WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 137

(By Mr. Strauss)

PASSED March 3, 1939

In Effect sixty days from Passage
ENROLLED

House Bill No. 137

(BY MR. STROUSS)

[Passed March 3, 1939; in effect ninety days from passage.]

AN ACT to amend and reenact article thirteen-a, chapter eleven of
the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by repealing section twenty-five-a; by
amending and reenacting sections two, four, twenty-four, twenty-five, twenty-eight, thirty, thirty-one, thirty-four, thirty-eight, forty-one, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four and sixty; and by adding a new section designated sixty-two, all relating to personal net income tax.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter eleven of the code of West Vir­ginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted by repealing section twenty-five-a; by amending and reenacting sections two, four, twenty-four, twenty-
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five, twenty-eight, thirty, thirty-one, thirty-four, thirty-eight, forty-one, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four and sixty; and by adding a new section designated sixty-two; all to read as follows:

Section 2. Definitions. When used in this act:

2 "Commissioner" means the state tax commissioner.

3 "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.

4 "Individual" means a natural person.

5 "Person" includes individuals, fiduciaries and partnerships.

6 "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.

7 "Partnership" includes a syndicate, group, pool, joint venture, joint ownership or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within
the meaning of this act, a trust or estate or a corporation;
and the term "partner" includes a member in such a
syndicate, group, pool, joint venture or joint ownership, or
organization.

"Resident" means any person domiciled in the state of
West Virginia, or who maintains a permanent place of abode
within the state, or who spends more than six months of the
taxable year within the state.

"Nonresident" means all other persons not included in the
term "resident."

"Taxable year" means the calendar year, or the fiscal year
ending during such calendar year, upon the basis of which the
net income is computed under this article. "Taxable year"
includes, in the case of a return made for a fractional part of
a year under the provisions of this article or under regula-
tions prescribed by the commissioner, the period for which
such return is made, subject to the provisions of section
eighteen.

"Fiscal year" means an accounting period of twelve
months, ending the last day of any month other than De-
The terms "tax" and "tax liability" shall include all taxes, interest and penalties accruing or imposed under this article.

"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.

"Gross income" means such income as is defined in sections twenty-one and twenty-four of this article.

"Net income" means "gross income" less the deductions allowed by sections eight and twenty-five of this article.

"Taxable net income" means "net income" less the exemptions and credits allowed by section thirty-three 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. If paid in property other than cash, such property shall be valued at its fair market value on the date of distribution.

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

"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. 4. Graduated Tax on Net Income of Nonresidents.

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-four of this article, a tax at the rates specified in section three of this article.

The term "business situs" as used in this section shall be deemed to have the same meaning as the situs of intangible personal property for ad valorem tax purposes, except that
intangible property constituting the corpus of a trust, in whole or in part, and not connected with or used in carrying on a trade or business within this state, shall not be treated as having such business situs within this state.

Sec. 24. Items Not Included in Gross Income. 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 premium paid by him under any 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) Any amount received through accident, or health insurance, or under workmen’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.

(6) 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; 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.

(7) Money and property received or derived from suit,
39 settlement or compromise because of injury to reputation,
40 property or person.
41 (8) The value of food and goods produced by the taxpayer
42 and consumed or used by his immediate family.
43 (9) Dividends received on shares of stock held in a na-
44 tional banking association or any bank or trust company
45 chartered under the laws of the state of West Virginia.

Sec. 25. Deductions from Gross Income. In computing net
2 income there shall be allowed as deductions:
3 (1) Ordinary and necessary expenses, including a reason-
4 able allowance for salaries and other compensation for per-
5 sonal services actually rendered, and rentals or other pay-
6 ments required to be made as a condition to the continued use
7 or possession of property to which the taxpayer has not taken
8 or is not taking title or in which he has no equity, if paid for
9 or incurred during the taxable 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 within the taxable year on
14 indebtedness, except on indebtedness incurred or continued to
purchase or carry obligations the interest upon which is
wholly exempt from the taxes imposed by this article.
(3) Taxes paid or accrued within the taxable year, except:
(a) West Virginia income taxes under this article;
(b) Estate, inheritance, legacy, succession and gift taxes;
and
(c) Taxes assessed against local benefits of a kind tending
to increase the value of the property assessed.
(4) Losses sustained during the taxable year and not com-
pensated for by insurance or otherwise:
(a) If incurred in trade or business; or
(b) If incurred in any transaction entered into for profit
though not connected with the trade or business; or
(c) On property not connected with the trade or business,
if the loss arises from fires, storms, shipwreck or other
casualty, or from theft, but in the case of a nonresident, only
on real property or tangible personal property having an
actual situs within the state: Provided, however, That the
basis for losses claimed under this subsection shall be adjusted
to the date of such loss as provided in section thirty of this
article, regardless of the nondeductibility in any prior year.
of the items of such adjustment under the provisions of this section.

(5) 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. 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 not 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.

(6) Debts ascertained to be worthless and charged off
within the taxable year; and when satisfied that a debt is
recoverable only in part, the commissioner may allow such debt,
in an amount not in excess of the part charged off within the
taxable year, as a deduction.

(7) A reasonable allowance for the exhaustion, wear and
tear of property used in the trade or business, including a
reasonable allowance for obsolescence. In the case of prop-
erty held by one person for life 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 absence
of such provisions, on the basis of the trust income allocable
to each.

(8) In the case of mines, timber, oil and gas wells, and
other natural deposits, a reasonable allowance for depletion, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the commissioner. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate, but not the basis for depletion, shall be revised and the allowance under this paragraph for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one person for life 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) The basis for determining the amount of deduction for
losses sustained and to be allowed, and for bad debts to be allowed, and for depletion, exhaustion, wear and tear and obsolescence, shall be the adjusted basis provided in section thirty of this article for determining the loss from the sale or other disposition of property.

(10) In lieu of the depletion allowance provided in subsection eight above for oil and gas wells, the taxpayer may deduct from the income of such oil and gas wells a depletion allowance equivalent to twenty-seven and one-half per cent of the gross income from the property during the tax year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed fifty per cent 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 subsection.

(11) In any case of two or more organizations, including corporations, trades, or businesses located both within and without the state, owned or controlled directly or indirectly by the same interest or interests, any one or more of which is
or are taxable in whole or in part under this article, the commis-
missioner is authorized to distribute, apportion, or allocate
gross income or deductions between or among such organiza-
tions, including corporations, trades, or businesses, if he de-
determines that such distribution, apportionment, or allocation is
necessary in order to prevent evasion of taxes, or clearly to
reflect the income of any such organizations, trades or busi-
nesses, taxable hereunder.

In the case of a nonresident taxpayer, the deductions
allowed by this section shall be allowed only if, and to the
extent that, they are connected with income taxable under this
article; the apportionment and allocation of both income and
deductions with respect to sources of income within and
without the state shall be determined under rules and regula-
tions to be prescribed by the commissioner.

(12) Contributions to churches and charitable institu-
tions within this state.

Sec. 28. Casual Sale or Other Disposition. 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 pay-
ments do not exceed thirty per cent of the sale price, the income may be returned on the basis and in the manner prescribed in section twenty-seven.

Sec. 30. Basis for Determining Gain or Loss. For the purpose of ascertaining the gain derived, or loss sustained, from the sale or other disposition of property, real, personal or mixed, subject to the adjustments as provided in subsection four of this section, the basis shall be:

(1) In case of property acquired on or after January first, one thousand nine hundred thirty-five, the cost thereof, except:

(a) In the case of property which is, or should be, included in an inventory, the basis shall be the last inventory value thereof;

(b) In the case of property acquired by bequest, devise or descent or by any other transfer upon which a tax was paid under the provisions of article eleven of this chapter, the basis shall be the fair market value thereof, when acquired.

(c) In the case of property acquired by gift or by a transfer in trust, except property acquired as pro-
vided in subsection (b) above, the basis shall be the same as it would be in the hands of the donor, grantor, or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift or transfer in trust, whichever is lower. If the facts necessary to determine the basis in the hands of the donor, grantor, or the last preceding owner, are unknown to the donee or recipient, the commissioner may obtain such facts from such donor, grantor, or last preceding owner, or any other person cognizant thereof. If the commissioner finds it impracticable to obtain such facts, the basis in the hands of such donor, grantor, or last preceding owners, shall be the fair market value of such property as found by the commissioner as of the date or approximate date at which, according to the best information that the commissioner is able to obtain, such property was acquired by such donor, grantor, or last preceding owner.

(2) In the case of property acquired prior to January first, one thousand nine hundred thirty-five, the basis shall
be determined as provided in subsection one of this section, subject to the adjustments as provided in subsection four of this section, and as further qualified by the provisions of paragraphs (a), (b), and (c) of this subsection. In determining the fair market value of stock in a corporation as of January first, one thousand nine hundred thirty-five, due regard shall be given to the fair market value of the assets of the corporation as of that date;

(a) If the amount realized from the sale or other disposition of property is in excess of the original cost and also in excess of the January first, one thousand nine hundred thirty-five, fair market value thereof, the gain to be included in gross income shall be the excess of the amount realized over the January first, one thousand nine hundred thirty-five, fair market value, if such fair market value is greater than the original cost, and if not, the excess of the amount realized over such cost.

(b) If the amount realized from the sale or other disposition of property is less than the original cost and also less than the January first, one thousand nine hundred thirty-five, fair market value thereof, the loss to be deducted from gross
61 income shall be the difference between the amount realized
62 and the January first, one thousand nine hundred thirty-five,
63 fair market value, if such fair market value is less than the
64 original cost, and if not, the difference between the amount
65 realized and such cost.
66 (c) If the amount realized from the sale or other dispo-
67 sition of property is more than the original cost but less than
68 the January first, one thousand nine hundred thirty-five, fair
69 market value thereof, or more than the January first, one
70 thousand nine hundred thirty-five, fair market value but less
71 than the original cost thereof, no gain shall be included in,
72 nor any loss deducted from, the gross income.
73 (3) The term "substituted basis" as used in this subsec-
74 tion means a basis determined under any provision of this
75 section providing that the basis shall be determined: (1)
76 by reference to the basis in the hands of a transferor, donor
77 or grantor, or (2) by reference to other property held at any
78 time by the person for whom the basis is to be determined.
79 Whenever it appears that the basis of property in the
80 hands of the taxpayer is a substituted basis, then the adjust-
81 ments provided in subsection four shall be made, after first
making in respect of such substituted basis, proper adjustment of a similar nature in respect of the period during which the property was held by the transferor, donor or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(4) The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsections one, two and three, above, adjusted as hereinafter provided.

(a) Proper adjustment in respect of the property shall in all cases be made:

(1) For expenditures, receipts, losses or other items, properly chargeable to capital account including taxes and other carrying charges on unimproved and non-productive real property, but no such adjustments shall be made for taxes or other carrying charges for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(2) In respect of any period since December thirty-first,
one thousand nine hundred thirty-four, for exhaustion, wear
and tear, obsolescence, amortization and depletion, to the ex-
ten allowable; and,

(3) In respect of any period prior to January first, one
thousand nine hundred thirty-five, for exhaustion, wear and
tear, obsolescence, amortization and depletion, to the extent
sustained.

(b) Amounts distributed in complete liquidation of a cor-
poration shall be treated as in full payment in exchange for
the stock, and amounts distributed in partial liquidation of
a corporation shall be treated as in partial or full payment in
exchange for the stock. The gain or loss to the distributee
resulting from such exchange shall be determined under this
section. For the purpose of the first sentence of this para-
graph, “complete liquidation” includes any one of a series
of distributions made by a corporation in complete cancella-
tion or redemption of all of its stock in accordance with a
bona fide plan of liquidation and under which the transfer
of the property under the liquidation is to be completed
within a time specified in the plan. The term “amounts dis-
tributed in partial liquidation” means a distribution by a
123 corporation in complete cancellation or redemption of a part
124 of its stock, or one of a series of distributions in complete
125 cancellation or redemption of all or a portion of its stock.
126 If any distribution (not in partial or complete liquidation)
127 made by a corporation to its shareholders is not out of in-
128 crease in value of property accrued before January first, one
129 thousand nine hundred thirty-five, and is not a taxable divi-
130 dend, then the amount of such distribution shall be applied
131 against and reduce the adjusted basis of the stock provided
132 in this section, and if in excess of such basis, such excess shall
133 be taxable in the same manner as a gain from the sale or ex-
134 change of property.

135 For the purposes of this article every distribution is made
136 out of earnings or profits to the extent thereof, and from
137 the most recently accumulated earnings or profits. Any earn-
138ings or profits accumulated, or increase in value of property
139 accrued, before January first, one thousand nine hundred
140 thirty-five, may be distributed exempt from tax under this
141 article, after the earnings and profits accumulated after De-
142cember thirty-first, one thousand nine hundred thirty-four,
143 have been distributed, but any such tax-free distribution shall
be applied against and reduce the adjusted basis of the stock provided in this section.

(c) In cases where it is necessary to determine the basis from either the cost or January first, one thousand nine hundred thirty-five, fair market value, cost shall be first adjusted to January first, one thousand nine hundred thirty-five, by the items of this subsection before comparison is made with the January first, one thousand nine hundred thirty-five, fair market value.

(5) If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (a) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (b) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be
the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. Nothing in this section shall be construed to prevent, in the case of property sold under contract providing for payment in installments, the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(6) If the property consists of stock or securities the acquisition of which, or the contract or option to acquire, resulted in the non-deductibility of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(7) If the property was acquired after December thirty-first, one thousand nine hundred thirty-four, upon an exchange described in section thirty-one (2) to (4), inclusive, of this article, the basis shall be the same as in the case of the
property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under this article and applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section thirty-one (2) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties, other than money, received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange.

(8) If the property was acquired after December thirty-first, one thousand nine hundred thirty-four, as a result of a compulsory or involuntary conversion described in section thirty-one (5), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of this article, determining the taxable status of the gain or loss upon such conversion, and in
creased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under this article.

(9) The amount realized from the sale or other disposition of property shall be the sum of any money received, plus the fair market value of any property other than money received.

Sec. 31. Recognition of Gain or Loss; Exchanges.

(1) Upon the sale or exchange of property the entire amount of the gain or loss, determined under section thirty-four of this article shall be recognized, except as hereinafter provided in this section.

(2) (a) No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(b) No gain or loss shall be recognized if common stock
in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(c) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(d) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock or securities received by each is substantially in proportion to his interest in the property prior to the exchange. The stock or securities received shall be considered as taking the place of the property transferred therefor.

(3) If an exchange would be within the provisions of subsection two of this section if it were not for the fact that
the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

If a distribution made in pursuance of a plan of reorganization is within the provisions of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under this subsection as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after December thirty-first, one thousand nine hundred thirty-four.

The remainder, if any, of the gain recognized under this subsection shall be taxed as a gain from the exchange of property.

(4) If an exchange would be within the provisions of subsection two of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraphs to be received without the
recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(5) If property, as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof, is compulsory or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commissioner, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition or control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(6) As used in this section and section thirty:

(a) The term "reorganization" means (a) a statutory merger or consolidation, or (b) the acquisition by one corporation in exchange solely for all or a part of its voting stock; of at least eighty per cent of the voting stock and at
least eighty per cent of the total number of shares of all
other classes of stock of another corporation; or of substan-
tially all the properties of another corporation; or (e) a
transfer by a corporation of all or a part of its assets to
another corporation if immediately after the transfer the
transferor or its shareholders or both are in control of the
corporation to which the assets are transferred, or (d) a
recapitalization, or (e) a mere change in identity, form, or
place or organization, however effected.

(b) The term "a party to a reorganization" includes a
corporation resulting from a reorganization and includes both
corporations in the case of a reorganization resulting from
the acquisition by one corporation of stock or properties of
another.

(7) As used in this section the term "control" means the
ownership of stock possessing at least eighty per cent of the
total combined voting power of all classes of stock entitled to
vote and at least eighty per cent of the total number of shares
of all other classes of stock of the corporation.

Sec. 34. Credits Allowed Nonresidents. In the case of a
nonresident taxpayer, the exemption and dependency credits
allowed under the preceding section shall be reduced to amounts which bear the same ratio to the full exemption and dependency credits provided for herein as his gross income returnable under this article bears to his entire gross income, for the taxable year: Provided, however, That such exemp-
tion and dependency credits shall not be allowed unless and until a return of income shall have been filed as provided in section thirty-eight of this article.

Whenever a nonresident individual of this state has be-
come liable to income tax to the state wherein he resides upon his net income for the taxable year derived from sources within this state and subject to taxation under this article, the commissioner shall credit the amount of income tax payable by him under this article with such proportion thereof as his entire gross income, less his gross income returnable under this article, bears to his entire gross income returnable to the state wherein he resides: Provided, That such credit shall be allowed only if the laws of the state wherein he resides grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state.

Sec. 38. Return by Nonresident. A nonresident taxpayer
shall not be entitled to the deductions authorized by section twenty-five of this article, nor to the exemption, dependency credits, or other credits authorized by section thirty-four of this article, unless and until he makes under oath a complete return of his gross income from sources both within and without the state.

Sec. 41. Form for Returns; Time for Filing. Returns shall be in the form the commissioner may prescribe, and shall be filed with the commissioner on or before the fifteenth day of April 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 the fiscal year, then on or before the fifteenth day of the third month following the close of such 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. 44. Payment of Tax, Interest and Penalties. The full amount of the tax shall be due and payable to the commissioner at the time the return is filed: Provided, however, That such time shall in no event be later than the time fixed by section forty-one of this article for filing the return. After a
taxpayer files a corrected or amended return for any taxable
year, on which a tax liability is disclosed in excess of the
amount shown due on return previously filed for the same
period, the excess of the tax liability, over and above that
previously shown due and up to the amount disclosed on the
corrected or amended return, shall be paid at the time of the
filing of the corrected or amended return. Payments of
deficiencies, interest and penalties shall be made as provided
by section forty-nine.

Under such regulations as the commissioner may prescribe,
the tax may be paid with uncertified check, but if such 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 pay-
ment of the tax, and for all legal penalties, the same as if such
check had not been tendered.

Sec. 45. Return to Be an Assessment. The filing of a re-
turn required by this article shall be deemed an assessment to
the extent of the amount shown due, subject, however, to ex-
amination, determination and revision of the tax under the
following sections of this article. The filing of a corrected or
amended return shall, in like manner, be deemed an assess-
ment as a deficiency to the extent of any excess shown due
over the amount previously shown due on the prior return,
subject, however, to examination, determination and revision
of the tax under the following sections of this article.

Sec. 46. Examination of Returns and Determination of Tax.

As soon as practicable after the return is filed the commis-
sioner shall examine it and shall determine the correct amount
of the tax.

(1) As used in, and in respect of a tax imposed by, this
article, the term "deficiency" means the amount by which the
tax imposed by this article exceeds the amount shown as the
tax by the return; but the amount so shown on the return
shall first be increased by the amounts previously assessed, or
collected without assessment, as a deficiency, and decreased by
the amounts previously refunded in respect to such tax.

(2) If in the case of any taxpayer the commissioner de-
termines that there is a deficiency in respect of the tax im-
posed by this article, the commissioner shall send notification
of such deficiency to the taxpayer by mail. Such notification
shall set forth the details of the deficiency and the manner in
which the deficiency was computed. Within sixty days after
such notification is mailed, the taxpayer may file a petition
with the commissioner for a redetermination of the deficiency.
If a petition for a redetermination of a deficiency has been
filed by a taxpayer within the period provided in this section,
notice of, and an opportunity for, a hearing shall be given by
the commissioner to the taxpayer, and after a hearing thereon,
a decision by the commissioner shall be made as quickly as
practicable, and prompt notice thereof given to the taxpayer.
The commissioner shall have jurisdiction to redetermine the
correct amount of the deficiency, regardless of the fact that a
prior deficiency may have been found and assessed. Such sub-
sequent redetermination shall be subject to the notification
and hearing provision of this section.
If the taxpayer does not file a petition with the commis-
sioner within the time prescribed by this section, the deficiency
shall be assessed.
All notices requires to be mailed to a taxpayer under the
provisions of this article, if mailed to him at his last known
address, as shown on the income tax records of the commis-
sioner, shall be sufficient for the purposes of this article.
Sec. 47. *Additions to Tax in Case of Deficiencies.*

1. (1) If any part of this deficiency is due to negligence, or
2. intentional disregard of the provisions of this article or any
3. regulation issued thereunder, but without intent to de-
4. fraud, five per cent of total amount of the deficiency shall be
5. added to such deficiency and collected as a part thereof.

6. If any part of any deficiency is due to fraud with intent
7. to evade tax, then one hundred per cent of the total amount
8. of the deficiency shall be added to such deficiency and collected
9. as a part thereof.

10. In case of any failure to make and file a return required by
11. this article within the time prescribed herein; or in case of
12. the filing of an incorrect or insufficient return and after no-
13. tification thereof by the commissioner, there is a refusal or
14. neglect, within twenty days after such notice, to file a
15. correct and sufficient return, or there is filed in response
16. thereto a false or fraudulent return, the commissioner shall
17. determine the correct tax liability of such taxpayer according
18. to the best information obtainable, and shall assess the same
19. at not more than double the amount of tax so determined.

20. The provisions of sections forty-six and forty-nine relating to
notice and hearing shall not be applicable to this and the pre-
ceeding paragraph.

Interest upon the amount determined as a deficiency shall
be assessed at the same time as the deficiency, or the additional
tax, and upon notice and demand from the commissioner, shall
be collected as a part of the tax, at the rate of one-half of one
per cent per month from the date prescribed for the pay-
ment of the tax to the date the deficiency or additional tax
is assessed.

(2) Where the amount determined by the taxpayer as
the tax imposed by this article, or any part of such amount,
is not paid on or before the date prescribed for its payment,
there shall be collected as a part of the tax, interest upon
such unpaid amount at the rate of one per cent per month
from the date prescribed for its payment until it is paid.

Where an extension of time for payment of the amount
determined as the tax by the taxpayer has been granted, and
the amount and interest determined under subsection three
is not paid in full prior to the expiration of the period of the
extension, then, in lieu of the interest provided in subsection
three, interest at the rate of one per cent per month shall be
collected on such unpaid amount from the date prescribed
for its payment, as if no extension had been granted, until
it is paid.

(3) If the time for payment of the amount determined as
the tax by the taxpayer is extended under the authority of
section forty-one, there shall be collected as a part of such
amount, interest thereon at the rate of six per cent per annum
from the date when such payment should have been made if
no extension had been granted, until the expiration of the
period of the extension, unless sooner paid, subject, however,
to the provisions of subsection two above.

Sec. 48. Criminal Penalties.

(1) Any person required under this article to pay any
tax, make a return, keep any records, or supply any infor-
mation, for the purposes of the computation, assessment, or
collection of any tax imposed by this article, who willfully
fails to pay such tax, make such return, keep such records, or
supply such information, at the time or times required by this
article or any lawful regulations issued thereunder, shall, in
addition to other penalties provided by this article, be guilty
of a misdemeanor, and, upon conviction thereof, be fined not
more than one thousand dollars, or imprisoned for not more
than one year, or both, in the discretion of the court.

(2) Any person who wilfully files a false or fraudulent
return under this article disclosing an understatement of
tax, or in case of a partnership showing an understatement
of net income, with intent to evade the tax, shall, in addition
to other penalties provided by this article, be guilty of a
misdemeanor and shall, upon conviction thereof, be fined not
more than one thousand dollars, or imprisoned for not more
than one year, or both, in the discretion of the court.

(3) The term "person" as used in this section includes an
officer or employee of a corporation or a member or employee
of a partnership, whose ordinary duties as such officer, em-
ployee, or member include the performance of the act or
acts in respect of which the violation occurs.

(4) The failure to do any act required by or under the
provisions of this article shall be deemed an act committed
in part at the office of the commissioner, in Charleston, West
Virginia. The certificate of the commissioner that any person
has failed to comply with the provisions of this article, either
in whole or in part, shall be prima facie evidence of such failure.

Sec. 49. Assessment and Collection of Deficiencies. If the taxpayer files a petition for a hearing with the commissioner, in accordance with the provisions of section forty-six of this article, the entire amount determined as the deficiency by the decision of the commissioner following such hearing, shall be assessed and be paid within ten days from and after notice and demand therefor.

No assessment of a deficiency in respect of the tax imposed by this article and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notification, as provided in section forty-six, has been mailed to the taxpayer, nor until the expiration of such sixty-day period, nor, if a petition has been filed with the commissioner, until after notice of his decision thereon.

If the taxpayer does not file a petition with the commissioner within the time prescribed in section forty-six, the deficiency, notification of which has been mailed to the taxpayer, shall be assessed and paid within ten days after notice and demand from the commissioner.
Sec. 50. Jeopardy Assessments; Termination of Taxable Year.

3 (1) (a) If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency, together with all interest, penalties, or additions to the tax provided for by this article, regardless of the provisions of sections forty-six or forty-nine, and notice and demand shall be made by the commissioner for immediate payment thereof. If the jeopardy assessment is made before any notice, in respect of the tax to which the jeopardy assessment relates, has been mailed under section forty-six, then the commissioner shall mail a notice as provided under section forty-six within ten days after the making of the assessment.

15 (b) When a jeopardy assessment has been made, the taxpayer may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the commissioner a bond in an amount not exceeding double the amount as to which the stay is desired, and with such sureties as the commissioner deems necessary, conditioned upon the payment of so much of the amount, the collection of which
is stayed by the bond, as is not reduced by the decision of the commissioner, together with interest thereon as provided in section forty-seven: Provided, however, That if a petition is not filed within the period provided in section forty-six, then the amount of the tax, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such period: Provided further, That such bond must be filed within ten days following the assessment.

(c) When a petition has been filed with the commissioner and when the amount which should have been assessed has been determined by a decision of the commissioner, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon the notice and demand, and any remaining portion of the assessment, not due and payable, shall be cancelled. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded to the taxpayer as provided in section fifty-four without the filing of claim therefor. If the amount determined as the tax which should have been assessed is greater than the amount actually assessed then the difference shall be assessed and
shall be collected as part of the tax upon notice and demand from the commissioner.

(2) (a) If the commissioner finds that a taxpayer intends or is about to depart from the state of West Virginia or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the commissioner shall declare the current period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the current taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by this article for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this subsection, the
finding of the commissioner, made as herein provided, whether
made after notice to the taxpayer or not, shall be for all pur-
poses presumptive evidence of the taxpayer’s intent or pur-
pose. The provisions of section forty-six and forty-nine with
respect to notice and hearing shall not be applicable to this
subsection.

(b) A taxpayer who is not in default in making any re-
turn or paying any tax under this article, but whose current
taxable year has been terminated as herein provided, may
furnish to the commissioner, under regulations to be pre-
scribed by him, security approved by the commissioner that
he will duly make the return next thereafter required to be
filed and pay the tax next thereafter required to be paid.

(c) If security is approved and accepted and such fur-
ther or other security with respect to the tax or taxes cov-
ered thereby, is given as the commissioner shall from time
to time find necessary and require, payment of such taxes
shall not be enforced by any proceedings under the pro-
visions of this article prior to the expiration of the time
otherwise allowed for paying such taxes.
Sec. 51. **Limitation Upon Assessment and Collection.**

1. The amount of taxes, including deficiencies, additional taxes, and the interest thereon, imposed by this article shall be assessed within three years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.

2. If the taxpayer omits from gross income on a return required by this article an amount which should have been included therein which is in excess of twenty-five per cent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

3. If the taxpayer omits from gross income on a return required by this article an amount which should have been included therein, as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

4. For the purposes of this section a return filed be-
fore the last day provided by this article for the filing thereof,
shall be considered as filed on such last day.

(5) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(6) Where before the expiration of the time prescribed by this section for the assessment of the tax, both the commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(7) Where the assessment of any tax imposed by this article has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (a) within five years after the assessment of the tax, or (b) prior to the expiration of any period for collection agreed upon in writing by the commissioner and the taxpayer before the expir-
ation of such five-year period. The period so agreed upon
may be extended by subsequent agreements in writing made
before the expiration of the period previously agreed upon.
(8) The running of the statute of limitations provided in
this section on the making of assessments and the institu-
tion of distraint proceedings or a proceeding in court for
collection, in respect of any deficiency, shall, after the mail-
ing of a notice under section forty-six, be suspended for the
period during which the commissioner is prohibited from
making the assessment or instituting distraint proceedings or
a proceeding in court as provided in this article.

Sec. 52. Restraint of Assessment or Collection. No injunc-
tion or other order shall be awarded by any court or judge to
restrain the assessment or collection of the taxes imposed by
this article, or any part of them, due from any person, except
upon the ground that such taxes were assessed in violation of
the constitution of either the state of West Virginia or the
United States.

Sec. 53. Collection of Unpaid Taxes, Interest and Penalties.
(1) The amount of the tax imposed under this article,
together with interest and penalties accrued and unpaid, shall
be a debt due the state. It shall be a personal obligation of the
taxpayer and shall be a lien upon all property of the taxpayer
as of the date of assessment, without the necessity of levy or
recordation, and said lien shall have priority over all other
liens and obligations. The lien created by this subsection with
respect to the personal property of the taxpayer may be en-
forced by distraint, and, with respect to real property of the
taxpayer, may be enforced by suit in equity as in the case of
a judgment lien; and the provisions of section fourteen, ar-
ticle nine of this chapter may also be invoked for the collection
of taxes accruing under this article.

(2) The commissioner may require the assistance of the
sheriff of any county of the state in levying such distraint in
the county of which such sheriff is an officer. A sheriff so
collecting taxes due hereunder shall be entitled to compensa-
tion in the amount of all penalties collected over and above
the principal amount of the tax due, but in no case shall
such compensation exceed twenty-five dollars. All taxes and
penalties so collected, less compensation provided above, shall
be remitted within ten days after collection to the tax com-
mmissioner, who shall prescribe by general regulation the man-
25 ner of remittance of such funds and of allowing the collecting
26 officer compensation due him under this section.
27 (3) Action may be brought at any time by the attorney
general of the state, at the instance of the commissioner, in
the name of the state to recover the amount of any taxes,
interest and penalties due and assessed under this article.
29 (4) The commissioner shall have the power to waive or
reduce any of the additional taxes, penalties or interest there-
on, assessed under the provisions of this article: Provided,
however, That no such additional penalties or interest shall
be waived or reduced if occasioned by negligence, fraud or
evasion of the taxpayer.

Sec. 54. Refunds. A taxpayer who has paid in any manner,
except under the provisions of subsection three or four of
section fifty-three, an amount of tax for any taxable period
in excess of the amount legally due for such period, may file
with the commissioner a claim for refund of such excess.
6 Unless a claim for refund is filed by the taxpayer within
three years from the time the tax was due or within two years
from the time the tax was paid, which-ever shall be the later
date, no refund shall be allowed.
The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or, if no claim was filed, then during the three years immediately preceding the allowance of the refund. A refund under this section shall be with interest at six per cent from time of payment. Interest payments on refunds heretofore made under this article are hereby authorized and approved.

If a claim for refund is filed, and as a part thereof the taxpayer petitions for a hearing thereon, the commissioner shall grant such hearing, and shall notify the taxpayer in writing of his determination and decision on the claim filed.

If in the examination of the return, and after the determination of the correct tax due under the provisions of section forty-six, or, after a determination of a claim for refund filed under this section, the commissioner finds the correct amount of tax due to be less than the amount paid, the excess shall be refunded, subject to the limitations of this section.

Any person feeling aggrieved by the decision of the commissioner on his claim for refund may appeal from the de-
decision, at any time within thirty days after notice of such
determination or decision is mailed, by filing his petition in
the circuit court of Kanawha county. Thereupon, appropriate
proceedings shall be had and the relief to which the taxpayer
may be entitled may be granted and any overpayment found
by the court to be in excess of the tax legally assessed and
paid shall be ordered refunded to the taxpayer, with interest
at the rate of six per cent per annum from time of payment.
Any person feeling aggrieved by the decision of the circuit
court of Kanawha county under the provisions of the pre-
ceeding paragraph may appeal to the supreme court of appeals
as in other civil cases.

Sec. 60. Severability. If any part of this article shall, for
any reason, be adjudged by a court to be invalid, such judg-
ment 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. 62. Effective Date. The provisions of this act shall take
effect as of January first, one thousand nine hundred thirty-
ine, and the first tax to be assessed and collected under the
provisions of this act shall be computed upon income received during the calendar year one thousand nine hundred thirty-nine.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

E. O. Wishman
Chairman Senate Committee

R. E. Brault
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within day of this the...

Mar... 1939.

Governor.

Filed in the office of the Secretary of State of West Virginia MAR.17, 1939
Wm. S. O'Brien,
Secretary of State