

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1955



ENROLLED

HOUSE BILL No. 128

(By Mr. Borries)



PASSED Mar 12 1955

In Effect 90 days from Passage



Filed in the Office of the Secretary of State
of West Virginia MAR 18 1955
D. PITT O'BRIEN
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 128

(Originating in the Committee on the Judiciary.)

[Passed March 12, 1955; in effect ninety days from passage.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by repealing sections two-j and twenty-three; by amending and reenacting sections one, two-a, two-b, two-c, two-d, two-i, three, four, five, six, seven, eight, eleven, twelve, thirteen, fourteen, sixteen, seventeen, twenty and twenty-two; and by enacting four new sections to be designated sections two-j, seven-a, seven-b and eight-a, all relating to the administration and enforcement of the business and occupation tax.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by repealing sections two-j and twenty-three; by amending and reenacting sections one, two, two-a, two-b, two-c, two-d, two-i, three, four, five, six, seven, eight, eleven, twelve, thirteen, fourteen, sixteen, seventeen, twenty and twenty-two; and by enacting four new sections to be designated sections two-j, seven-a, seven-b and eight-a, all to read as follows:

Section 1. *Definitions.*—When used in this article, the
2 term “person” or the term “company”, herein used inter-
3 changeably, includes any individual, firm, copartnership,
4 joint adventure, association, corporation, trust, or any
5 other group or combination acting as a unit, and the
6 plural as well as the singular number, unless the intention
7 to give a more limited meaning is disclosed by the context.

8 “Tax year” or “taxable year” means either the calendar
9 year, or the taxpayer’s fiscal year when permission is
10 obtained from the tax commissioner to use same as the
11 tax period in lieu of the calendar year.

12 “Sale”, “sales” or “selling” includes any transfer of the
13 ownership of, or title to, property, whether for money
14 or in exchange for other property.

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

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

29 "Gross proceeds of sales" means the value, whether
30 in money or other property, actually proceeding from the
31 sale of tangible property without any deduction on ac-
32 count of the cost of property sold or expenses of any kind.

33 The terms "gross income" and "gross proceeds of sales"
34 shall not be construed to include (1) cash discounts
35 allowed and taken on sales; (2) the proceeds of sale of

36 goods, wares or merchandise returned by customers when
37 the sale price is refunded either in cash or by credit; or
38 (3) the amount allowed as "trade-in value" for any article
39 accepted as part payment for any article sold.

40 "Business" shall include all activities engaged in or
41 caused to be engaged in with the object of gain or
42 economic benefit, either direct or indirect. "Business"
43 shall not include a casual sale by a person who is not
44 engaged in the business of selling the type of property
45 involved in such casual sale. "Business" shall include the
46 production of natural resources or manufactured products
47 which are used or consumed by the producer or manu-
48 facturer.

49 "Service business or calling" shall include all non-
50 professional activities engaged in for other persons for a
51 consideration, which involve the rendering of a service
52 as distinguished from the sale of tangible property, but
53 shall not include the services rendered by an employee
54 to his employer. This term shall include persons engaged
55 in manufacturing, compounding or preparing for sale,
56 profit, or commercial use, articles, substances, or commodi-

57 ties which are owned by another or others, as well as
58 persons engaged as independent contractors in producing
59 natural resource products for persons required to pay
60 the tax imposed by section two-a of this article.

61 "Selling at wholesale" or "wholesale sales" shall mean
62 and include: (1) sales of any tangible personal property
63 for the purpose of resale in the form of tangible personal
64 property; (2) sales of machinery, supplies or materials
65 which are to be directly consumed or used by the pur-
66 chaser in the conduct of any business or activity which
67 is subject to the tax imposed by this article or by article
68 twelve-a of this chapter; (3) sales of any tangible per-
69 sonal property to the United States of America, its
70 agencies and instrumentalities or to the state of West
71 Virginia, its institutions or political subdivisions.

72 "Contracting" shall include the furnishing of work, or
73 both materials and work, in the fulfillment of a contract
74 for the construction, alteration, repair, decoration or
75 improvement of a new or existing building or structure,
76 or any part thereof, or for the alteration, improvement or
77 development of real property.

Sec. 2. *Imposition of Privilege Tax.*—There is hereby
2 levied and shall be collected annual privilege taxes against
3 the persons, on account of the business and other activi-
4 ties, and in the amounts to be determined by the appli-
5 cation of rates against values or gross income as set forth
6 in sections two-a to two-j inclusive, of this article.

7 If any person liable for any tax under sections two-a
8 or two-b shall ship or transport his products or any part
9 thereof out of the state without making sale of such
10 products, the value of the products in the condition or
11 form in which they exist immediately before transpor-
12 tation out of the state shall be the basis for the assessment
13 of the tax imposed in said sections, except in those
14 instances in which another measure of the tax is ex-
15 pressly provided. The tax commissioner shall prescribe
16 equitable and uniform rules for ascertaining such value.

17 In determining value, however, as regards sales from
18 one to another of affiliated companies or persons, or under
19 other circumstances where the relation between the
20 buyer and seller is such that the gross proceeds from
21 the sale are not indicative of the true value of the subject

22 matter of the sale, the tax commissioner shall prescribe
23: uniform and equitable rules for determining the value
24: upon which such privilege tax shall be levied, corres-
25: ponding as nearly as possible to the gross proceeds from
26 the sale of similar products of like quality or character
27 where no common interest exists between the buyer and
28 seller but the circumstances and conditions are otherwise
29 similar.

30: Gross income included in the measure of the tax under
31 sections two-a and two-b of this article, except in
32: the case of production of natural gas, shall neither be
33 added nor deducted in computing the tax levied under
34: the other sections of this article.

35 A person exercising any privilege taxable under sec-
36 tions two-a or two-b of this article and engaging in
37: the business of selling his natural resources or manu-
38 factured products at retail in this state shall be required
39: to make returns of the gross proceeds of such retail sales
40: and pay the tax imposed in section two-c of this article
41: for the privilege of engaging in the business of selling
42: such natural resources or manufactured products at retail

43 in this state. But any person exercising any privilege
44 taxable under section two-a or two-b of this article
45 and engaging in the business of selling his natural re-
46 sources or manufactured products to producers of natural
47 resources, manufacturers, wholesalers, jobbers, retailers
48 or commercial consumers for use or consumption in the
49 purchaser's business shall not be required to pay the tax
50 imposed in section two-c of this article.

51 Manufacturers exercising any privilege taxable under
52 section two-b of this article shall not be required to pay
53 the tax imposed in section two-c of this article for the
54 privilege of selling their manufactured products for
55 delivery outside of this state, but the gross income derived
56 from the sale of such manufactured products outside of
57 this state shall be included in determining the measure
58 of the tax imposed on such manufacturer in section
59 two-b.

60 A person exercising privileges taxable under the other
61 sections of this article, producing coal, oil, natural gas,
62 minerals, timber or other natural resource products the
63 production of which is taxable under section two-a,

64 and using or consuming the same in his business, shall
65 be deemed to be engaged in the business of mining and
66 producing coal, oil, natural gas, minerals, timber or other
67 natural resource products for sale, profit or commercial
68 use, and shall be required to make returns on account of
69 the production of the business showing the gross proceeds
70 or equivalent in accordance with uniform and equitable
71 rules for determining the value upon which such privilege
72 tax shall be levied, corresponding as nearly as possible to
73 the gross proceeds from the sale of similar products of like
74 quality or character by other taxpayers, which rules the
75 tax commissioner shall prescribe.

Sec. 2-a. *Production of Coal and Other Natural Re-*
2 *source Products.*—Upon every person engaging or con-
3 tinuing within this state in the business of producing for
4 sale, profit or commercial use any natural resource prod-
5 ucts, the amount of such tax to be equal to the value of
6 the articles produced as shown by the gross proceeds
7 derived from the sale thereof by the producer, except as
8 otherwise provided, multiplied by the respective rates as
9 follows: Coal, one per cent; limestone or sandstone,

10 quarried or mined, one and one-half per cent; oil, three
11 per cent; natural gas, in excess of the value of five thou-
12 sand dollars, six per cent; blast furnace slag, three per
13 cent; sand, gravel or other mineral product, not quarried
14 or mined, three per cent; timber, one and one-half per
15 cent; other natural resource products, two per cent. The
16 measure of this tax is the value of the entire production in
17 this state, regardless of the place of sale or the fact that
18 the delivery may be made to points outside the state.

Sec. 2-b. *Manufactured or Compounded Products; Pro-*
2 *cessing of Poultry and Turkeys Not Considered as Manu-*
3 *facturing or Compounding.*—Upon every person engaging
4 or continuing within this state in the business of manu-
5 facturing, compounding or preparing for sale, profit or
6 commercial use, either directly or through the activity of
7 others in whole or part; any article or articles, substance
8 or substances, commodity or commodities, or electric pow-
9 er not produced by public utilities taxable under other pro-
10 visions of this article, the amount of the tax to be equal to
11 the value of the article, substance, commodity or electric
12 power manufactured, compounded or prepared for sale,

13 as shown by the gross proceeds derived from the sale
14 thereof by the manufacturer or person compounding or
15 preparing the same, except as otherwise provided, multi-
16 plied by a rate of three-tenths of one per cent. The
17 measure of this tax is the value of the entire product
18 manufactured, compounded or prepared in this state for
19 sale, profit or commercial use, regardless of the place of
20 sale or the fact that deliveries may be made to points
21 outside the state. However, the dressing and processing
22 of poultry and turkeys by a person, firm or corporation,
23 which poultry and turkeys are to be sold on a wholesale
24 basis by such person, firm or corporation shall not be
25 considered as manufacturing or compounding, but the
26 sale of these products, on a wholesale basis shall be sub-
27 ject to the same tax as is imposed on the business of selling
28 at wholesale as provided in section two-c of this article.

29 It is further provided, however, that in those instances
30 in which the same person partially manufactures products
31 within this state and partially manufactures such products
32 outside this state the measure of his tax under this section
33 shall be that proportion of the sale price of the manu-

34 factured product that the payroll cost of manufacturing
35 within this state bears to the entire payroll cost of manu-
36 facturing the product; or, at the option of the taxpayer,
37 the measure of his tax under this section shall be the
38 proportion of the sales value of the articles that the cost
39 of operations in West Virginia bears to the full cost of
40 manufacture of the articles.

Sec. 2-c. *Business of Selling Tangible Property; Sales*
2 *Exempt.*—Upon every person engaging or continuing
3 within this state in the business of selling any tangible
4 property whatsoever, real or personal, including the sale
5 of food, and the services incident to the sale of food in
6 hotels, restaurants, cafeterias, confectioneries, and other
7 public eating houses, except sales by any person engaging
8 or continuing in the business of horticulture, agriculture
9 or grazing, or of selling stocks, bonds or other evidences
10 of indebtedness, there is likewise hereby levied, and shall
11 be collected, a tax equivalent to one-half of one per cent
12 of the gross income of the business, except that in the
13 business of selling at wholesale the tax shall be equal to

14 fifteen one-hundredths of one per cent of the gross income
15 of the business.

Sec. 2-d. *Public Service or Utility Business.*—Upon any
2 person engaging or continuing within this state in any
3 public service or utility business, except railroad, railroad
4 car, express, pipe line, telephone and telegraph companies,
5 water carriers by steamboat or steamship and motor car-
6 riers, there is likewise hereby levied and shall be collected
7 taxes on account of the business engaged in equal to the
8 gross income of the business multiplied by the respective
9 rates as follows: Street and interurban and electric rail-
10 ways, one per cent; water companies, four per cent, except
11 as to income received by municipally owned water plants;
12 electric light and power companies, four per cent on sales
13 and demand charges for domestic purposes and com-
14 mercial lighting and three per cent on sales and demand
15 charges for all other purposes, except as to income re-
16 ceived by municipally owned plants producing or pur-
17 chasing electricity and distributing same; natural gas
18 companies, three per cent on the gross income, said gross
19 income for this purpose to be determined by deducting

20 from gross income from all sales of gas to consumers the
21 amount of the tax paid by the taxpayer under section
22 two-a of this article on the production of the same gas;
23 toll bridge companies, three per cent; and upon all other
24 public service or utility business, two per cent. The
25 measure of this tax shall not include gross income derived
26 from commerce between this state and other states of the
27 United States or between this state and foreign countries.
28 The measure of the tax under this section shall include
29 only gross income received from the supplying of public
30 services. The gross income of the taxpayer from any
31 other activity shall be included in the measure of the tax
32 imposed under the appropriate section or sections of this
33 article.

Sec. 2-i. *Business of Furnishing Property for Hire.*—

2 Upon every person engaging or continuing within this
3 state in the business of furnishing any real or tangible
4 personal property, which has a tax situs in this state, or
5 any interest therein, for hire, loan, lease or otherwise,
6 whether the return be in the form of rentals, royalties,

7 fees or otherwise, the tax shall be one per cent of the gross
8 income of any such activity.

9 The term "tangible personal property", as used herein,
10 shall not include money or public securities.

Sec. 2-j. *Small Loan Business.*—Upon every person en-
2 gaging or continuing within this state in the business of
3 making loans of money, credit goods, or things in action,
4 who because of such activity is required under the pro-
5 visions of article seven-a, chapter forty-seven, of the code
6 of West Virginia, one thousand nine hundred thirty-one,
7 as amended, to obtain a license from the commissioner of
8 banking of the state of West Virginia, the tax shall be
9 one per cent of the gross income of any such activity.

Sec. 3. *Exemptions.*—There shall be an exemption in
2 every case of fifty dollars in amount of tax computed
3 under the provisions of this article. A person exercising
4 a privilege taxable hereunder for a fractional part of a
5 tax year shall be entitled to an exemption of the sum
6 bearing the proportion to fifty dollars that the period
7 of time the privilege is exercised bears to a whole year.
8 Only one exemption shall be allowed to any one person,

9 whether he exercises one or more privileges taxable here-
10 under.

11 The provisions of the article shall not apply to: (a) In-
12 surance companies which pay the state of West Virginia
13 a tax upon premiums: *Provided, however,* That said ex-
14 emption shall not extend to that part of the gross income
15 of insurance companies which is received for the use of
16 real property, other than property in which any such
17 company maintains its office or offices, in this state,
18 whether such income be in the form of rentals or royal-
19 ties; (b) persons engaged in the business of banking: *Pro-*
20 *vided, however,* That said exemption shall not extend to
21 that part of the gross income of such persons which is
22 received for the use of real property owned, other than
23 the banking house or building in which the business of
24 the bank is transacted, whether such income be in the
25 form of rentals or royalties; (c) non-profit cemetery com-
26 panies organized and operated for the exclusive benefit
27 of their members; (d) fraternal societies, organizations
28 and associations organized and operated for the exclusive
29 benefit of their members and not for profit; (e) corpora-

30 tions, associations and societies organized and operated
31 exclusively for religious or charitable purposes; (f) pro-
32 duction credit association, organized under the provisions
33 of the federal "Farm Credit Act of one thousand nine hun-
34 dred thirty-three": *Provided, however,* That the exemp-
35 tions of this section shall not apply to corporations or
36 cooperative associations organized under the provisions
37 of article four, chapter nineteen of the code of West Vir-
38 ginia, one thousand nine hundred thirty-one, as amended;
39 (g) building and loan associations and federal savings and
40 loan associations; (h) persons engaged in conducting the
41 business of industrial loans under authority granted them
42 by article seven, chapter thirty-one of the code of West
43 Virginia, one thousand nine hundred thirty-one: *Pro-*
44 *vided, however,* That said exemption shall not extend to
45 that part of the gross income of such persons which is
46 received from the use of real property owned, other than
47 the business house or building in which the business of
48 the industrial loan company is transacted, whether such
49 income be in the form of rentals or royalties.

Sec. 4. *Computation of Tax; Payment.*—The taxes

2 levied hereunder shall be due and payable in quarterly
3 installments on or before the expiration of one month
4 from the end of the quarter in which they accrue. The
5 taxpayer shall, within one month from the expiration
6 of each quarter, make out an estimate of the tax for which
7 he is liable for such quarter, sign the same, and mail the
8 same together with a remittance, in the form required
9 by section eleven of this article, of the amount of the
10 tax to the office of the tax commissioner. In estimating
11 the amount of the tax due for each quarter the taxpayer
12 may deduct one-fourth of the total exemption allowed for
13 the year. When the total tax for which any person is liable
14 under this article does not exceed the sum of one hun-
15 dred dollars in any year, the taxpayer may pay the same
16 quarterly as aforesaid or, with the consent in writing of
17 the tax commissioner, at the end of the month next fol-
18 lowing the close of the tax year.

19 Any other provision of this section notwithstanding,
20 the tax commissioner, if he deems it necessary to insure
21 payment of the tax, may require the return and payment

22 under this section for periods of shorter duration than
23 quarter-year periods.

Sec. 5. *Return and Remittance by Taxpayer.*—On or
2 before the expiration of one month after the end of the
3 tax year each taxpayer shall make a return for the entire
4 tax year showing the gross proceeds of sales or gross
5 income of business, trade or calling, and compute the
6 amount of tax chargeable against him in accordance with
7 the provisions of this article and deduct the amount of
8 quarterly payments (as hereinbefore provided), if any,
9 and transmit with his report a remittance in the form
10 required by section eleven of this article covering the
11 residue of the tax chargeable against him to the office
12 of the tax commissioner; such return shall be signed by
13 the taxpayer, if made by an individual, or by the presi-
14 dent, vice president, secretary or treasurer of a corpora-
15 tion, if made on behalf of a corporation. If made on be-
16 half of a partnership, joint adventure, association, trust,
17 or any other group or combination acting as a unit, any
18 individual delegated by such firm, copartnership, joint
19 adventure, association, trust or any other group or com-

20 bination acting as a unit shall sign the return on behalf
21 of the taxpayer. The tax commissioner, for good cause
22 shown, may extend the time for making the annual re-
23 turn on the application of any taxpayer and grant such
24 reasonable additional time within which to make the same
25 as may, by him, be deemed advisable.

Sec. 6. *Erroneous Computation.*—If the taxpayer shall
2 make any clerical error which shall be apparent on the
3 face of the return in computing the tax assessable against
4 him, the tax commissioner shall correct such error or
5 reassess the proper amount of taxes, and notify the tax-
6 payer of his action by mailing to him promptly a copy
7 of the corrected assessment, and any additional tax for
8 which such taxpayer may be liable shall be paid within
9 fifteen days after the receipt of such statement.

10 If the amount already paid exceeds that which should
11 have been paid on the basis of the tax so recomputed, the
12 excess so paid shall be immediately refunded to the tax-
13 payer upon the requisition of the tax commissioner to
14 the state auditor, who shall issue his warrant on the
15 treasurer, which shall be payable out of any funds avail-

16 able for the purpose. The taxpayer may, at his election,
17 apply an overpayment credit to taxes subsequently accru-
18 ing hereunder.

Sec. 7. *Assessment of Tax When Insufficiently Re-*
2 *turned.*—If the tax commissioner believes that the tax
3 imposed by this article is insufficiently returned by a
4 taxpayer, either because the taxpayer has failed to prop-
5 erly remit the tax or has failed to make a return, or has
6 made a return which is incomplete, deficient or otherwise
7 erroneous, he may proceed to investigate and determine
8 or estimate the tax liability of the taxpayer and make
9 an assessment therefor.

Sec. 7-a. *Jeopardy Assessments.*—If the tax commis-
2 sioner believes that the collection of any tax which he is
3 required to administer will be jeopardized by delay, he
4 shall thereupon make an assessment of the tax, noting
5 that fact upon the assessment. The amount assessed shall
6 be immediately due and payable. Unless the taxpayer
7 against whom a jeopardy assessment is made petitions
8 for reassessment within twenty days after service of no-

9 tice of the jeopardy assessment, such an assessment be-
10 comes final.

11 A petition for reassessment by a person against whom a
12 jeopardy assessment has been made must be accompanied
13 by such security as the tax commissioner may deem neces-
14 sary to insure compliance with this article.

Sec. 7-b. *Notice of Assessment; Petition for Reassess-*
2 *ment; Hearing.*—The tax commissioner shall give to the
3 taxpayer written notice of any assessment made pursuant
4 to this article. Unless the taxpayer to whom a notice of
5 assessment is directed shall, within thirty days after serv-
6 ice thereof (except in the case of jeopardy assessments),
7 either personally or by registered mail, file with the tax
8 commissioner a petition in writing, verified under oath
9 by said taxpayer or his duly authorized agent, having
10 knowledge of the facts, setting forth with definiteness
11 and particularity the items of the assessment objected to,
12 together with the reason for such objections, said assess-
13 ments shall become and be deemed conclusive and the
14 amount thereof shall be payable at the end of the thirty
15 day period. In every case where a petition for reassess-

16 ment as above described is filed, the tax commissioner
17 shall assign a time and place for the hearing of same and
18 shall notify the petitioner of such hearing by written
19 notice at least twenty days in advance thereof and such
20 hearing shall be held within sixty days from the filing
21 of the petition for reassessment unless continued by agree-
22 ment or by the tax commissioner for good cause. The
23 hearing shall be informal and may be conducted by an
24 examiner designated by the tax commissioner. At such
25 hearing evidence may be offered to support the assess-
26 ment or to prove that it is incorrect. After such hearing
27 the tax commissioner shall, within a reasonable time, give
28 notice in writing of the decision. Unless an appeal is
29 taken within thirty days from service of this notice, the
30 tax commissioner's decision shall be final.

Sec. 8. *Appeal.*—An appeal may be taken by the tax-
2 payer to the circuit court of the county in which the ac-
3 tivity taxed was engaged, or in which the taxpayer re-
4 sides, or in the circuit court of Kanawha county, within
5 thirty days after he shall have received notice from the

6 tax commissioner of his determination as provided in sec-
7 tion seven-b.

8 The appeal shall be taken by written notice to the tax
9 commissioner and served as an original notice. When said
10 notice is so served it shall, with the return thereon, be
11 filed in the office of the clerk of the circuit court and
12 docketed as other cases with the taxpayer as plaintiff and
13 the tax commissioner as defendant. The plaintiff shall
14 file with such clerk a bond for the use of the defendant,
15 with sureties approved by such clerk, in penalty double
16 the amount of tax appealed from, and in no case shall the
17 bond be less than fifty dollars, conditioned that the plain-
18 tiff shall perform the orders of the court.

19 The court shall hear the appeal in equity and determine
20 anew all questions submitted to it on appeal from the
21 determination of the tax commissioner. In such appeal a
22 certified copy of the tax commissioner's assessment shall
23 be admissible and shall constitute prima facie evidence
24 of the tax due under the provisions of this article. The
25 court shall render its decree thereon and a certified copy
26 of said decree shall be filed by the clerk of said court with

27 the tax commissioner who shall then correct the assess-
28 ment in accordance with said decree. An appeal may be
29 taken by the taxpayer or the tax commissioner to the
30 supreme court of appeals of this state in the same man-
31 ner that appeals are taken in equity.

Sec. 8-a. *Service of Notice.*—Any written notice re-
2 quired by this article shall, unless otherwise specifically
3 provided, be served upon the taxpayer personally or by
4 registered mail.

Sec. 11. *Payment; Penalty for Non-Payment.*—Every
2 remittance of taxes imposed by this article shall be made
3 by bank draft, certified check, money order, or certificate
4 of deposit, to the tax commissioner who shall issue his
5 receipt therefor to the taxpayer and pay the moneys into
6 the state treasury to be kept and accounted for as pro-
7 vided by law.

8 If any taxpayer fails to make the return required by this
9 article, or makes his return but fails to remit in whole or in
10 part the proper amount of tax, there shall be added to the
11 amount of the tax unpaid, from the date such tax should
12 have been paid, a penalty in the amount of five per cent of

13 the tax for the first month, or fraction thereof, of delin-
14 ency and one per cent of the tax for each succeeding
15 month, or fraction thereof, of delinquency: *Provided*,
16 *however*, That if such failure is due to reasonable cause,
17 the tax commissioner may waive or remit in whole or in
18 part these penalties.

19 If the failure to pay is due to fraud or intent to evade
20 this article and the rules and regulations promulgated
21 thereunder, there shall be added an additional penalty
22 of twenty-five per cent of the amount of the tax, exclu-
23 sive of penalties.

24 The penalties so added shall be collected at the same
25 time and in the same manner and as a part of the tax.

Sec. 12. *Tax a Debt; Lien of Unpaid Tax; Recordation*
2 of *Lien*.—A tax due and unpaid under this article shall
3 be a debt due the state. It shall be a personal obligation
4 of the taxpayer and shall be a lien upon the property of
5 the taxpayer: *Provided*, That such lien shall be subject
6 to the restrictions and conditions embodied in article
7 ten-c, chapter thirty-eight of the code of West Virginia,

8 one thousand nine hundred thirty-one, and any amend-
9 ment made or which may hereafter be made thereto.

Sec. 13. *Collection by Action or Suit; Injunction.*—The
2 tax commissioner may collect any tax, interest and pen-
3 alty due and unpaid under the provisions of this article
4 by action in debt, assumpsit, motion for judgment or other
5 appropriate proceeding in the county in which (a) the
6 activity taxed was engaged in or (b) the taxpayer resides;
7 or by a suit to enforce the lien therefor in any county in
8 which property of the taxpayer may be found; or, if the
9 tax due and unpaid under this article is three hundred
10 dollars or less, by suit in the court of any justice having
11 jurisdiction of the taxpayer or of his property. If the
12 failure of any taxpayer to comply with the provisions
13 of this article shall have continued sixty days, the tax
14 commissioner may proceed to obtain an injunction re-
15 straining the taxpayer from doing business in this state
16 until he fully complies with the provisions of this article.
17 In any proceeding under this section upon judgment or
18 decree for the plaintiff he shall be awarded his costs.
19 In the event a business subject to the tax imposed by

20 this article shall be operated in connection with a receiv-
21 ership or insolvency proceeding, the court under whose
22 direction such business is operated shall, by the entry of
23 a proper order in the cause, make provision for the regu-
24 lar payment of such taxes as the same become due.

Sec. 14. *Payment When Person Sells Out or Quits*
2 *Business; Lien; Liability of Successor.*—Any person ex-
3 ercising any privilege taxable under this article who shall
4 sell out his business or stock of goods, or shall cease doing
5 such business, shall file the return prescribed by section
6 five of this article and remit the entire tax that may be
7 chargeable against him because of all business done,
8 within thirty days after selling out his business or stock
9 of goods, or ceasing to do such business. The tax im-
10 posed by this article shall be a lien upon the property of
11 such person.

12 The successor in business of any such person shall with-
13 hold so much of the purchase money as will satisfy the
14 taxes and penalty which may be due until the former
15 owner shall produce a receipt from the tax commissioner
16 evidencing the payment of such taxes and penalty. If

17 the purchaser of a business or stock of goods shall fail
18 to withhold purchase money as above provided, and the
19 taxes and penalty shall remain unpaid after expiration
20 of the thirty day period allowed for payment thereof,
21 he shall be personally liable for the payment of all such
22 taxes and penalty, and the same shall be recoverable
23 by the tax commissioner by action or suit as provided
24 by section thirteen of this article.

Sec. 16. *Prerequisite to Final Settlement with State
2 or Political Subdivision Contractor; Penalty.*—All state,
3 county, district and municipal officers and agents making
4 contracts on behalf of the state of West Virginia or any
5 political subdivision thereof shall withhold payment in
6 the final settlement of such contracts until the receipt of
7 a certificate from the tax commissioner to the effect that
8 all taxes levied or accrued under this article against the
9 contractor have been paid. Any official violating this
10 section shall be guilty of a misdemeanor and, on conviction
11 thereof, shall be fined not more than one thousand
12 dollars or imprisoned not exceeding one year in the

13 county jail, or shall be subject to both said fine and im-
14 prisonment, in the discretion of the court.

Sec. 17. *Priority in Distribution in Receivership, etc.;*

2 *Personal Liability of Administrator.*—In the distribution,
3 voluntary or compulsory, in receivership, bankruptcy or
4 otherwise, of the estate of any person, firm or corpora-
5 tion, all taxes due and unpaid under this article shall be
6 paid from the first money available for distribution in
7 priority to all claims, except taxes and debts due the
8 United States which under federal law are given priority
9 over the debts and liens created by this article. Any
10 person charged with the administration of an estate who
11 shall violate the provisions of this section shall be per-
12 sonally liable for any taxes accrued and unpaid under
13 this article, which are chargeable against the person,
14 firm or corporation whose estate is in administration.

Sec. 20. *Collection by Distraint; Report of Collection.*—

2 The tax commissioner may distraint upon any goods,
3 chattels or intangibles represented by negotiable evi-
4 dences of indebtedness, of any taxpayer delinquent under
5 this article for the amount of all taxes and penalties ac-

6 crued and unpaid hereunder. The commissioner may re-
7 quire the assistance of the sheriff of any county of the
8 state in levying such distress in the county of which such
9 sheriff is an officer. A sheriff so collecting taxes due
10 hereunder shall be entitled to compensation in the amount
11 of all penalties collected over and above the principal
12 amount of the tax due, but in no case shall such compen-
13 sation exceed twenty-five dollars. All taxes and pen-
14 alties so collected shall be reported within ten days after
15 collection to the tax commissioner, who shall prescribe
16 by general regulation the manner of remittance of such
17 funds and of allowing the collecting officer the compensa-
18 tion due him under this section.

Sec. 22. *Administration of Article by Tax Commis-*
2 *sioner.*—The administration of this article is vested in and
3 shall be exercised by the tax commissioner who shall
4 prescribe forms and reasonable rules in conformity with
5 this article for the making of returns and for the ascer-
6 tainment, assessment and collection of the taxes imposed
7 hereunder; and the enforcement of any of the provisions
8 of this article in any of the courts of the state shall be

9 under the exclusive jurisdiction of the tax commissioner,
10 who shall require the assistance of and act through the
11 prosecuting attorney of any county where suit is brought;
12 but the prosecuting attorney of any county shall receive
13 no fees or compensation for services rendered in enforc-
14 ing this article in addition to the salary paid by the county
15 to such officer.

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

Paul C. [Signature]
Chairman Senate Committee

W. T. Branterton Jr
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 Day from passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W. E. Flannery
Speaker House of Delegates

The within approved this the 17
day of March, 1955.

William C. Marland
Governor



Filed in the Office of the Secretary of State
of West Virginia MAR 18 1955
D. PITT O'BRIEN
SECRETARY OF STATE