or covered by contract or option to acquire is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities, the loss from the sale or other disposition of which is not deductible, shall be determined under rules and regulations prescribed by the commissioner. If the amount of stock or securities acquired or covered by a contract or option to acquire is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities, the acquisition of which or the contract or option to acquire which resulted in the non-deductibility of the loss, shall be determined under rules and regulations prescribed by the commissioner.

Sec. 26. In computing net income no deduction shall in any case be allowed in respect of:

1. Personal living or family expenses;

2. An amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

3. An amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

4. Premiums paid on any life insurance policy, covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Sec. 27. A taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any tax year that proportion of the installment payments actually received in that year which the total profit realized or to be realized when the payment is completed, bears to the total contract price.

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

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

Sec. 30. The basis for determining the gain or loss from the sale or other disposition of property, real or personal or mixed, shall be, in the case of property:

1. Acquired before January first, one thousand nine hun-

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 property transferred therefor and no gain or loss shall be deemed to arise therefrom.

Where in connection with the reorganization, merger or consolidation of a corporation, a taxpayer receives, in the place of stock or securities owned by him new stock or securities, the basis of computing the gain or loss, if any, shall be, in case the stock or securities owned were acquired before January first, one thousand nine hundred thirty-five, the fair market price or value thereof as of that date, if such price or value exceeds the original cost, and in all other cases the cost thereof.

Sec. 32. The commissioner may direct a taxpayer to prepare an inventory, conforming to the best accounting practice of the trade or business and clearly reflecting the taxpayer's income when he believes an inventory is necessary to determine the income of the taxpayer.

Sec. 33. There shall be deducted from net income the following exemptions:

1. In the case of a single individual, a personal exemption of six hundred dollars;

2. In the case of the head of a family or a married person living with husband or wife, a personal exemption of one thou-

sand three hundred dollars. A husband and wife living together shall receive but one personal exemption. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them;

3. Two hundred dollars for each individual (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support because mentally or physically defective;

4. If the status of the taxpayer, in so far as it affects the exemptions allowed by this section, changes during the tax year, and exemptions shall be apportioned, under rules and regulations prescribed by the tax commissioner.

Sec. 34. If the law of the domicile of a non-resident taxpayer:

1. Grants a credit to residents of this state which is substantially similar to the one granted by this section, or

2. Imposes a tax upon the personal income of its residents derived from sources in this state and exempts from taxation the personal incomes of residents of this state, the tax commissioner shall credit the amount of income tax payable by him

under this article with such proportion of the tax payable by him to the state or county of his domicile as his income subject to taxation under this article bears to his entire income upon which the tax payable to the state or county of his domicile was imposed.

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

Sec. 36. In the case of husband and wife living together each shall make such a return, or the income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income. But no return shall be required in the following cases:

1. In the case of a married person living with husband or wife on the last day of the tax year whose income was included in a joint return.

2. In the case of a married woman living with her husband

on the last day of the tax year, who had no separate gross income for the tax year.

3. Dependent individuals who receive their chief support from a head of a family and who are under twenty-one years of age or incapable of self-support because mentally or physically defective and whose income, if any, is included in the gross income of such head of a family.

4. Minor or incompetent individuals whose income, if any, would be taxable to or subject to a return by a head of a family, guardian or other fiduciary.

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

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

Sec. 39. Every partnership shall make a return for each tax year, stating the items of its gross income and the deductions allowed by this article, and shall include in the return the 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 the close of the fiscal year. On application, the tax commissioner may grant a reasonable extension of time, not exceeding two months, for filing returns whenever in his judgment good cause exists therefor.

Sec. 42. In order to aid in the effective administration of this article and the procurement of a complete set of returns, the tax commissioner, under such reasonable rules and regulations as are necessary, may require a person who pays during the calendar year to another person within this state, six hundred dollars or more, as salary, compensation for personal services, or for fixed or determinable gain, profit or income, to report every such payment and the name and address of the recipient, if known.

Sec. 43. If the commissioner shall be of the opinion that any taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return, or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this article. If from a supplementary return, or otherwise, the commissioner finds that any items of income, taxable under this article, have been omitted from the original return, he may require the taxpayer to add the item to his original return. The supplementary return and the correction of the original return, shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this article. The commissioner may proceed under the provisions of section forty-six of this article whether or not he requires a return or a supplementary return under this section.

Sec. 44. The full amount of the tax shall be paid to the commissioner at the time fixed by section forty-one for filing the return. If the time for filing the return is extended, interest at the rate of six per cent per year, from the time when the return was originally due shall be added and paid.

Under such regulations as the commissioner may prescribe the tax may be paid with uncertified check, but if such a check is not paid by the bank on which it is drawn, the taxpayer by whom the check is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check 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 a lien upon the title to and interest in real property or chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against properties upon judgment of a court of record, and shall be entitled to the same fees for his services, in executing the warrant, to be collected in the same manner. If a warrant be returned not satisfied in full, the commissioner shall have the same remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.

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

Sec. 49. Action may be brought at any time by the attorney general at the instance of the commissioner, in the name of the state to recover the tax, penalty or interest due under this article.

Sec. 50. Upon a record of his reasons therefor, the commissioner may waive or reduce any of the additional taxes or interest provided for in section forty-five of this article.

Sec. 51. If a person without fraudulent intent fails to pay 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 required 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 exceed one thousand dollars or be imprisoned not to exceed one year, or both, in the discretion of the court.

The failure to do any act required by or under the provisions of this article shall be deemed to be an act committed in part at the office of the tax commissioner in Charleston. The certificate of the commissioner that a taxpayer has not complied with the provisions of this section shall be prima facie evidence of that fact.

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

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

Sec. 54. A taxpayer may appeal from the determination of the commissioner any time within thirty days after the determination. He shall file a complaint in the circuit court of the county in which he resides, or if not a resident, in which he conducts his business, trade or occupation, or has taxable income. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be entitled may 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 House

Takes effect 90 Days from passage.

Clerk of the Senate

Jno S Hall
Clerk of the House of Delegates

Geo. E. Hodges
President of the Senate

Speaker House of Delegates.

The within is approved this the 15"

day of March, 1935.

H G Kump
Governor.

Filed in the office of the Secretary of State
of West Virginia MAR 15 1935
Wm. S. O'BRIEN,
Secretary of State