WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED
SENATE BILL NO. 106

(By Mr. ——, Mr. President, and Mr. Court)

PASSED February 10, 1961

In Effect Passage

Filed in Office of the Secretary of State of West Virginia February 14, 1961

JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, imposing a tax on personal incomes as such incomes are defined for federal income tax purposes, and providing for the administration and collection thereof.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby amended by adding thereto a new article, designated article twenty-one, to read as follows:

Section 1. Legislative Findings.—The Legislature hereby finds and declares that the adoption by this state for its personal income tax purposes of the provisions of the laws of the United States relating to the determination of income for federal income tax purposes will (1) simplify preparation of state income tax returns by taxpayers, (2) improve enforcement of the state income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does therefore declare that this article twenty-one be construed so as to accomplish the foregoing purposes.

Sec. 2. Short Title; Arrangement and Classification.—This article may be cited as the “West Virginia Personal Income Tax Act.” No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, nor shall the de-
Sec. 3. Persons Subject to Tax.—(a) Imposition of Tax.

A tax determined in accordance with the rates set forth in section four of this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate and trust.

(b) Partners and Partnerships.—A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities.

(c) Associations Taxable as Corporations.—An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt Trusts and Organizations.—A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated
(e) Cross References.—For definitions of West Virginia taxable income of—

(1) Resident individual, see section eleven.

(2) Resident estate or trust, see section eighteen.

(3) Nonresident individual, see section thirty-one.

(4) Nonresident estate or trust, see section thirty-eight.

Sec. 4. Rate of Tax.—(a) Rate of Tax on Individuals.—The tax imposed by section three of this article on the West Virginia taxable income of every individual (other than a head of a household to whom subsection (b) applies) and upon the West Virginia taxable income of every estate and trust shall be equal to six per centum of the federal income tax which would be imposed on an identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954.

(b) Rate of Tax on Heads of Households.—The tax imposed by section three of this article on the West Virginia taxable income of every individual who is a head of a
household in the determination of his federal income tax for the taxable year shall be equal to six per centum of the federal income tax which would be imposed upon an identical amount of federal taxable income under subsection (b) of section one of the United States Internal Revenue Code of 1954.

(c) Rates of Tax in Case of Joint Return or Return of Surviving Spouse.—In the case of a joint return of a husband and wife, the tax imposed by section three of this article on the West Virginia taxable income shall be equal to six per centum of twice the tax which would be imposed upon half the identical amount of federal taxable income under subsection (a) of section one of the United States Internal Revenue Code of 1954. For purposes of this subsection of this article and for the purposes of section five of this article, the return of an individual who is entitled to file his federal income tax return for the taxable year as a surviving spouse shall be treated as a joint return of a husband and wife.

Sec. 5. Optional Tax for Certain Resident Individuals.

(a) General.—The tax commissioner may promulgate
tables enabling resident individuals who meet the conditions of this section to compute their taxes under section three of this article on the basis of their federal adjusted gross incomes.

(b) Tables.—The tables promulgated under this section shall show the amounts of tax due under section three of this article to the nearest two dollars (or such smaller amount as the tax commissioner may establish.)

(c) Conditions for Optional Computation.—The optional tax computation under this section may be elected only if all the following conditions are satisfied by the taxpayer, or by both husband and wife whose federal income tax is determined on a joint return:

(1) The taxpayer has elected to take the standard deduction for federal income tax purposes or to pay the federal optional tax.

(2) The taxpayer has no items of income or deduction described in section twelve (b) or (d) as an individual, as a partner, or as a beneficiary of an estate or trust.

(3) The taxpayer's federal income tax is not reduced by operation of:
(a) the federal alternative tax on long term capital gains, or

(b) a federal provision which has the effect of taxing income of the taxable year as if it were partly or wholly income of a prior taxable year.

(4) The taxpayer satisfies such other conditions, not inconsistent with the purposes of this section, as may be specified by the tax commissioner.

(d) Manner of Election.—The election by a taxpayer to compute his tax under this section shall be made under regulations of the tax commissioner.

(e) Husband and Wife Computing West Virginia Taxes Separately.—

(1) A husband or wife who files a separate federal return may elect the optional tax computation under this section only if the other spouse's tax under this article, if any, is determined under this section.

(2) A husband and wife who file a joint federal return may not elect the optional tax computation under this section if they elect to determine their West Virginia taxes separately.
Sec. 6. Accounting Periods and Methods.—(a) Accounting Periods.—A taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(b) Change of Accounting Periods.—If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the West Virginia standard deduction, the West Virginia personal exemptions and the credits allowed under section eight shall be prorated under regulations of the tax commissioner.

(c) Accounting Methods.—A taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, West Virginia taxable income shall be computed under such method as in the opinion of the tax commissioner clearly reflects income.

(d) Change of Accounting Methods.—
(1) If a taxpayer’s method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(2) If a taxpayer’s method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were rateably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer’s method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commissioner.
Sec. 7. Resident and Nonresident Defined.—(a) Resident individual means an individual—
(1) Who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state, or
(2) Who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state.
(b) Nonresident Individual.—A nonresident individual means an individual who is not a resident.
(c) Resident Estate or Trust.—A resident estate or trust means—
(1) The estate of a decedent who at his death was domiciled in this state,
(2) A trust created by will of a decedent who at his death was domiciled in this state, or
(3) A trust created by, or consisting of property of, a person domiciled in this state.
(d) Nonresident Estate or Trust.—A nonresident estate or trust means an estate or trust which is not a resident.

(e) Cross Reference.—For effect of change of an individual's resident status, see section fifty-four.

Section 8. Credits Against Tax.—(a) Business and Occupation Tax Credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen of chapter eleven of this code; provided that the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the
taxpayer, in computing the credit provided for by this
section, in an amount proportionate to the income of such
partnership, estate, trust or corporation, which is in-
cluded in the taxpayer's West Virginia taxable income.

(b) Transportation Privilege Tax Credit.—A credit
shall be allowed against the tax imposed by section three
of this article equal to the amount of the liability of the
taxpayer for the taxable year for any tax imposed on
the taxpayer under article twelve-A of chapter eleven
of this code provided that the amount of such credit
shall not exceed the portion of the tax imposed by this
article which is attributable to the West Virginia tax-
able income derived by the taxpayer for the taxable
year from the exercise of the privilege with respect of
which said tax under article twelve-A was imposed. In
case the West Virginia taxable income of a taxpayer
includes income from a partnership, estate, trust or a
corporation electing to be taxed under subchapter S of
the Internal Revenue Code of 1954, as amended, a part
of any tax liability of the partnership, estate, trust, or
corporation under said article twelve-A shall be allowed
to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation which is included in the taxpayer's West Virginia taxable income.

(c) Cross Reference.—For credit in respect of—

(1) Taxes withheld on wages, see section seventy-three,

(2) Taxes imposed on a resident by other states, see section twenty,

(3) Taxes imposed on a nonresident by the state of his residence, see section forty.

Section 9. Meaning of Terms.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United
States prior to the first day of January, one thousand nine
hundred sixty-one shall be given effect in determining
the taxes imposed by this article but no amendment to
laws of the United States made after said date shall be
given effect.

Sec. 11. West Virginia Taxable Income of a Resident

(a) General.—The West Virginia taxable in-
come of a resident individual shall be his West Virginia
adjusted gross income less his West Virginia deduction
and West Virginia personal exemptions, as determined
under this Part.

(b) Husband and Wife.—

(1) If the federal taxable income of husband or wife is
determined on a separate federal return, their West Vir-
ginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife
is determined on a joint federal return, or if neither files
a federal return—

(A) their tax shall be determined on their joint West
Virginia taxable income, or

(B) separate taxes may be determined on their sepa-
rate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

Sec. 12. West Virginia Adjusted Gross Income of a Resident Individual.—(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications Increasing Federal Adjusted Gross Income.—There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;
14    (2) Interest or dividend income on obligations or se-
15    curities of any authority, commission, or instrumentality
16    of the United States, which the laws of the United States
17    exempt from federal income tax but not from state in-
18    come taxes;
19    (3) Income taxes imposed by this state or any other
20    taxing jurisdiction, to the extent deductible in determin-
21    ing federal adjusted gross income and not credited against
22    federal income tax; and
23    (4) Interest on indebtedness incurred or continued to
24    purchase or carry obligations or securities the income
25    from which is exempt from tax under this article, to the
26    extent deductible in determining federal adjusted gross
27    income.
28    (c) Modifications Reducing Federal Adjusted Gross
29    Income.—There shall be subtracted from federal adjusted
30    gross income:
31    (1) Interest income on obligations of the United States
32    and its possessions to the extent includible in gross in-
33    come for federal income tax purposes;
34    (2) Interest or dividend income on obligations or se-
curities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States; (3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January one thousand nine hundred sixty-one than the adjusted basis at said date for federal income tax purposes: Provided, however, that the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis; Provided further, that if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty percentum of such portion of the gain. (4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes. (d) Modification for West Virginia Fiduciary Adjustment.—There shall be added to or subtracted from federal adjusted gross income (as the case may be) the taxpay-
er's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen.

(f) Husband and Wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

Sec. 13. West Virginia Deduction of a Resident Individual.—The West Virginia deduction of a resident individual shall be his West Virginia standard deduction unless he elects to deduct his West Virginia itemized deduction under the conditions set forth in section fifteen.

Sec. 14. West Virginia Standard Deduction of a Resident Individual.—(a) General.—The West Virginia standard deduction of a resident individual, or of husband and
wife whose West Virginia taxable income is determined jointly, shall be ten per centum of West Virginia adjusted gross income or one thousand dollars, whichever is less. (b) Husband and Wife Determining Income Separately.—The West Virginia standard deductions of husband and wife whose West Virginia taxable incomes are determined separately (whether or not on a single form) shall not exceed ten per centum of the aggregate of their separate West Virginia adjusted gross incomes or one thousand dollars, whichever is less, but may be taken by either or divided between them in such proportions as they may elect.

Sec. 15.—West Virginia Itemized Deduction of a Resident Individual.—(a) General.—If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal
exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and wife.—

(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications reducing federal itemized deductions.—The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for—

(1) Income taxes imposed by this State or any other taxing jurisdiction; and

(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income
from which is exempt from tax under this article.

(d) Partners.—The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

Sec. 16. West Virginia Personal Exemptions of a Resident Individual.—(a) General.—A resident individual shall be allowed a West Virginia exemption of six hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife.—If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

Sec. 17. Resident Partners.—(a) Partner's modifications.—In determining West Virginia adjusted gross in-
come and West Virginia taxable income of a resident
partner, any modification described in section twelve (b),
(c) or (d) or section fifteen (c), which relates to an item
of partnership income, gain, loss or deduction shall be
made in accordance with the partner’s distributive share,
for federal income tax purposes, of the items to which the
modifications relate. Where a partner’s distributive share
of any such item is not required to be taken into account
separately for federal income tax purposes, the partners
distributive share of such item shall be his distributive
share for federal income tax purposes of partnership taxa-
ble income or loss generally.
(b) Character of Items.—Each item of partnership in-
come, gain, loss, or deduction shall have the same charac-
ter for a partner under this article as for federal income
tax purposes. Where an item is not characterized for fed-
eral income tax purposes, it shall have the same character
for a partner as if realized directly from the source from
which realized by the partnership, or incurred in the same
manner as incurred by the partnership.
(c) West Virginia Tax Avoidance or Evasion.—Where
a partner’s distributive share of an item of partnership
income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this article, the partner’s distributive share of such item, and any modification required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Sec. 18. West Virginia Taxable Income of a Resident Estate or Trust.—The West Virginia taxable income of a resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(1) There shall be subtracted six hundred dollars as the West Virginia exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be subtracted the modification described in section twelve (c) (3), with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from distributable net in-
come of the estate or trust for federal income tax pur-
poses.

(3) There shall be added or subtracted (as the case may
be) the share of the estate or trust in the West Virginia
fiduciary adjustment determined under section nineteen.

Sec. 19. Share of Resident Estate, Trust or Beneficiary
in West Virginia Fiduciary Adjustment.—(a) General.—
An adjustment shall be made in determining West Vir-
ginia taxable income of a resident estate or trust under
section eighteen, or West Virginia adjusted gross income
of a resident beneficiary of any estate or trust under sec-
tion twelve (d), in the amount of the share of each in the
West Virginia fiduciary adjustment as determined in
this section.

(b) Definition.—The West Virginia fiduciary adjust-
ment shall be the net amount of the modifications de-
scribed in section twelve (b), (c) and (d), and section
fifteen (c) which relate to items of income, gain, loss or
deduction of an estate or trust. Such net amount shall not
include any modification described in section twelve (c)
(3), with respect to gains from the sale or other disposi-
tion of property, to the extent such gains are excluded
from distributable net income of the estate or trust for federal income tax purposes.

(c) Shares of West Virginia Fiduciary Adjustment.—

(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the West Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust for federal income tax purposes.

(2) If the distributable net income for the taxable year of the estate or trust is zero, the share of each beneficiary in the West Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is distributed within such year, or is required to be distributed currently. Any balance of the West Virginia fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate Attribution of Modifications.—The tax commissioner may, on application, authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed,
as may be appropriate and equitable, on such terms and conditions as he may require.

Sec. 20. Credit for Income Tax of Another State.—(a) General.—A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, upon income both derived therefrom and subject to tax under this article.

(b) Limitations.—(1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) Exception.—No credit shall be allowed under this
section for a tax of a jurisdiction which allows residents of this state a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by section forty.

(d) Definition.—For purposes of this section West Virginia income means—

(1) the West Virginia adjusted gross income of an individual, or

(2) the amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his West Virginia adjusted gross income under section twelve.

Sec. 31. West Virginia Taxable Income of a Nonresident Individual.—(a) General.—The West Virginia taxable income of a nonresident individual shall be his West Virginia adjusted gross income less his West Virginia deduction and West Virginia personal exemptions, as determined under this part.

(b) Husband and Wife.—

(1) If the federal taxable income of husband or wife,
9 both of whom are nonresidents, is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal income of husband and wife, both of whom are nonresidents, is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

Sec. 32. West Virginia Adjusted Gross Income of a Nonresident Individual.—(a) General.—The West Virginia
adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with West Virginia sources, including:

(A) His distributive share of partnership income, gain, loss and deduction, determined under section thirty-seven, and

(B) His share of estate or trust income, gain, loss and deduction, determined under section thirty-nine; and

(2) The portion of the modifications described in subsections (b) and (c) of section twelve which relate to income derived from West Virginia sources (including any modifications attributable to him as a partner).

(b) Income and Deductions from West Virginia Sources.—

(1) Items of income, gain, loss and deduction derived from or connected with West Virginia sources shall be those items attributable to:
(A) The ownership of any interest in real or tangible personal property in this state; or

(B) A business, trade, profession or occupation carried on in this state.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from West Virginia sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(3) Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(C) Income and Deductions Partly from West Virginia Sources.—If a business, trade, profession or occupation is carried on partly within and partly without this state,
as determined under regulations of the tax commissioner
the items of income, gain, loss and deduction derived
from or connected with West Virginia sources shall be
determined by apportionment and allocation under such
regulation.

(d) Purchase and Sale for Own Account.—A nonresi-
dent, other than a dealer holding property primarily for
sale to customers in the ordinary course of his trade or
business, shall not be deemed to carry on a business, trade,
profession or occupation in this state solely by reason of
the purchase and sale of property for his own account.

(e) Husband and Wife.—If husband and wife deter-
mine their federal income tax on a joint return but de-
termine their West Virginia income taxes separately, they
shall determine their West Virginia adjusted gross in-
comes separately as if their federal adjusted gross incomes
had been determined separately.

Sec. 33. West Virginia Deduction of a Nonresident In-
dividual.—The West Virginia deduction of a nonresident
individual shall be his West Virginia standard deduction
unless he elects to deduct his West Virginia itemized de-
Sec. 34. **West Virginia Standard Deduction of a Non-resident Individual.**—The West Virginia standard deduction of a nonresident individual shall be ten per centum of his West Virginia adjusted gross income, or one thousand dollars, whichever is less. The West Virginia standard deduction of a nonresident husband or wife shall be determined under the rules of section fourteen.

Sec. 35. **West Virginia Itemized Deduction of a Non-resident Individual.**—(a) General.—If federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a nonresident individual shall be the same as the total amount of the following of his deductions from federal adjusted gross income, as provided in the laws of the United States for the taxable year (including any items attributable to him as a partner):
(1) Deductions for contributions or gifts to this state or to any political subdivision thereof, or to any corporation, trust, community chest, fund, foundation, or other entity organized or operated under the laws of this state;

(2) Deductions for alimony or separate maintenance payments includible in the West Virginia adjusted gross income of the recipient;

(3) Deductions for losses of real or tangible personal property having an actual situs in this state, arising from fire, storm, shipwreck or other casualty, or from theft;

(4) Deductions, with respect to real or tangible personal property having an actual situs in this state, for losses (other than capital losses) incurred in any transaction entered into for profit but not connected with the taxpayer's trade or business; and

(5) Deductions determined under regulations of the tax commissioner to be connected with his West Virginia adjusted gross income, except deductions for income taxes imposed by this state or any other taxing jurisdiction.

(b) Husband and Wife.—

(1) A husband and wife, both of whom are required
to file returns under this article, shall be allowed West
Virginia itemized deductions only if both elect to take
West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions
of a husband and wife whose federal taxable income is
determined on a joint return but whose West Virginia
taxable incomes are determined separately may be taken
by either or divided between them as they may elect.

Sec. 36. West Virginia Personal Exemptions of a Non-
resident Individual.—A nonresident individual shall be
allowed the same West Virginia exemptions as are al-
lowed by section sixteen to a resident individual.

Sec. 37. Nonresident Partners.—(a) Portion Derived
from West Virginia Sources.—In determining West Vir-
ginia adjusted gross income of a nonresident partner of
any partnership, there shall be included only the portion
derived from or connected with West Virginia sources of
such partner's distributive share, for federal income tax
purposes, of items of partnership income, gain, loss and
deduction, as such portion shall be determined under reg-
ulations of the tax commissioner consistent with the ap-
plicable rules of section thirty-two. In determining West
Virginia taxable income of a nonresident partner of any
partnership, there shall be attributed to him his distribu-
tive share, for federal income tax purposes, of those part-
ship items of deduction which are deductible by him un-
der the applicable rules of section thirty-five.

(b) Special Rules As to West Virginia Sources.—In de-
termining the sources of a nonresident partner's income,
no effect shall be given to a provision in the partnership
agreement which:

(1) Characterizes payments to the partner as being for
services or for the use of capital, or

(2) Allocates to the partner, as income or gain from
sources outside West Virginia, a greater proportion of his
distributive share of partnership income or gain than the
ratio of partnership income or gain from sources outside
West Virginia to partnership income or gain from all
sources, except as authorized in subsection (d), or

(3) Allocates to the partner a greater proportion of a
partnership item of loss or deduction connected with West
Virginia sources than his proportionate share, for federal
income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (d).

(c) Partner's Modifications.—Any modification described in subsection (b) or (c) of section twelve, which relates to an item of partnership income, gain, loss or deduction, shall be made in accordance with the partner's distributive share for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with West Virginia sources.

(d) Alternate Methods.—The tax commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(e) Cross Reference.—

(1) For a partner's distributive share of items, see subsection (a) of section seventeen.

(2) For character of partnership items for a partner,
(3) For effect of special provision in partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance of evasion of tax under this article, see subsection (c) of section seventeen.

Sec. 38. West Virginia Taxable Income of a Nonresident Estate or Trust.—(a) General.—The West Virginia taxable income of a nonresident estate or trust shall be determined as follows:

(1) Items in Distributable Net Income.—There shall be determined its share of income, gain, loss and deduction from West Virginia sources under section thirty-nine (relating to items entering into the definition of distributable net income).

(2) Items Not in Distributable Net Income.—There shall be added or subtracted (as the case may be) the amount derived from or connected with West Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes, but excluded from the definition of federal distributable net income of the estate.
or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable rules of section thirty-two and thirty-five as in the case of a nonresident individual.

(3) Modifications.—There shall be subtracted the amount of any modifications described in paragraph (3) of subsection (c) of section twelve with respect to income or gain referred to in paragraph (2) of this subsection.

(4) Exemption.—There shall be subtracted the amount of six hundred dollars as a West Virginia exemption.

(b) Special West Virginia Source Rules.—Deductions with respect to capital losses, net long-term capital gains and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with West Virginia sources, under regulations of the tax commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

Sec. 39. Share of a Nonresident Estate, Trust or Beneficiary in Income From West Virginia Sources.—(a) General.—The share of a nonresident estate or trust under
paragraph (1) of subsection (a) of section thirty-eight, and the share of a nonresident beneficiary of any estate or trust under subsection (a) of section thirty-two, in estate or trust income, gain, loss and deduction from West Virginia sources shall be determined as follows:

(1) Items of Distributable Net Income from West Virginia Sources.—There shall be determined the items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which enter into the definition of federal distributable net income of the estate or trust for the taxable year. Such determination of source shall be made in accordance with the applicable rules of sections thirty-two and thirty-five as in the case of a nonresident individual.

(2) Addition or Subtraction of Modifications.—There shall be added or subtracted (as the case may be) the modifications described in subsections (b) and (c) of section twelve, to the extent relating to items of income, gain, loss and deduction, derived from or connected with West Virginia sources, which enter into the definition of federal distributable net income. No modification shall be made
under this subsection which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(3) Allocation Among Estate or Trust and Beneficiaries.—

(A) The amounts determined under paragraphs (1) and (2) shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income.

(B) The amounts so allocated shall have the same character under this article as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) Alternate Methods of Determining Shares.—

(1) If the estate or trust has no federal distributable net income for the taxable year, the share of each bene-
ficiary (including, solely for the purpose of this allocation, resident beneficiaries) in the net amount determined
under paragraphs (1) and (2) of subsection (a) shall be
in proportion to his share of the estate or trust income for
such year, under local law or the governing instrument,
which is required to be distributed currently and any
other amounts of such income distributed in such year.
Any balance of such net amounts shall be allocated to
the estate or trust.
(2) The tax commissioner may, on application, authorize
the use of such other methods of determining the respective shares of the beneficiaries and of the estate or
trust in its income derived from West Virginia sources,
and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he
may require.

Sec. 40. Credit for Income Tax of State of Residence.—
(a) General.—A nonresident shall be allowed a credit against the tax otherwise due under this article for any
income tax imposed for the taxable year by another state
of the United States or by the District of Columbia, of
which the taxpayer is a resident.

(b) Limitation.—The credit under this section shall
not exceed either—

(1) The percentage of the other tax determined by
dividing the portion of the taxpayer's West Virginia in-
come which is also subject to the other tax by the total
amount of his income subject to such other tax, or

(2) The percentage of the tax otherwise due under
this article, determined by dividing the portion of the
taxpayer's West Virginia income which is also subject to
the other tax by the total amount of the taxpayer's West
Virginia income.

(c) Exceptions.—No credit shall be allowed under
this section unless the jurisdiction of which the taxpayer
is a resident—

(1) Grants a substantially similar credit to residents
of this state, or

(2) Imposes an income tax on its own residents with
respect to income derived from this state, and exempts
from income tax the income of residents of this state.
(d) Definition.—For purposes of this section West Virginia income means—

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual.

Sec. 51. Returns and Liabilities.—(a) General.—On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve in excess of the sum of his West Virginia personal exemptions.

(2) every resident estate or trust required to file a federal income tax return for the taxable year, or having any West Virginia taxable income for the taxable year, determined under section eighteen.
(3) every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two, in excess of the sum of his West Virginia personal exemptions; and

(4) every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) Husband and Wife.—

(1) If the federal income tax liability of husband or wife is determined on a separate federal return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in paragraph (3) of this subsection (b) are determined on a joint federal return, or if neither files a federal return:

(A) they shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several,
(B) they may elect to file separate West Virginia income tax returns on a single form if they comply with the requirements of the tax commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the tax commissioner, and in such event their tax liabilities shall be separate.

(c) Decedents.—The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

(d) Individuals Under a Disability.—The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(e) Estates and Trusts.—The return for an estate or
trust shall be made and filed by the fiduciary.

(f) Joint Fiduciaries.—If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) Tax a Debt.—Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of West Virginia.

(h) Cross Reference.—For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight.

Sec. 52. Time and Place for Filing Returns and Paying Tax.—A person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the tax commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The tax commissioner shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this article and for payment of any tax.
Sec. 53. Signing of Returns and Other Documents.—

(a) General.—Any return, declaration, statement or other
document required to be made pursuant to this article
shall be signed in accordance with regulations or instruc-
tions prescribed by the tax commissioner. The fact that
an individual's name is signed to a return, declaration,
statement, or other document, shall be prima facie evi-
dence for all purposes that the return, declaration, state-
ment or other document was actually signed by him.

(b) Partnerships.—Any return, statement or other
document required of a partnership shall be signed by one
or more partners. The fact that a partner's name is signed
to a return, statement, or other document, shall be prima
facie evidence for all purposes that such partner is au-
thorized to sign on behalf of the partnership.

(c) Certifications.—The making or filing of any re-
turn, declaration, statement or other document or copy
thereof required to be made or filed pursuant to this
article, including a copy of a federal return, shall con-
stitute a certification by the person making or filing such
return, declaration, statement or other document or copy
thereof that the statements contained therein are true
and that any copy filed is a true copy.

Sec. 54. Change of Resident Status During Year.—(a)

2 General.—If an individual changes his status during his
taxable year from resident to nonresident, or from non-
resident to resident, he shall file one return as a resident
for the portion of the year during which he is a resident,
and one return as a nonresident for the portion of the year
during which he is a nonresident, subject to such excep-
tions as the tax commissioner may prescribe by regula-
tion.

(b) West Virginia Taxable Income As Resident and
Nonresident.—The West Virginia taxable income for the
portion of the year during which he is a resident shall be
determined under Part II of this article as if his taxable
year for federal income tax purposes were limited to the
period of his resident status. The West Virginia taxable
income for the remaining portion of his taxable year dur-
ing which he is a nonresident shall be determined under
Part III of this article as if his taxable year for federal
income tax purposes were limited to the period of his nonresident status.

(c) Special Accruals.—

(1) If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for West Virginia income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(2) If an individual changes his status from nonresident to resident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, other...
than items derived from or connected with West Virginia sources, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections twelve and fifteen as if such accrued items were includible or allowable for federal income tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subsection shall be taken into account in determining West Virginia adjusted gross income or the West Virginia itemized deduction for any subsequent taxable period.

(4) The accruals under this subsection shall not be required if the individual files with the tax commissioner a bond or other security acceptable to the tax commissioner, conditioned upon the inclusion of amounts accruable under this subsection in West Virginia adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status.
(d) Minimum Tax.—Where two returns are required under this section, the total of the taxes due thereon shall not be less than would be due if the West Virginia taxable incomes reportable on the two returns were includible in one return.

(e) Prorations.—Where two returns are required under this section, the West Virginia standard deduction allowable under sections fourteen and thirty-four, the West Virginia personal exemptions allowable under sections sixteen and thirty-six shall be prorated, under regulations of the tax commissioner, between the two returns to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident.

Sec. 55. Declarations of Estimated Tax.—(a) Requirement of Declaration.—Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by regulations or instructions, if his West Virginia adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hun-
dred dollars plus the sum of the West Virginia personal exemptions to which he is entitled.

(b) Definition of Estimated Tax.—The term "estimated tax" means the amount which an individual estimates to be his income tax under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

(c) Joint Declaration of Husband and Wife.—A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but husband and wife elect to determine their taxes under this article separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Time for Filing Declaration.—A declaration of estimated tax of an individual other than a farmer shall
be filed on or before the fifteenth day of April of the taxable year, except that if the requirements of subsection (a) are first met—

(1) after the first day of April and before the second day of June of the taxable year, the declaration shall be filed on or before the fifteenth day of June, or

(2) after the first day of June and before the second day of September of the taxable year, the declaration shall be filed on or before the fifteenth day of September, or

(3) after the first day of September, of the taxable year, the declaration shall be filed on or before the fifteenth day of January of the succeeding year.

(e) Declaration of Estimated Tax By a Farmer.—A declaration of estimated tax of an individual having an estimated West Virginia adjusted gross income from farming for the taxable year which is at least two-thirds of his total estimated West Virginia adjusted gross income for the taxable year may be filed at any time on or before the fifteenth day of January of the succeeding year, in lieu of the time otherwise prescribed.

(f) Declaration of Estimated Tax of Forty Dollars or
51 Less.—A declaration of estimated tax of an individual
52 having a total estimated tax for the taxable year of forty
53 dollars or less may be filed at any time on or before the
54 fifteenth day of January of the succeeding year under
55 regulations of the tax commissioner.
56 (g) Amendments of Declaration.—An individual may
57 amend a declaration under regulations of the tax com-
58 missioner.
59 (h) Return As Declaration or Amendment.—If on or
60 before the fifteenth day of February of the succeeding
61 taxable year an individual files his return for the taxable
62 year for which the declaration is required, and pays there-
63 with the full amount of the tax shown to be due on the
64 return:
65 (1) such return shall be considered as his declaration,
66 if no declaration was required to be filed during the tax-
67 able year, but is otherwise required to be filed on or be-
68 fore the fifteenth day of January.
69 (2) such return, if filed on or before the fifteenth day
70 of January, shall be considered an amendment permitted
71 by subsection (g) if the tax shown on the return is greater
than the estimated tax shown in a declaration previously made.

(i) Fiscal Year.—This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) Short Taxable Year.—An individual having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the tax commissioner.

(k) Declaration for Individual Under a Disability.—The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property, (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

Sec. 56. Payments of Estimated Tax.—(a) General.—The estimated tax with respect to which a declaration is required shall be paid as follows:
4  (1) If the declaration is filed on or before the fifteenth day of April of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following fifteenth day of June, fifteenth day of September, and fifteenth day of January, respectively.

5  (2) If the declaration is filed after the fifteenth day of April and not after the fifteenth day of June of the taxable year, and is not required to be filed on or before the fifteenth day of April of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following fifteenth day of September and fifteenth day of January, respectively.

6  (3) If the declaration is filed after the fifteenth day of June and not after the fifteenth day of September of the taxable year, and is not required to be filed on or before the fifteenth day of June of the taxable year, the estimated tax shall be paid in two equal installments. The first in-
stallment shall be paid at the time of the filing of the
declaration, and the second shall be paid on the following
fifteenth day of January.

(4) If the declaration is filed after the fifteenth day of
September of the taxable year, and is not required to be
filed on or before the fifteenth day of September of the
taxable year, the estimated tax shall be paid in full at the
time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed
therefor, or after the expiration of any extension of time
therefor, paragraphs (2), (3), and (4) of this subsection
shall not apply, and there shall be paid at the time of
such filing all installments of estimated tax payable at or
before such time, and the remaining installments shall be
paid at the times at which, and in the amounts in which,
they would have been payable if the declaration had been
filed when due.

(b) Farmers.—If an individual referred to in section
55(e) (relating to income from farming) makes a declara-
tion of estimated tax after the fifteenth day of September
of the taxable year and on or before the following fifteenth
day of January, the estimated tax shall be paid in full at
the time of the filing of the declaration.

(c) Amendments of Declaration.—If any amendment
of a declaration is filed, the remaining installments, if any,
shall be rateably increased or decreased (as the case may
be) to reflect any increase or decrease in the estimated
tax by reason of such amendment, and if any amendment
is made after fifteenth day of September of the taxable
year, any increase in the estimated tax by reason thereof
shall be paid at the time of making such amendment.

(d) Application to Short Taxable Year.—This section
shall apply to a taxable year of less than twelve months
in accordance with regulations of the tax commissioner.

(e) Fiscal Year.—This section shall apply to a taxable
year other than a calendar year by the substitution of the
months of such fiscal year for the corresponding months
specified in this section.

(f) Installment Paid in Advance.—An individual may
elect to pay any installment of his estimated tax prior to
the date prescribed for its payment.

Sec. 57. Extensions of Time.—(a) General.—The tax
commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension shall exceed six months.

(b) Amount Determined As Deficiency.—The tax commissioner may, under regulations, extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this subsection may be granted only where it is established to the satisfaction of the tax commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to disregard of rules and regulations or to fraud.

(c) Claims in Bankruptcy or Receivership Proceedings.
Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

(d) Furnishing of Security.—If any extension of time is granted for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the tax commissioner may require.

Sec. 58. Requirements concerning Returns, Notices, Records and Statements.—(a) General.—The tax commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient
to show whether or not such person is liable under this article for tax or for collection of tax.

(b) Partnerships.—Every partnership having a resident partner or having any income derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commissioner may by regulations and instructions prescribe.

(c) Information At Source.—The tax commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before the twenty-eighth day of February of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this article. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, cus-
tody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunera-
tions, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of Qualification As Receiver, etc.—Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

Sec. 59. Report of Change in Federal Taxable Income.—

If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change
or correction in federal taxable income within ninety days
after the final determination of such change, correction,
or renegotiation, or as otherwise required by the tax
commissioner, and shall concede the accuracy of such
determination or state wherein it is erroneous. Any tax-
payer filing an amended federal income tax return shall
also file within ninety days thereafter an amended return
under this article, and shall give such information as the
tax commissioner may require. The tax commissioner
may by regulation prescribe such exceptions to the re-
quirements of this section as he deems appropriate.

Sec. 60. Change of Election.—Any election expressly
authorized by this article may be changed on such terms
and conditions as the tax commissioner may prescribe by
regulation.

Sec. 71. Requirement of Withholding Tax From Wages.
--- (a) General.—Every employer maintaining an office
or transacting business within this state and making pay-
ment of any wages taxable under this article to a resident
or nonresident individual shall deduct and withhold from
such wages for each payroll period a tax computed in such
manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the tax commissioner, with due regard to the West Virginia withholding exemptions of the employee; such method for the year one thousand nine hundred sixty-one shall prescribe rates of withholding estimated by the tax commissioner to result in the withholding during the portion of said year during which withholding is in effect of an amount substantially equivalent to the tax due for the entire year one thousand nine hundred sixty-one. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) Withholding exemptions.—For purposes of this section:

(1) An employee shall be entitled to the same number
of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) The amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or a nonresident.

(c) Exception for certain nonresidents.—If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

Sec. 72. Information Statement for Employee.—Every employer required to deduct and withhold tax under this
article from the wages of an employee, or who would have
been required so to deduct and withhold tax if the em-
ployee had claimed no more than one withholding exemp-
tion, shall furnish to each such employee in respect of the
wages paid by such employer to such employee during
the calendar year on or before the fifteenth day of Feb-
ruary of the succeeding year, or, if his employment is
terminated before the close of such calendar year, on the
date on which the last payment of the wages is made, a
written statement as prescribed by the tax commissioner
showing the amount of wages paid by the employer to the
employee, the amount deducted and withheld as tax, and
such other information as the tax commissioner shall
prescribe.

Sec. 73. Credit for Tax Withheld.—Wages upon which
tax is required to be withheld shall be taxable under this
article as if no withholding were required, but any amount
of tax actually deducted and withheld under this article
in any calendar year shall be deemed to have been paid
to the tax commissioner on behalf of the person from
whom withheld, and such persons shall be credited with
Sec. 74. Employer's Return and Payment of Withheld Taxes.—(a) General.—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld; but the tax commissioner may, by regulation, provide that every such employer shall on or before the fifteenth day of each month pay over to the tax commissioner, or a depository designated by the tax commissioner, the taxes so required to be deducted and withheld if such taxes aggregate one hundred dollars or more for the preceding calendar month. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably
18 be expected to be less than one hundred dollars, the tax
19 commissioner may by regulation permit an employer to
20 file an annual return. The tax commissioner may, if he
21 believes such action necessary for the protection of the
22 revenues, require any employer to make such return and
23 pay to him the tax deducted and withheld at any time, or
24 from time to time.
25 (b) Deposit in Trust for Tax Commissioner.—When-
26 ever any employer fails to collect, truthfully account for,
27 pay over the tax, or make returns of the tax as required
28 in this section, the tax commissioner may serve a notice
29 requiring such employer to collect the taxes which become
30 collectible after service of such notice, to deposit such
31 taxes in a bank approved by the tax commissioner, in a
32 separate account, in trust for and payable to the tax com-
33 missioner, and to keep the amount of such tax in such
34 account until payment over to the tax commissioner.
35 Such notice shall remain in effect until a notice of can-
36 cellation is served by the tax commissioner.

Sec. 75. Employer's Liability for Withheld Taxes.—
2 Every employer required to deduct and withhold tax un-
der this article is hereby made liable for such tax. To the extent not inconsistent with the provisions of this article, all the provisions of sections eighty to ninety-three of this article relating to assessment and collection of taxes, and to penalties, additions to tax, and interest in respect thereto, shall apply to every employer required to withhold tax under this article. For such purposes any amount required to be withheld and paid over to the tax commissioner shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this article shall be held to be a special fund in trust for the tax commissioner. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the tax commissioner in compliance or in intended compliance with this article.

Sec. 76. Employer's Failure to Withhold.—If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the em-
poyeer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

Sec. 80. General Provisions.—(a) Regulations.—The tax commissioner shall administer and enforce the tax herein imposed and shall issue all needful regulations, rules, and interpretations thereof. All regulations, rules and interpretations issued by the tax commissioner shall be filed with the secretary of state of West Virginia as provided in section three of article two of chapter five of this code, provided that all such regulations, rules and interpretations originally issued by the tax commissioner during the year one thousand nine hundred sixty-one shall take effect immediately upon the filing of copies thereof in the office of the secretary of state.

(b) Investigations.—The tax commissioner for the purpose of ascertaining the correctness of any returns or for the purpose of making an estimate of taxable income of any person shall have the power to examine or cause to be examined, by any agent or any representative designated by the tax commissioner, any books, papers, records
or memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge in the premises and may take testimony and may require material proof with power to administer oath to such person or persons.

(c) Returns by Tax Commissioner.—If any taxpayer fails to file a return at the time required by law or by regulation made under authority of law, the tax commissioner may proceed to make a return from any information available.

(d) Secrecy of Returns.—Except when required in an official investigation or proceedings in court involving taxes payable under this article and except as provided in subparagraph (e) of this section, it shall be unlawful for any officer or employee of the state to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by this article or any regulation of the tax commissioner issued hereunder.
(e) Reciprocal Exchange.—The tax commissioner may permit the proper officer of the United States or any state, territory or political subdivision of the United States, or his authorized representative, to inspect reports, declarations, or returns filed with the tax commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the tax commissioner or to the attorney general of this state. Subsection (d) of this section shall not be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof.

Sec. 81. Assessment.—(a) Taxes Shown On Return.—The tax commissioner shall assess all taxes determined by the taxpayer or the tax commissioner to be due as shown by any return filed under this article and may at any time within the period prescribed for assessment make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) Assessment of Deficiencies.—Whenever the tax commissioner shall determine that any tax due under this
article has not been paid in full, the tax commissioner shall make an assessment against the taxpayer of such deficiency in tax, addition to tax, interest or penalties as he may find to be due, and shall give the taxpayer written notice of such assessment.

(c) Abatement of Assessments.—The tax commissioner may abate in whole or in part any assessment which he shall determine to be erroneous.

Sec. 82. Deficiency Procedure.—(a) Informal Proceedings.—Prior to assessing a deficiency as provided in section eighty-one the tax commissioner may notify the taxpayer in writing that he proposes to assess a deficiency and afford the taxpayer in person or by his representative an opportunity to be heard with respect to the proposed deficiency, either by the filing of a written protest against the proposed deficiency or by informal conference or both.

(b) Judicial Review of Proposed Assessments.—At least ninety days prior to assessing a deficiency (except a deficiency occurring as the result of a mathematical error on the face of the return) the tax commissioner shall notify the taxpayer in writing of the amount of the de-
ficiency to be assessed and the reasons therefor. Such notice shall advise the taxpayer that the assessment will be made unless the taxpayer within said ninety day period either pays the amount to be assessed or commences suit for a declaratory judgment or decree as to his liability therefor. If the taxpayer neither pays the amount of the deficiency proposed nor commences a suit for a declaratory judgment or decree within said ninety day period, the assessment shall be made. A taxpayer who has been notified of the determination of a deficiency under this article may apply to a circuit court for a declaratory judgment or decree under article thirteen, chapter fifty-five of this code. In the case of a resident taxpayer, application may be made to the circuit court of the county of the taxpayer's residence. In the case of a nonresident taxpayer, such application may be made to the circuit court of the county in which the taxpayer is employed or if the taxpayer is not employed within the state, to the circuit court of the county in which income producing property of the taxpayer is situated. In all other cases, such applications shall be made to the circuit court of the county in
which the seat of the state government is located. No as-
se ssment shall be made of any proposed deficiency while
proceedings to secure a declaratory judgment or decree
are pending. In any such proceedings all questions re-
lating to the liability of the taxpayer for the taxable year
or years shall be determined. The tax commissioner shall
have the burden of proof on any issue raised by him sub-
sequent to the commencement of the proceedings.

Sec. 83. Collection.—The tax commissioner shall collect
the taxes, additions to tax, interest and penalties imposed
by this article. In addition to all other remedies available
for the collection of debts due the state, the tax commis-
sioner may proceed by foreclosure of the lien provided in
section eighty-four or by distraint and sale under section
eighty-five. Every assessment made by the tax commis-
sioner under this article shall constitute a judgment and
may be collected as judgments are collected.

Sec. 84. Lien.—If any person liable to pay any tax as-
anced under this article, neglects or refuses to pay the
same within ten days after written notice of assessment
of the same, the amount of said tax, including any addi-
tions to tax, interest and penalties, together with any
costs that may accrue, shall become a lien in the favor of
the State of West Virginia upon all property and rights
to property whether real or personal belonging to such
person.

The lien imposed by this section shall arise at the time
the assessment is made and shall continue until the lia-
bility for the amount so assessed shall be satisfied or be-
comes unenforceable by reason of lapse of time.

The lien imposed by this section shall be subject to the
restrictions and conditions embodied in article ten-c,
chapter thirty-eight of this code and any amendment
made or which may hereafter be made thereto.

The tax commissioner, pursuant to regulations pre-
scribed by him, may issue his certificate of release of any
lien imposed pursuant to this section upon finding that
the liability for the amount assessed has been fully satis-
fied or has become legally unenforceable or is adequately
secured by bond or other security.

Sec. 85. Distrainment.—If any tax imposed by this article
required to be paid at the time a return is filed or any
portion of such tax be not so paid or if an assessment of
the tax be made by the tax commissioner and notice
thereof be given as required by this article or if any in-
stallment of a tax be not paid within thirty days after the
same becomes due, the tax commissioner may issue a war-
rant directed to the sheriff of any county of the state com-
manding him to levy upon and sell the real and personal
property of the person owing the same found within his
county for the payment of the amount thereof with the
added penalties, interest, and the cost of executing the
warrant, and to return such warrant to the tax commis-
sioner and pay to him the money collected by virtue
thereof by a time to be therein specified and not less than
sixty days from the date of such warrant. In case the tax
commissioner shall find that the collection of a tax would
be jeopardized by the delay of thirty days as above pro-
vided he may issue his warrant within said period. The
sheriff shall within five days after the receipt of the war-
rant file with the clerk of the county court a copy thereof
and thereupon the clerk shall enter in the judgment
docket the name of the taxpayer mentioned in the war-
rant and the amount of the tax or portion thereof and
penalties for which the warrant is issued and the date
when such copy is filed and thereupon the amount so
docketed shall become a lien upon the title to and interest
in real property or chattels real of the person against
whom it is issued in the same manner as a judgment duly
docketed in the office of such clerk. The said sheriff shall
thereupon proceed upon the same in all respects, with like
effect, and in the same manner prescribed by law in re-
spect to executions issued against property upon judg-
ments of a court of record, and shall be entitled to the
same fees for his services in executing the warrant, to be
collected in the same manner. In the discretion of the tax
commissioner a warrant of like terms, force and effect
may be issued and directed to any officer or employee of
the tax commissioner and in the execution thereof such
officer or employee shall have all the powers conferred by
law upon sheriffs, but shall be entitled to no fee or com-
pensation in excess of actual expenses paid in the per-
formance of such duty. If a warrant be returned not satis-
fied in full, the tax commissioner shall have the same
remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.

Sec. 86. Overpayments, Credits and Refunds.— (a) Refunding of Overpayments.—In the case of any overpayment of any tax, addition to tax, interest or penalties imposed by this article, whether by reason of error on the part of the taxpayer, excessive withholding, or an erroneous assessment of tax, the tax commissioner shall refund the amount of the overpayment to the taxpayer. If any overpayment is not refunded within six months from the date a claim for the refund thereof is filed by the taxpayer, interest shall be paid upon the amount of such overpayment at the rate of six per centum from the date of the filing of the claim for the refund thereof. The tax commissioner may prescribe by regulation the form and content of a claim for refund.

(b) Credits.—At the election of the taxpayer, the amount of any overpayment may be applied by the taxpayer as a credit against his liability for taxes under this article for the subsequent year.
(c) Petitions for Refund.—In the event that any overpayment of tax, addition to tax, interest or penalty paid under this article is not refunded or credited pursuant to subsection (a) or (b) of this section within six months after the filing of a claim for the refund thereof, or in the event such claim is denied by the tax commissioner, the taxpayer may file a petition for refund pursuant to section two (a) of article one, chapter eleven of this code. Notwithstanding the period of limitations prescribed in said section, a taxpayer may file a petition for refund at the latest within six months after a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability.

Sec. 87. Limitations On Assessment.—(a) General Rule.—The amount of any tax imposed by this article shall be assessed within three years after the due date of the return, provided that in the case of a false or fraudulent return filed with the intent to evade tax or in the case no return is filed the tax may be assessed or a proceeding in court for the collection of such tax may be begun at any
time, provided further that in the event the tax commissioner notifies the taxpayer of a deficiency pursuant to section eighty-two (b) of this article, within three years after the due date of the return, the deficiency may be assessed within ninety days from the date of such notice or from the final determination of any declaratory judgment proceeding brought by the taxpayer.

(b) Extension By Agreement.—The tax commissioner and the taxpayer may by a written agreement extend the period within which the tax may be assessed in accordance with regulations promulgated by the state tax commissioner.

c) Deficiency In Federal Tax.—In the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation upon assessment of a deficiency reflecting said final determinations in the tax imposed by this article shall not expire until ninety days after the tax commissioner is advised of the determination by the taxpayer as provided in section fifty-nine.
Sec. 88. *Limitations On Collection.*—No proceeding shall be maintained in any court to collect any tax imposed by this article or to subject any property to sale under the lien provided for in section eighty-four of this article after the expiration of the period of limitation on assessment provided in section eighty-seven, unless the tax was assessed prior to the expiration of such period.

Sec. 89. *Interest.*—Taxes imposed by this article, if not paid when due, shall bear interest at the rate of six per centum per annum from the due date of the return. Each assessment made by the tax commissioner shall bear interest at the rate of six per centum per annum from the date thereof if not paid within ten days from receipt of notice thereof by the taxpayer.

Sec. 90. *Additions to Tax.*—(a) *Delinquency.*—In the case of any failure to make or file a return or whenever the full amount of the tax or any portion or deficiency thereof has not been paid, as required by this article, unless it be shown that such failure be due to reasonable cause and not due to willful neglect there shall be added to the tax five per centum if a failure is not for more than
thirty days with an additional five per centum for each additional thirty days or fraction thereof during which failure shall continue not to exceed twenty-five per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect by the tax commissioner in which case the amount so added shall be collected in the same manner as the tax; provided, that in all cases of delinquency, interest shall be assessed.

(b) Fraud.—In the case of the filing of any false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, there shall be added to the tax an amount equal fifty per centum thereof which shall be in lieu of the addition to tax provided for in section ninety (a) of this article. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the tax commissioner.

Sec. 91. Penalties.—(a) Failure to Collect, Account For, And Pay Over Tax, or Attempt to Defeat or Evade
3. Tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall, in addition to other penalties provided by law, be liable to a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over.

(b) Fraudulent Statement or Failure to Furnish Statement to Employee.—Any person required under the provisions of section seventy-two of this article to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by said section, or regulations prescribed thereunder, shall for each such failure be subject to a money penalty of fifty dollars.

(c) Person Defined.—The term “person” as used in this section includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a
partnership, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

(d) Collection of Penalty.—Any money penalty may be collected in the same way as the tax imposed by this article.

Sec. 92. Crimes.—(a) Failure to File Returns, Submit Information, or Pay Tax.—Any person required under this article to pay any tax or estimated tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, withholding, or collection of any tax or estimated tax imposed by this article, who, at the time or times required by law, willfully fails to pay such tax or estimated tax, make such return or declaration, keep such records, or supply such information, or willfully furnishes false and fraudulent information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of
(b) Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or withhold or truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) False Returns or Certification.—Any person who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, or who willfully makes a certification (as defined in subsection (c) of section fifty-three of this article) that is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both,
(d) Person Defined.—The term “person” as used in this section includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

(e) State Officers or Employees.—Any officer or employee of the state who violates section eighty (d) of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(f) Prima Facie Evidence.—The certificate of the tax commissioner signed by his own hand to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this article shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.
(g) Venue.—The tax commissioner or any other public officer initiating proceedings against any person under this section shall do so in the county wherein such person resides, or if such person be a nonresident, then in the county wherein such nonresident is employed, or, if such nonresident is not employed in this state then in the county in which the seat of the State government is located.

Sec. 93. Disposition of Revenue.—Of the revenue collected under this article the state treasurer shall retain in his hands such amount as the tax commissioner may determine to be necessary for refunds to which taxpayers shall be entitled under this article. The state treasurer shall, after reserving such refund fund, on or before the tenth day of each month pay all interest, penalties and taxes collected under this article and remaining to his credit in banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury.

Sec. 94. Effective Date; Severability.—(a) Effective Date.—The provisions of this article shall take effect im-
mediately. Such provisions shall apply to all taxable years ending on or after the thirty-first day of December one thousand nine hundred sixty-one, and to the entirety of each such year, including that part which has elapsed prior to the effective date of this article. Such provisions shall also apply to taxable years beginning prior to and ending in the year one thousand nine hundred sixty-one, but the tax imposed for any such year shall be one-twelfth of a tax for the full year multiplied by the number of months elapsed from the first day of January nineteen hundred sixty-one until the end of the taxable year.

(b) Severability.—If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 14th day of February, 1961.

Governor