

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



# ENROLLED

HOUSE BILL No. 137

(By Mr. Strauss)



PASSED March 3, 1939

In Effect ninety days from Passage

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(BY MR. STROUSS)

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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-

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  
4     to a tax imposed by this article, or whose income is in whole  
5     or in part subject to a tax imposed by this article.

6     “Individual” means a natural person.

7     “Person” includes individuals, fiduciaries and partner-  
8     ships.

9     “Fiduciary” means a guardian, trustee, executor, admin-  
10    istrator, receiver, conservator, or any person, whether indi-  
11    vidual or corporate, acting in any fiduciary capacity, for any  
12    person, trust or estate.

13    “Partnership” includes a syndicate, group, pool, joint  
14    venture, joint ownership or other unincorporated organiza-  
15    tion, through or by means of which any business, financial  
16    operation, or venture is carried on, and which is not, within

17 the meaning of this act, a trust or estate or a corporation ;  
18 and the term "partner" includes a member in such a  
19 syndicate, group, pool, joint venture or joint ownership, or  
20 organization.

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

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

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

35 "Fiscal year" means an accounting period of twelve  
36 months, ending the last day of any month other than De-  
37 cember.

38     The terms “tax” and “tax liability” shall include all taxes  
39     interest and penalties accruing or imposed under this article.

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

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

50     “Gross income” means such income as is defined in sections  
51     twenty-one and twenty-four of this article.

52     “Net income” means “gross income” less the deductions  
53     allowed by sections eight and twenty-five of this article.

54     “Taxable net income” means “net income” less the ex-  
55     emptions and credits allowed by section thirty-three of this  
56     article.

57     “Dividend” means any distribution made by a corporation  
58     out of its earnings or profits to its shareholders or members,



59 whether in cash or in other property or in stock of the cor-  
60 poration, other than stock dividends. If paid in property  
61 other than cash, such property shall be valued at its fair mar-  
62 ket value on the date of distribution.

63 “Stock dividends” mean new stock issued for surplus or  
64 profits capitalized, to common shareholders in proportion to  
65 their previous holdings.

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

Sec. 4. *Graduated Tax on Net Income of Nonresidents.*

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

9 The term “business situs” as used in this section shall be  
10 deemed to have the same meaning as the situs of intangible  
11 personal property for ad valorem tax purposes, except that

12 intangible property constituting the corpus of a trust, in  
13 whole or in part, and not connected with or used in carrying  
14 on a trade or business within this state, shall not be treated  
15 as having such business situs within this state.

Sec. 24. *Items Not Included in Gross Income.* The following

2 items shall not be included in gross income and shall be ex-  
3 empt from taxation under this article:

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

9 (2) The amount received by the insured as a return of  
10 premium paid by him under any life insurance, endowment  
11 or annuity contract either during the term or at the maturity  
12 of the term mentioned in the contract or upon the surrender  
13 of the contract.

14 (3) The value of property acquired by gift, bequest, de-  
15 vise or descent, but the income from such property shall be  
16 included in gross income.

17 (4) Interest upon the obligations of the United States or

18 its possessions, the District of Columbia, or upon obligations  
19 of the state of West Virginia or any political subdivision  
20 thereof.

21 (5) Any amount received through accident, or health in-  
22 surance, or under workmen's compensation acts, as compen-  
23 sation for personal injury or sickness, plus the amount of  
24 damages received whether by suit or agreement on account of  
25 such injury or sickness or through the war risk insurance act  
26 or any law for the benefit or relief of injured or disabled  
27 members of the military or naval forces of the United  
28 States.

29 (6) Stock dividends when received by a shareholder, unless  
30 before or after the distribution of the dividend the cor-  
31 poration proceeds to cancel or redeem its stock so as to make  
32 the distribution and cancellation or redemption in whole or in  
33 part essentially equivalent to the distribution of a taxable  
34 dividend; and stock dividends shall be considered in com-  
35 puting gain, profit or income upon the sale, exchange, or  
36 other disposition of stock upon which a stock dividend has  
37 been declared or of the stock included in such stock dividend.

38 (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

15 purchase or carry obligations the interest upon which is  
16 wholly exempt from the taxes imposed by this article.

17 (3) Taxes paid or accrued within the taxable year, except:

18 (a) West Virginia income taxes under this article;

19 (b) Estate, inheritance, legacy, succession and gift taxes;

20 and

21 (c) Taxes assessed against local benefits of a kind tending  
22 to increase the value of the property assessed.

23 (4) Losses sustained during the taxable year and not com-  
24 pensated for by insurance or otherwise:

25 (a) If incurred in trade or business; or

26 (b) If incurred in any transaction entered into for profit  
27 though not connected with the trade or business; or

28 (c) On property not connected with the trade or business,  
29 if the loss arises from fires, storms, shipwreck or other  
30 casualty, or from theft, but in the case of a nonresident, only  
31 on real property or tangible personal property having an  
32 actual situs within the state: *Provided, however,* That the  
33 basis for losses claimed under this subsection shall be adjusted  
34 to the date of such loss as provided in section thirty of this  
35 article, regardless of the nondeductibility in any prior year

36 of the items of such adjustment under the provisions of this  
37 section.

38 (5) In the case of any loss claimed to have been sustained  
39 from any sale or other disposition of shares of stock or secu-  
40 rities where it appears that, within a period beginning thirty  
41 days before the date of such sale or disposition and ending  
42 thirty days after such date, the taxpayer has acquired, by  
43 purchase or by an exchange upon which the entire amount of  
44 gain or loss was recognized by law, or has entered into a con-  
45 tract or option so to acquire, substantially identical stock or  
46 securities, then no deduction for the loss shall be allowed. If  
47 the amount of stock or securities acquired, or covered by con-  
48 tract or option to acquire, is less than the amount of stock or  
49 securities sold or otherwise disposed of, then the particular  
50 shares of stock or securities, the loss from the sale or other dis-  
51 position of which is not deductible, shall be determined under  
52 rules and regulations prescribed by the commissioner. If the  
53 amount of stock or securities acquired, or covered by a con-  
54 tract or option to acquire, is not less than the amount of stock  
55 or securities sold or otherwise disposed of, then the particular  
56 shares of stock or securities, the acquisition of which, or the

57 contract or option to acquire which, resulted in the non-  
58 deductibility of the loss, shall be determined under rules and  
59 regulations prescribed by the commissioner.

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

65 (7) A reasonable allowance for the exhaustion, wear and  
66 tear of property used in the trade or business, including a  
67 reasonable allowance for obsolescence. In the case of prop-  
68 erty held by one person for life with remainder to another  
69 person, the deduction shall be computed as if the life tenant  
70 were the absolute owner of the property and shall be allowed  
71 to the life tenant. In the case of property held in trust the  
72 allowable deduction shall be apportioned between the income  
73 beneficiaries and the trustee in accordance with the pertinent  
74 provisions of the instrument creating the trust, or, in absence  
75 of such provisions, on the basis of the trust income allocable  
76 to each.

77 (8) In the case of mines, timber, oil and gas wells, and

78 other natural deposits, a reasonable allowance for depletion,  
79 according to the peculiar conditions in each case ; such reason-  
80 able allowance in all cases to be made under rules and regula-  
81 tions to be prescribed by the commissioner. In any case in  
82 which it is ascertained as a result of operations or of develop-  
83 ment work that the recoverable units are greater or less than  
84 the prior estimate thereof, then such prior estimate, but not  
85 the basis for depletion, shall be revised and the allowance  
86 under this paragraph for subsequent taxable years shall be  
87 based upon such revised estimate. In the case of leases the  
88 deductions shall be equitably apportioned between the lessor  
89 and lessee. In the case of property held by one person for life  
90 with remainder to another person, the deduction shall be com-  
91 puted as if the life tenant were the absolute owner of the  
92 property and shall be allowed to the life tenant. In the case  
93 of property held in trust the allowable deduction shall be  
94 apportioned between the income beneficiaries and the trustee  
95 in accordance with the pertinent provisions of the instrument  
96 creating the trust, or, in the absence of such provisions, on  
97 the basis of the trust income allocable to each.

98 (9) The basis for determining the amount of deduction for

99 losses sustained and to be allowed, and for bad debts to be  
100 allowed, and for depletion, exhaustion, wear and tear and  
101 obsolescence, shall be the adjusted basis provided in section  
102 thirty of this article for determining the loss from the sale or  
103 other disposition of property.

104 (10) In lieu of the depletion allowance provided in subsec-  
105 tion eight above for oil and gas wells, the taxpayer may de-  
106 duct from the income of such oil and gas wells a depletion  
107 allowance equivalent to twenty-seven and one-half per cent  
108 of the gross income from the property during the tax year,  
109 excluding from such gross income an amount equal to any  
110 rents or royalties paid or incurred by the taxpayer in respect  
111 of the property. Such allowance shall not exceed fifty per  
112 cent of the net income of the taxpayer, computed without  
113 allowance for depletion, from the property, except that in no  
114 case shall the depletion allowance be less than it would be if  
115 computed without reference to this subsection.

116 (11) In any case of two or more organizations, including  
117 corporations, trades, or businesses located both within and  
118 without the state, owned or controlled directly or indirectly  
119 by the same interest or interests, any one or more of which is



120 or are taxable in whole or in part under this article, the com-  
121 missioner is authorized to distribute, apportion, or allocate  
122 gross income or deductions between or among such organiza-  
123 tions, including corporations, trades, or businesses, if he de-  
124 termines that such distribution, apportionment, or allocation is  
125 necessary in order to prevent evasion of taxes, or clearly to  
126 reflect the income of any such organizations, trades or busi-  
127 nesses, taxable hereunder.

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

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

Sec. 28. *Casual Sale or Other Disposition.* In the case of a  
2 casual sale or other casual disposition of personal property for  
3 a price exceeding five hundred dollars, or of a sale or other  
4 disposition of real property, if in either case the initial pay-

5 ments do not exceed thirty per cent of the sale price, the in-  
6 come may be returned on the basis and in the manner pre-  
7 scribed in section twenty-seven.

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

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

9 (a) In the case of property which is, or should be, in-  
10 cluded in an inventory, the basis shall be the last inventory  
11 value thereof;

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

17 (c) in the case of property acquired by gift or by  
18 a transfer in trust, except property acquired as pro-

19 vided in subsection (b) above, the basis shall be the  
20 same as it would be in the hands of the donor, grantor,  
21 or the last preceding owner by whom it was not ac-  
22 quired by gift, except that for the purpose of determ-  
23 ining loss the basis shall be the basis so determined  
24 or the fair market value of the property at the time  
25 of the gift or transfer in trust, whichever is lower. If  
26 the facts necessary to determine the basis in the hands of the  
27 donor, grantor, or the last preceding owner, are unknown to  
28 the donee or recipient, the commissioner may obtain such  
29 facts from such donor, grantor, or last preceding owner, or  
30 any other person cognizant thereof. If the commissioner  
31 finds it impracticable to obtain such facts, the basis in the  
32 hands of such donor, grantor, or last preceding owners, shall  
33 be the fair market value of such property as found by the  
34 commissioner as of the date or approximate date at which,  
35 according to the best information that the commissioner is  
36 able to obtain, such property was acquired by such donor,  
37 grantor, or last preceding owner.

38 (2) In the case of property acquired prior to January  
39 first, one thousand nine hundred thirty-five, the basis shall

40 be determined as provided in subsection one of this section,  
41 subject to the adjustments as provided in subsection four of  
42 this section, and as further qualified by the provisions of  
43 paragraphs (a), (b) and (c) of this subsection. In determin-  
44 ing the fair market value of stock in a corporation as of  
45 January first, one thousand nine hundred thirty-five, due  
46 regard shall be given to the fair market value of the assets of  
47 the corporation as of that date;

48 (a) If the amount realized from the sale or other dispo-  
49 sition of property is in excess of the original cost and also  
50 in excess of the January first, one thousand nine hundred  
51 thirty-five, fair market value thereof, the gain to be included  
52 in gross income shall be the excess of the amount realized  
53 over the January first, one thousand nine hundred thirty-five,  
54 fair market value, if such fair market value is greater than  
55 the original cost, and if not, the excess of the amount real-  
56 ized over such cost.

57 (b) If the amount realized from the sale or other dispo-  
58 sition of property is less than the original cost and also less  
59 than the January first, one thousand nine hundred thirty-five,  
60 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

82 making in respect of such substituted basis, proper adjust-  
83 ment of a similar nature in respect of the period during  
84 which the property was held by the transferor, donor or  
85 grantor, or during which the other property was held by the  
86 person for whom the basis is to be determined. A similar rule  
87 shall be applied in the case of a series of substituted bases.

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

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

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

101 (2) In respect of any period since December thirty-first,



102 one thousand nine hundred thirty-four, for exhaustion, wear  
103 and tear, obsolescence, amortization and depletion, to the ex-  
104 tent allowable; and,

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

109 (b) Amounts distributed in complete liquidation of a cor-  
110 poration shall be treated as in full payment in exchange for  
111 the stock, and amounts distributed in partial liquidation of  
112 a corporation shall be treated as in part or full payment in  
113 exchange for the stock. The gain or loss to the distributee  
114 resulting from such exchange shall be determined under this  
115 section. For the purpose of the first sentence of this para-  
116 graph, "complete liquidation" includes any one of a series  
117 of distributions made by a corporation in complete cancella-  
118 tion or redemption of all of its stock in accordance with a  
119 bona fide plan of liquidation and under which the transfer  
120 of the property under the liquidation is to be completed  
121 within a time specified in the plan. The term "amounts dis-  
122 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-  
138 ings 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-  
142 cember thirty-first, one thousand nine hundred thirty-four,  
143 have been distributed, but any such tax-free distribution shall

144 be applied against and reduce the adjusted basis of the stock  
145 provided in this section.

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

153 (5) If an installment obligation is satisfied at other than  
154 its face value or distributed, transmitted, sold, or otherwise  
155 disposed of, gain or loss shall result to the extent of the differ-  
156 ence between the basis of the obligation and (a) in the case  
157 of satisfaction at other than face value or a sale or exchange  
158 —the amount realized, or (b) in case of a distribution, trans-  
159 mission, or disposition otherwise than by sale or exchange—  
160 the fair market value of the obligation at the time of such  
161 distribution, transmission or disposition. Any gain or loss so  
162 resulting shall be considered as resulting from the sale or  
163 exchange of the property in respect of which the installment  
164 obligation was received. The basis of the obligation shall be

165 the excess of the face value of the obligation over an amount  
166 equal to the income which would be returnable were the obli-  
167 gation satisfied in full. Nothing in this section shall be con-  
168 strued to prevent, in the case of property sold under contract  
169 providing for payment in installments, the taxation of that  
170 portion of any installment payment representing gain or  
171 profit in the year in which such payment is received.

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

182 (7) If the property was acquired after December thirty-  
183 first, one thousand nine hundred thirty-four, upon an ex-  
184 change described in section thirty-one (2) to (4), inclusive,  
185 of this article, the basis shall be the same as in the case of the

186 property exchanged; decreased in the amount of any money  
187 received by the taxpayer and increased in the amount of gain  
188 or decreased in the amount of loss to the taxpayer that was  
189 recognized upon such exchange under this article and ap-  
190 plicable to the year in which the exchange was made. If the  
191 property so acquired consisted in part of the type of property  
192 permitted by section thirty-one (2) to be received without  
193 the recognition of gain or loss, and in part of other property,  
194 the basis provided in this subsection shall be allocated be-  
195 tween the properties, other than money, received, and for  
196 the purpose of the allocation there shall be assigned to such  
197 other property an amount equivalent to its fair market value  
198 at the date of the exchange.

199 (8) If the property was acquired after December thirty-  
200 first, one thousand nine hundred thirty-four, as a result of a  
201 compulsory or involuntary conversion described in section  
202 thirty-one (5), the basis shall be the same as in the case of the  
203 property so converted; decreased in the amount of any money  
204 received by the taxpayer which was not expended in accord-  
205 ance with the provisions of this article, determining the tax-  
206 able status of the gain or loss upon such conversion, and in-

207 creased in the amount of gain or decreased in the amount of  
208 loss to the taxpayer recognized upon such conversion under  
209 this article.

210 (9) The amount realized from the sale or other disposi-  
211 tion of property shall be the sum of any money received, plus  
212 the fair market value of any property other than money  
213 received.

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

2 (1) Upon the sale or exchange of property the entire  
3 amount of the gain or loss, determined under section thirty  
4 of this article shall be recognized, except as hereinafter pro-  
5 vided in this section.

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

14 (b) No gain or loss shall be recognized if common stock



15 in a corporation is exchanged solely for common stock in the  
16 same corporation, or if preferred stock in a corporation is  
17 exchanged solely for preferred stock in the same corporation.

18 (c) No gain or loss shall be recognized if stock or securi-  
19 ties in a corporation a party to a reorganization are, in pur-  
20 surance of the plan of reorganization, exchanged solely for  
21 stock or securities in such corporation or in another corpora-  
22 tion a party to the reorganization.

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

34 (3) If an exchange would be within the provisions of  
35 subsection two of this section if it were not for the fact that

36 the property received in exchange consists not only of prop-  
37 erty permitted by such subsection to be received without the  
38 recognition of gain, but also of other property or money,  
39 then the gain, if any, to the recipient shall be recognized,  
40 but in an amount not in excess of the sum of such money  
41 and the fair market value of such other property.

42 If a distribution made in pursuance of a plan of reorgani-  
43 zation is within the provisions of this subsection but has the  
44 effect of the distribution of a taxable dividend, then there  
45 shall be taxed as a dividend to each distributee such an  
46 amount of the gain recognized under this subsection as is  
47 not in excess of his ratable share of the undistributed earn-  
48 ings and profits of the corporation accumulated after De-  
49 cember thirty-first, one thousand nine hundred thirty-four.  
50 The remainder, if any, of the gain recognized under this sub-  
51 section shall be taxed as a gain from the exchange of prop-  
52 erty.

53 (4) If an exchange would be within the provisions of sub-  
54 section two of this section if it were not for the fact that the  
55 property received in exchange consists not only of property  
56 permitted by such paragraphs to be received without the

57 recognition of gain or loss, but also of other property or  
58 money, then no loss from the exchange shall be recognized.

59 (5) If property, as a result of its destruction in whole or  
60 in part, theft or seizure, or an exercise of the power of  
61 requisition or condemnation, or the threat or imminence  
62 thereof, is compulsory or involuntarily converted into property  
63 similar or related in service or use to the property so converted,  
64 or into money which is forthwith in good faith, under regula-  
65 tions prescribed by the commissioner, expended in the acquisi-  
66 tion of other property similar or related in service or use to the  
67 property so converted, or in the acquisition or control of a  
68 corporation owning such other property, or in the establish-  
69 ment of a replacement fund, no gain or loss shall be recog-  
70 nized. If any part of the money is not so expended, the gain,  
71 if any, shall be recognized, but in an amount not in excess  
72 of the money which is not so expended.

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

74 (a) The term "reorganization" means (a) a statutory  
75 merger or consolidation, or (b) the acquisition by one cor-  
76 poration in exchange solely for all or a part of its voting  
77 stock; of at least eighty per cent of the voting stock and at

78 least eighty per cent of the total number of shares of all  
79 other classes of stock of another corporation; or of substan-  
80 tially all the properties of another corporation, or (c) a  
81 transfer by a corporation of all or a part of its assets to  
82 another corporation if immediately after the transfer the  
83 transferor or its shareholders or both are in control of the  
84 corporation to which the assets are transferred, or (d) a  
85 recapitalization, or (e) a mere change in identity, form, or  
86 place or organization, however effected.

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

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

Sec. 34. *Credits Allowed Nonresidents.* In the case of a  
2 nonresident taxpayer, the exemption and dependency credits

3 allowed under the preceding section shall be reduced to  
4 amounts which bear the same ratio to the full exemption and  
5 dependency credits provided for herein as his gross income  
6 returnable under this article bears to his entire gross income,  
7 for the taxable year: *Provided, however,* That such exemp-  
8 tion and dependency credits shall not be allowed unless and  
9 until a return of income shall have been filed as provided in  
10 section thirty-eight of this article.

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

Sec. 38. *Return by Nonresident.* A nonresident taxpayer

2 shall not be entitled to the deductions authorized by section  
3 twenty-five of this article, nor to the exemption, dependency  
4 credits, or other credits authorized by section thirty-four of  
5 this article, unless and until he makes under oath a complete  
6 return of his gross income from sources both within and  
7 without the state.

Sec. 41. *Form for Returns; Time for Filing.* Returns shall  
2 be in the form the commissioner may prescribe, and shall be  
3 filed with the commissioner on or before the fifteenth day of  
4 April of each year, if the return is made on the basis of the  
5 calendar year, or if the return is made on the basis of the  
6 fiscal year, then on or before the fifteenth day of the third  
7 month following the close of such fiscal year. On application,  
8 the tax commissioner may grant a reasonable extension of  
9 time, not exceeding two months, for filing returns whenever  
10 in his judgment good cause exists therefor.

Sec. 44. *Payment of Tax, Interest and Penalties.* The full  
2 amount of the tax shall be due and payable to the commissioner  
3 at the time the return is filed: *Provided, however, That*  
4 such time shall in no event be later than the time fixed by  
5 section forty-one of this article for filing the return. After a



6 taxpayer files a corrected or amended return for any taxable  
7 year, on which a tax liability is disclosed in excess of the  
8 amount shown due on return previously filed for the same  
9 period, the excess of the tax liability, over and above that  
10 previously shown due and up to the amount disclosed on the  
11 corrected or amended return, shall be paid at the time of the  
12 filing of the corrected or amended return. Payments of  
13 deficiencies, interest and penalties shall be made as provided  
14 by section forty-nine.

15 Under such regulations as the commissioner may prescribe,  
16 the tax may be paid with uncertified check, but if such check  
17 is not paid by the bank on which it is drawn, the taxpayer by  
18 whom the check is tendered shall remain liable for the pay-  
19 ment of the tax, and for all legal penalties, the same as if such  
20 check had not been tendered.

Sec. 45. *Return to Be an Assessment.* The filing of a re-  
2 turn required by this article shall be deemed an assessment to  
3 the extent of the amount shown due, subject, however, to ex-  
4 amination, determination and revision of the tax under the  
5 following sections of this article. The filing of a corrected or  
6 amended return shall, in like manner, be deemed an assess-

7 ment as a deficiency to the extent of any excess shown due  
8 over the amount previously shown due on the prior return,  
9 subject, however, to examination, determination and revision  
10 of the tax under the following sections of this article.

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

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

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

12 (2) If in the case of any taxpayer the commissioner de-  
13 termines that there is a deficiency in respect of the tax im-  
14 posed by this article, the commissioner shall send notification  
15 of such deficiency to the taxpayer by mail. Such notification  
16 shall set forth the details of the deficiency and the manner in  
17 which the deficiency was computed. Within sixty days after

18 such notification is mailed, the taxpayer may file a petition  
19 with the commissioner for a redetermination of the deficiency.

20 If a petition for a redetermination of a deficiency has been  
21 filed by a taxpayer within the period provided in this section,  
22 notice of, and an opportunity for, a hearing shall be given by  
23 the commissioner to the taxpayer, and after a hearing thereon,  
24 a decision by the commissioner shall be made as quickly as  
25 practicable, and prompt notice thereof given to the taxpayer.

26 The commissioner shall have jurisdiction to redetermine the  
27 correct amount of the deficiency, regardless of the fact that a  
28 prior deficiency may have been found and assessed. Such sub-  
29 sequent redetermination shall be subject to the notification  
30 and hearing provision of this section.

31 If the taxpayer does not file a petition with the commis-  
32 sioner within the time prescribed by this section, the deficiency  
33 shall be assessed.

34 All notices requires to be mailed to a taxpayer under the  
35 provisions of this article, if mailed to him at his last known  
36 address, as shown on the income tax records of the commis-  
37 sioner, shall be sufficient for the purposes of this article.

Sec. 47. *Additions to Tax in Case of Deficiencies.*

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

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

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

22 notice and hearing shall not be applicable to this and the pre-  
23 ceding paragraph.

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

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

37 Where an extension of time for payment of the amount  
38 determined as the tax by the taxpayer has been granted, and  
39 the amount and interest determined under subsection three  
40 is not paid in full prior to the expiration of the period of the  
41 extension, then, in lieu of the interest provided in subsection  
42 three, interest at the rate of one per cent per month shall be

43 collected on such unpaid amount from the date prescribed  
44 for its payment, as if no extension had been granted, until  
45 it is paid.

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

Sec. 48. *Criminal Penalties.*

2 (1) Any person required under this article to pay any  
3 tax, make a return, keep any records, or supply any infor-  
4 mation, for the purposes of the computation, assessment, or  
5 collection of any tax imposed by this article, who willfully  
6 fails to pay such tax, make such return, keep such records, or  
7 supply such information, at the time or times required by this  
8 article or any lawful regulations issued thereunder, shall, in  
9 addition to other penalties provided by this article, be guilty  
10 of a misdemeanor, and, upon conviction thereof, be fined not



11 more than one thousand dollars, or imprisoned for not more  
12 than one year, or both, in the discretion of the court.

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

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

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

31 in whole or in part, shall be prima facie evidence of such  
32 failure.

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

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

15 If the taxpayer does not file a petition with the commis-  
16 sioner within the time prescribed in section forty-six, the  
17 deficiency, notification of which has been mailed to the tax-  
18 payer, shall be assessed and paid within ten days after notice  
19 and demand from the commissioner.

Sec. 50. *Jeopardy Assessments; Termination of Taxable*2 *Year.*

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

15     (b) When a jeopardy assessment has been made, the tax-  
16 payer may obtain a stay of collection of the whole or any  
17 part of the amount of the assessment by filing with the com-  
18 missioner a bond in an amount not exceeding double the  
19 amount as to which the stay is desired, and with such sure-  
20 ties as the commissioner deems necessary, conditioned upon  
21 the payment of so much of the amount, the collection of which

22 is stayed by the bond, as is not reduced by the decision of the  
23 commissioner, together with interest thereon as provided in  
24 section forty-seven: *Provided, however,* That if a petition is  
25 not filed within the period provided in section forty-six, then  
26 the amount of the tax, the collection of which is stayed by the  
27 bond, shall be paid on notice and demand at any time after  
28 the expiration of such period: *Provided further,* That such  
29 bond must be filed within ten days following the assessment.

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

43 shall be collected as part of the tax upon notice and demand  
44 from the commissioner.

45 (2) (a) If the commissioner finds that a taxpayer in-  
46 tends or is about to depart from the state of West Virginia  
47 or to remove his property therefrom, or to conceal himself  
48 or his property therein, or to do any other act tending to  
49 prejudice or to render wholly or partly ineffectual proceed-  
50 ings to collect the tax for the taxable year then last past or  
51 the taxable year then current unless such proceedings be  
52 brought without delay, the commissioner shall declare the  
53 current period for such taxpayer immediately terminated  
54 and shall cause notice of such finding and declaration to be  
55 given the taxpayer, together with a demand for immediate  
56 payment of the tax for the current taxable period so de-  
57 clared terminated and of the tax for the preceding taxable  
58 year or so much of such tax as is unpaid, whether or not the  
59 time otherwise allowed by this article for filing return and  
60 paying the tax has expired; and such taxes shall thereupon  
61 become immediately due and payable. In any proceeding in  
62 court brought to enforce payment of taxes made due and  
63 payable by virtue of the provisions of this subsection, the

64 finding of the commissioner, made as herein provided, whether  
65 made after notice to the taxpayer or not, shall be for all pur-  
66 poses presumptive evidence of the taxpayer's intent or pur-  
67 pose. The provisions of section forty-six and forty-nine with  
68 respect to notice and hearing shall not be applicable to this  
69 subsection.

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

77 (c) If security is approved and accepted and such fur-  
78 ther or other security with respect to the tax or taxes cov-  
79 ered thereby, is given as the commissioner shall from time  
80 to time find necessary and require, payment of such taxes  
81 shall not be enforced by any proceedings under the pro-  
82 visions of this article prior to the expiration of the time  
83 otherwise allowed for paying such taxes.



Sec. 51. *Limitation Upon Assessment and Collection.*

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

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

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

21    (4) For the purposes of this section a return filed be-

22 fore the last day provided by this article for the filing thereof,  
23 shall be considered as filed on such last day.

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

28 (6) Where before the expiration of the time prescribed by  
29 this section for the assessment of the tax, both the commis-  
30 sioner and the taxpayer have consented in writing to its as-  
31 sessment after such time, the tax may be assessed at any time  
32 prior to the expiration of the period agreed upon. The period  
33 so agreed upon may be extended by subsequent agreements in  
34 writing made before the expiration of the period previously  
35 agreed upon.

36 (7) Where the assessment of any tax imposed by this ar-  
37 ticle has been made within the period of limitation properly  
38 applicable thereto, such tax may be collected by distraint or  
39 by a proceeding in court, but only if begun (a) within five  
40 years after the assessment of the tax, or (b) prior to the  
41 expiration of any period for collection agreed upon in writ-  
42 ing by the commissioner and the taxpayer before the expir-

43 ation of such five-year period. The period so agreed upon  
44 may be extended by subsequent agreements in writing made  
45 before the expiration of the period previously agreed upon.

46 (8) The running of the statute of limitations provided in  
47 this section on the making of assessments and the institu-  
48 tion of distraint proceedings or a proceeding in court for  
49 collection, in respect of any deficiency, shall, after the mail-  
50 ing of a notice under section forty-six, be suspended for the  
51 period during which the commissioner is prohibited from  
52 making the assessment or instituting distraint proceedings or  
53 a proceeding in court as provided in this article.

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

Sec. 53. *Collection of Unpaid Taxes, Interest and Penalties.*

2 (1) The amount of the tax imposed under this article,  
3 together with interest and penalties accrued and unpaid, shall

4 be a debt due the state. It shall be a personal obligation of the  
5 taxpayer and shall be a lien upon all property of the taxpayer  
6 as of the date of assessment, without the necessity of levy or  
7 recordation, and said lien shall have priority over all other  
8 liens and obligations. The lien created by this subsection with  
9 respect to the personal property of the taxpayer may be en-  
10 forced by distraint, and, with respect to real property of the  
11 taxpayer, may be enforced by suit in equity as in the case of  
12 a judgment lien; and the provisions of section fourteen, ar-  
13 ticle nine of this chapter may also be invoked for the collection  
14 of taxes accruing under this article.

15 (2) The commissioner may require the assistance of the  
16 sheriff of any county of the state in levying such distraint in  
17 the county of which such sheriff is an officer. A sheriff so  
18 collecting taxes due hereunder shall be entitled to compensa-  
19 tion in the amount of all penalties collected over and above  
20 the principal amount of the tax due, but in no case shall  
21 such compensation exceed twenty-five dollars. All taxes and  
22 penalties so collected, less compensation provided above, shall  
23 be remitted within ten days after collection to the tax com-  
24 missioner, 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  
28 general of the state, at the instance of the commissioner, in  
29 the name of the state to recover the amount of any taxes,  
30 interest and penalties due and assessed under this article.

31 (4) The commissioner shall have the power to waive or  
32 reduce any of the additional taxes, penalties or interest there-  
33 on, assessed under the provisions of this article: *Provided,*  
34 *however,* That no such additional penalties or interest shall  
35 be waived or reduced if occasioned by negligence, fraud or  
36 evasion of the taxpayer.

Sec. 54. *Refunds.* A taxpayer who has paid in any manner,  
2 except under the provisions of subsection three or four of  
3 section fifty-three, an amount of tax for any taxable period  
4 in excess of the amount legally due for such period, may file  
5 with the commissioner a claim for refund of such excess.

6 Unless a claim for refund is filed by the taxpayer within  
7 three years from the time the tax was due or within two years  
8 from the time the tax was paid, which-ever shall be the later  
9 date, no refund shall be allowed.

10     The amount of the refund shall not exceed the portion of  
11     the tax paid during the three years immediately preceding  
12     the filing of the claim, or, if no claim was filed, then during  
13     the three years immediately preceding the allowance of the  
14     refund. A refund under this section shall be with interest at  
15     six per cent from time of payment. Interest payments on  
16     refunds heretofore made under this article are hereby author-  
17     ized and approved.

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

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

28     Any person feeling aggrieved by the decision of the com-  
29     missioner on his claim for refund may appeal from the de-



30 cision, at any time within thirty days after notice of such  
31 determination or decision is mailed, by filing his petition in  
32 the circuit court of Kanawha county. Thereupon, appropriate  
33 proceedings shall be had and the relief to which the taxpayer  
34 may be entitled may be granted and any overpayment found  
35 by the court to be in excess of the tax legally assessed and  
36 paid shall be ordered refunded to the taxpayer, with interest  
37 at the rate of six per cent per annum from time of payment.  
38 Any person feeling aggrieved by the decision of the circuit  
39 court of Kanawha county under the provisions of the pre-  
40 ceding paragraph may appeal to the supreme court of appeals  
41 as in other civil cases.

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

Sec. 62. *Effective Date.* The provisions of this act shall take  
2 effect as of January first, one thousand nine hundred thirty-  
3 nine, and the first tax to be assessed and collected under the

4 provisions of this act shall be computed upon income received  
5 during the calendar year one thousand nine hundred thirty-  
6 nine.

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

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

*E. O. Wiseman*

Chairman Senate Committee

*Reece B. Bralton*

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

*Charles A. Miller*

Clerk of the Senate

*Geo. S. Hall*

Clerk of the House of Delegates

*James H. Thomas*

President of the Senate

*James Kay Thomas*

Speaker House of Delegates

The within *passed* this the *16<sup>th</sup>*

day of *March*, 1939.

*Thomas A. Lee*

Governor.



Filed in the office of the Secretary of State  
of West Virginia. **MAR 17 1939**

Wm. S. O'BRIEN,  
Secretary of State