WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 209

(By Mr. [Signature]
Mr. [Signature] original sponsor)

PASSED
March 8, 1967

In Effect
July 1, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
This date 3-21-67
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-four, imposing a tax on the net incomes of corporations and similar business organizations subject thereto as such incomes are defined therein, providing for the administration and collection thereof of said tax, and providing for penalties for violation of the provisions of said article.

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-four,
to read as follows:

§11-24-1. Legislative Findings.

§11-24-2. Short Title; Arrangement and Classification.

Part I—Definitions, Imposition of Tax and Rate, and
Exemptions


§11-24-4. Imposition of Tax and Rate.

§11-24-5. Corporations Exempt from Tax.

§11-24-6. Adjustments in Determining West Virginia Taxable Income.


§11-24-8. Accounting Periods and Methods of Accounting.

§11-24-9. Credits Against Tax.

§§11-24-10 through 11-24-12. (Reserved for future use.)

Part II—Returns, Declarations and Payment of Tax.


§11-24-14. Time and Place for Filing Returns and Paying Tax.


§11-24-17. Payments of Estimated Tax.


§§11-24-22 through 11-24-25. (Reserved for future use.)

PART III—Procedure and Administration


§11-24-27. Assessment.


§11-24-29. Collection.


§11-24-32. Overpayments, Credits and Refunds.

§11-24-33. Limitations on Assessment.

§11-24-34. Limitations on Collection.

§11-24-35. Interest.

§11-24-36. Additions to Tax.

§11-24-37. Penalties.


§11-24-40. Effective Date; Severability.

The Legislature hereby finds and declares that the adoption by this state for its corporation net income tax purposes of certain 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 corporation net income tax returns by taxpayers, (2) improve enforcement of the state corporation net income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state corporation net income tax law through increased use of federal judicial and administrative determinations and precedents.

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

§11-24-2. Short title; arrangement and classification.

This article may be cited as the "West Virginia Corporation Net 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 par-
ticular section or provision or portion of this article, nor
shall the descriptive matter or headings relating to any
part, section, subsection or paragraph be given any legal
effect.

PART I—DEFINITIONS, IMPOSITION OF TAX
AND RATE, AND EXEMPTIONS


(a) General.—Any term used in this article shall
have the same meaning as when used in a comparable
class of the United States relating to federal
income taxes, unless a different meaning is clearly re-
quired by the context or by definition in this article. Any
reference in this article to the laws of the United States
or to the internal revenue code or to the federal income
tax law shall mean the 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-seven, shall
be given effect in determining the taxes imposed by this
article for the tax period beginning the first day of July,
one thousand nine hundred sixty-seven, and thereafter,
but no amendment to laws of the United States made on
or after the first day of January, one thousand nine hun-
dred sixty-seven, shall be given effect.

(b) Certain Terms Defined.—For purposes of this
article:

(1) The term “tax commissioner” means the tax
commissioner of the state of West Virginia or his delegate.

(2) The term “corporation” means and includes
a joint stock company or any association which is taxable
as a corporation under the federal income tax law.

(3) The term “domestic corporation” means any
corporation organized under the laws of West Virginia.

(4) The term “foreign corporation” means any
corporation other than a domestic corporation.

(5) The term “state” means any state of the United
States, the District of Columbia, the Commonwealth of
Puerto Rico, any territory or possession of the United
State, and any foreign county or political subdivision
thereof.

(6) The term “taxable year” means the taxable
year for which the taxable income of the taxpayer is computed under the federal income tax law.

(7) The term "taxpayer" means a corporation subject to the tax imposed by this article.

(8) The term "tax" includes, within its meaning, interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

(9) The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(10) The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

(11) The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or ap-

portioned to this state under the provisions of section seven.

(12) The term “business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) “Nonbusiness income” means all income other than business income.

(14) The term “public utility” means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia, as amended.

(15) The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term “this state” means the state of West Virginia.
§11-24-4. Imposition of tax and rate.

(1) In the case of taxable years beginning after
the thirtieth day of June one thousand nine hundred
sixty-seven, a tax is hereby imposed for each taxable
year at the rate of six per centum per annum on the
West Virginia taxable income of every domestic or for-
eign corporation engaging in business in this state or
deriving income from property, activity or other sources
in this state, except corporations exempt under section
five.

(2) In the case of a taxable year beginning on
the first day of January one thousand nine hundred
sixty-seven and ending on the thirty-first day of De-
cember one thousand nine hundred sixty-seven, a tax
of one-half (½) of the rate set forth in paragraph
(1) is hereby imposed for such taxable year on the
West Virginia taxable income of every domestic or
foreign corporation engaging in business in this state
or deriving income from property, activity or other
sources in this state, except corporations exempt un-
der section five.
(3) In the case of taxable years, other than the year beginning on the first day of January one thousand nine hundred sixty-seven, beginning after the thirtieth day of June one thousand nine hundred sixty-six and before the first day of July one thousand nine hundred sixty-seven, a tax is hereby imposed on the West Virginia taxable income of every domestic or foreign corporation engaging in business in West Virginia or deriving income from property, activity or other sources in this state, except corporations exempt under section five, in an amount equal to that portion of the tax calculated in the manner set forth in paragraph (1) which the number of days in such taxable year after the thirtieth day of June one thousand nine hundred sixty-seven bears to the total number of days in such taxable year.

§11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this subsection:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided,
That this exemption shall not apply to the unrelated business income, as defined in the internal revenue code, of any such corporation if such income is subject to federal income tax. Without limiting the generality of the preceding sentence and notwithstanding any contrary meaning of such term under the internal revenue code, for the purposes of subsection (a) the term "unrelated business income" includes income from the sale by any private club, as defined in section two, article seven of chapter sixty of this code, of food and alcoholic liquors, other than in sealed packages, for consumption on its premises, and of services related thereto, to its members and their guests in accordance with the provisions of section two, article seven of chapter sixty of this code.

(b) Banks, banking associations, trust companies, building and loan associations and savings and loan associations.

(c) Insurance companies which pay this state a tax upon premiums: Provided, That this exemption shall not extend to income of any such corporation which is received for the use of real property other than property in
which any such corporation maintains its place of business in this state, whether such income be in the form of rentals or royalties.

(d) Production credit associations organized under the provisions of the federal “Farm Credit Act of 1933”: Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(e) Corporations electing to be taxed under subchapter S of the internal revenue code of one thousand nine hundred fifty-four, as amended.

(f) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General.—In determining the West Virginia tax-
able income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted by the items specified in this section.

(b) Adjustments Increasing Federal Taxable Income.— There shall be added to federal taxable income (unless already included in the computation of federal taxable income):

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof (other than this state and its political subdivisions and authorities), unless made exempt by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state
(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal taxable income.

(c) Adjustments Decreasing Federal Taxable Income.

—There shall be subtracted from federal taxable income:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includable 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 July one thousand nine hundred sixty-seven than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjust-
44  ment is limited to that portion of any such gain which
does not exceed the difference between such fair market
value and such adjusted basis;
47    (4) The amount of any refund or credit for over-
48  payment of income taxes imposed by this state or any
49  other taxing jurisdiction, to the extent properly included
50  in gross income for federal income tax purposes; and
51    (5) The amount of dividends received, to the ex-
tent included in federal taxable income.
53  (d) Adjustments Resulting From Recomputation of
54  Net Operating Loss Deduction.—In determining the West
55  Virginia taxable income of a corporation entitled to a
56  net operating loss deduction for the taxable year for
57  federal income tax purposes, there shall be added to or
58  subtracted from the federal taxable income the amount
59  of an adjustment reflecting a recomputation of such
60  net operating loss deduction in which the adjustments
61  required by subsections (b) and (c) are made for each
62  taxable year involved in the computation of such net
63  operating loss deduction.
(e) Special Adjustments for Expenditures for Water and Air Pollution Control Facilities.

(1) If the taxpayer so elects under paragraph (2) of this subsection, there shall be—

(A) subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in section 48 (h) (12) (B) and (C) of the internal revenue code, and

(B) added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in paragraph (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such
manner, and the scope and application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in subparagraphs (A) and (B) of paragraph (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.


(a) General.—Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income
as provided in subsection (d) or by one of the methods provided in subsection (e). For purposes of this section, the term "net income" means the taxpayer's federal taxable income adjusted as provided in section six.

(b) "Taxable in Another State" Defined.—For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) Business Activities Entirely Within West Virginia.
—If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, the entire net income of such taxpayer is subject to the tax imposed by this article.

(d) Business Activities Partially Within and Partially Without West Virginia.—If the business activities of a taxpayer take place partially within and partially without
this state and such taxpayer is also taxable in another state:

(1) Rents and royalties from real or tangible personal property, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in paragraphs (2) through (4).

(2) (A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the
property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) Interest is allocable to this state if the taxpayer's commercial domicile is in this state.

(4) (A) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufac-
turing or other processing in the state or to the extent that
a patented product is produced in the state. If the basis of
receipts from patent royalties does not permit allocation
to states or if the accounting procedures do not reflect
states of utilization, the patent is utilized in the state in
which the taxpayer's commercial domicile is located.
(C) A copyright is utilized in a state to the
extent that printing or other publication originates in the
state. If the basis of receipts from copyright royalties does
not permit allocation to states or if the accounting pro-
cedures do not reflect states of utilization, the copyright
is utilized in the state in which the taxpayer's commercial
domicile is located.
(5) All net income, after deducting those items
specifically allocated under paragraphs (1) through (4),
shall be apportioned to this state by multiplying such net
income by a fraction, the numerator of which is the prop-
erty factor plus the payroll factor, and the denominator
of which is two.
(A) The property factor is a fraction, the
numerator of which is the average value of the taxpayer's
real and tangible personal property owned or rented and
used in this state during the taxable year and the denomi-
nator of which is the average value of all the taxpayer's
real and tangible personal property owned or rented and
used during the taxable year.

(B) Property owned by the taxpayer is valued
at its original cost: Provided, That where records of origi-
nal cost are unavailable or cannot be obtained without
unreasonable expense, property shall be valued at original
cost as determined under regulations of the tax commis-
sioner. Property rented by the taxpayer from others is
valued at eight times the annual rental rate.

(C) The average value of property shall be
determined by averaging the values at the beginning and
ending of the taxable year, but the tax commissioner may
require the averaging of monthly values during the tax
period if reasonably required to reflect properly the aver-
age value of the taxpayer's property.

(D) The payroll factor is a fraction, the nu-
merator of which is the total amount paid in this state
during the taxable year by the taxpayer for compensation,
and the denominator of which is the total compensation paid everywhere during the taxable year.

(E) Compensation is paid in this state if:

(i) the individual’s service is performed entirely within the state; or

(ii) the individual’s service is performed both within and without the state, but the service performed without the state is incidental to the individual’s service within the state; or

(iii) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this state.

(e) Other Methods of Allocation.—(1) General.—If the allocation and apportionment provisions of subsection (d) do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition
for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) separate accounting;
(B) the exclusion of one of the factors;
(C) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
(D) the employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income.

(2) Alternative method for public utilities.—If the taxpayer is a public utility and if the allocation and apportionment provisions of subsection (d) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for or the tax commissioner may require, as an alternative to the other methods provided for in paragraph (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to
the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of Proof.—In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in paragraphs (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (d) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall—

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.


(a) Period of Computation of West Virginia Taxable Income.—For purposes of the tax imposed by this article,
a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Change of Taxable Year.—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed.

(c) Methods of Accounting.—(1) Same as federal.—A taxpayer's method of accounting under this article shall be the same as the taxpayer's 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 for purposes of this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(2) Change of accounting methods.—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.

(d) Adjustments.—In computing a taxpayer's West Virginia taxable income for any taxable year under a method of accounting different from the method under
which the taxpayer's West Virginia taxable income for
the previous year was computed, there shall be taken
into account those adjustments which are determined,
under regulations prescribed by the tax commissioner,
to be necessary solely by reason of the change in order
to prevent amounts from being duplicated or omitted.

(e) Limitation on Additional Tax.—(1) Change other
than to installment method.—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.

(2) Change from accrual to installment method.—
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 subse-
quent year which is attributable to the receipts of install- 
ment 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, under regulations prescribed by the tax commissioner.

(f) Application of Federal Accounting Adjustments.—Notwithstanding any of the other provisions of this section, any accounting adjustments made for federal income tax purposes for any taxable year shall be applied in computing the taxpayer’s taxable income for such taxable year.

(g) Taxpayer Currently on the Installment Method of Accounting.—If a taxpayer is using the installment method of accounting at the time of the enactment of this article, any tax for the year of the enactment of this article and for any subsequent year which is attributable to the receipts of installment payments properly accrued in a period prior to the enactment of this article and which were subject to the privilege tax as imposed by
article thirteen of chapter eleven of this code shall, under regulations of the tax commissioner, be reduced by the portion of such privilege tax previously paid on such receipts.

§11-24-9. Credits against tax.

(a) Credit for Taxes Imposed Under Article Thirteen, Chapter Eleven of this Code.

A credit shall be allowed against the tax imposed by 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 and shall not in any event exceed the tax imposed by this article for such taxable year: Provided further, That no such credit shall be allowed for any tax imposed under article thirteen with respect to any period
prior to the first day of July, one thousand nine hundred sixty-seven.

(b) Credit for Taxes Imposed Under Article Twelve-A, Chapter Eleven of this Code.

A credit shall be allowed against the tax imposed by 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, 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 any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year:

Provided further, That no such credit shall be allowed for any tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

§§11-24-10 through 11-24-12. (Reserved for future use.)
PART II—RETURNS, DECLARATIONS AND
PAYMENT OF TAX


(a) Time for Filing.—On or before the fifteenth day
of the third month following the close of a taxable year,
an income tax return under this article shall be made
and filed by or for every corporation subject to the tax
imposed by this article.

(b) Consolidated Returns of Corporations.—Any cor-
poration subject to tax under this article which is affili-
ated through controlling stock ownership with one or
more other corporations shall be permitted, under regu-
lations prescribed by the tax commissioner, to make a
consolidated return showing the consolidated taxable in-
come of all such affiliated corporations wherever incor-
porated, and such other information as the tax commis-
sioner may require to establish the West Virginia taxable
income of the consolidated group. If such corporation
does not make a consolidated return, the tax commissioner
may, if he determines that the intercompany prices or
transactions of such corporation have been artificially
arranged to shift taxable income from itself to another
member or members of its affiliated group not subject to
tax under this article, require such corporation to make
a consolidated return in order clearly to reflect the taxable
income of such corporation. In the event that such a con-
solidated return is filed, whether voluntarily or by re-
quirement of the tax commissioner, the net income or loss
of each member of the group, after proper intercorporate
eliminations, shall be consolidated pursuant to regulations
prescribed by the tax commissioner to produce the con-
solidated taxable income of the group, and the tax im-
posed by this article shall be computed and assessed upon
the taxable income of the consolidated group, determined
according to the provisions of section seven, in the appli-
cation of which the consolidated group shall be treated
as the taxpayer.

§11-24-14. Time and place for filing returns and paying tax.

A person required to make and file a return under this
article shall pay any tax shown to be due by such return,
without assessment, notice or demand, to the tax com-
m issioner on or before the date fixed for filing such re-
turn determined without regard to any extension of time for filing the return. The tax commissioner shall pre-
scribe by regulation the place for filing any return, state-
ment or other document required to be filed by this
article and for the payment of any tax.


(a) Any return, statement or other document required
to be made pursuant to this article shall be filed in ac-
cordance with regulations or instructions prescribed by
the tax commissioner. The fact that an individual's name
is signed to a return, statement or other document shall
be prima facie evidence for all purposes that the return,
statement or other document was actually signed by him.
The fact that a return, statement or other document is
signed by an officer of a corporation shall be prima facie
evidence for all purposes that such officer is authorized
to sign on behalf of the corporation.

(b) The making or filing of any return, 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 constitute a certification by the person, cor-
poration or officer making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.


(a) Requirement of Declaration.—Every corporation subject to tax under this article shall make a declaration of estimated tax for the taxable year if its West Virginia taxable income can be reasonably expected to exceed ten thousand dollars.

(b) Definition of Estimated Tax.—The term “estimated tax” means the amount which a corporation estimates to be its income tax under this article for the taxable year, less an amount which such corporation estimates to be the sum of any credits allowable against the tax.

(c) Contents of Declaration.—The declaration shall contain such pertinent information as the tax commissioner may by forms or regulations prescribe, including, but not limited to, such detailed information as may be necessary to clearly reflect the estimated West Virginia taxable income of the corporation for the taxable year.
(d) Amendment of Declaration.—A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the tax commissioner.

(f) Time for Filing Declaration.—If the requirements of subsection (a) are first met before the first day of the fourth month of the taxable year a declaration of estimated tax of a corporation shall be filed on or before the fifteenth day of the fourth month of the taxable year, except that if the requirements of subsection (a) are first met—

(1) after the last day of the third month and before the first day of the sixth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the sixth month of the taxable year, or

(2) after the last day of the fifth month and before the first day of the ninth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the ninth month of the taxable year, or

(3) after the last day of the eighth month and before the first day of the twelfth month of the taxable

year, the declaration shall be filed on or before the fifteenth day of the twelfth month of the taxable year.

(g) Declaration of Estimated Tax of One Hundred Dollars or Less.—A declaration of estimated tax of a corporation having a total estimated tax for the taxable year of one hundred dollars or less may be filed at any time on or before the fifteenth day of the first month of the succeeding taxable year under regulations of the tax commissioner.

(h) Return as Declaration or Amendment.—If on or before the fifteenth day of the second month of the succeeding taxable year a corporation files its return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as such corporation's declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before the fifteenth day of the first month of the succeeding taxable year.

(2) Such return, if filed on or before such appli-
§11-24-17. Payments of estimated tax.

(a) Installment Payments.—The estimated tax of a corporation with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before the fifteenth day of the fourth month 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 days of the sixth, ninth and twelfth months of the taxable year, respectively.

(2) If the declaration is filed after the fifteenth day of the fourth month and not after the fifteenth day of the sixth month of the taxable year, and is not required to be filed on or before the fifteenth day of the fourth month 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 days of the ninth and twelfth months of the taxable year, respectively.

(3) If the declaration is filed after the fifteenth day of the sixth month and not after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the sixth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of the twelfth month of the taxable year.

(4) If the declaration is filed after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the ninth month 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) Amendments of Declaration by Any Corporation.
—If any amendment of a declaration is filed by a corporation, 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 the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) 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.

(d) Installment Paid in Advance.—Any corporation may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

(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.

(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 intentional 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 the amount for which the extension of time for payment is granted on such terms and conditions as the tax commissioner may require.


(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 corporation, by regulation or notice served upon such corporation, to make such
returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

(b) Information at Source.—The tax commissioner may prescribe regulations and instructions requiring returns of information to be made by 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, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(c) 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.

If the amount of a taxpayer's federal taxable income reported on its 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 taxpayer 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 requirements of this section as he deems appropriate.


Any election expressly authorized by this article, other than any election expressly stated to be irrevocable, may
3 be changed on such terms and conditions as the tax com-
4 missioner may prescribe by regulation.

§§11-24-22 through 11-24-25. (Reserved for future use.)

PART III—PROCEDURE AND ADMINISTRATION


(a) Regulations.—The tax commissioner shall admin-
2 ister and enforce the tax imposed by this article. He shall
3 make all needful regulations, rules, and interpretations
4 thereof as provided in article three, chapter twenty nine-a
5 of this code and shall file the same with the secretary of
6 state of West Virginia as provided in article two, chapter
7 twenty nine-a of this code.

(b) Investigations.—The tax commissioner for the pur-
9 pose of ascertaining the correctness of any returns or for
10 the purpose of making an estimate of any taxpayer's in-
11 come subject to tax under this article shall have the power
12 to examine or cause to be examined, by any agent or
13 any representative designated by the tax commissioner,
14 any books, papers, records or memoranda bearing upon
15 the matters required to be included in the return and
16 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 commis-
sioner may proceed to make a return from any informa-
tion 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 paragraph (e) of this subsection, 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, declara-
tion or return required to be filed with the tax commis-
sioner by this article or by any regulation of the tax com-
missioner 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, declara-
tions, 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 publica-
tion of statistics so classified as to prevent the identifica-
tion of particular reports and the items thereof.

(f) Service of Notice.—Any written notice required by
this article shall, unless otherwise specifically provided,
be served upon the taxpayer personally or by certified
mail.

§11-24-27. Assessment.

(a) 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 serve the taxpayer with
written notice of such assessment, either in person or by
certified mail. For purposes of this article such written
notice is termed a “notice of assessment”.

(b) Jeopardy Assessment.—If the tax commissioner
believes that the assessment or collection of a deficiency,
as defined in subsection (a), or the collection of any tax
due under this article, will be jeopardized by delay, he
shall, notwithstanding the provisions of section twenty-
eight of this article, immediately make an assessment of
such deficiency or such tax due (together with all addi-
tional amounts, interest or penalties provided for by this
article), noting that fact upon the assessment. The amount
so assessed shall be immediately due and payable, and
a notice of assessment and demand for the payment
thereof shall be served upon the taxpayer. Unless the
taxpayer against whom a jeopardy assessment is made
petitions the tax commissioner for reassessment within
twenty days after service of notice of the jeopardy assess-
ment, such assessment shall become final: Provided, That
the tax commissioner may, upon the written request of
the taxpayer made within such twenty day period, show-
ing reasonable cause therefor, grant an extension of time not to exceed thirty additional days within which such petition may be filed. A petition for reassessment by a taxpayer against whom or which a jeopardy assessment has been made shall be accompanied by such security as the tax commissioner may deem necessary to insure compliance with this article. If such petition for reassessment is filed, accompanied by the necessary security, the provisions for hearing, determination and appeal set forth in section twenty-eight shall then be applicable.

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


(a) Informal Proceedings.—(1) General.—Prior to assessing a deficiency and giving a notice of assessment as provided in section twenty-seven, the tax commissioner shall notify the taxpayer in writing by certified mail that he proposes to make such assessment and shall afford the taxpayer in person or by his representative an opportunity to be heard with respect to the proposed assess-
ment, either by the filing of a written protest against the
proposed assessment or by informal conference or both.

(2) Written protest.—The tax commissioner shall,
by regulations, prescribe the circumstances under which
the taxpayer shall be required to file a written protest and
the formal requirements thereof. Such written protest,
whether the filing thereof is required by the tax com-
misioner or whether it is filed voluntarily by the tax-
payer, shall be filed by the taxpayer within thirty days
after the receipt by the taxpayer of the tax commission-
er's written notice of the proposed assessment. The tax
commissioner may, upon the written request of the tax-
payer made within such thirty-day period, showing rea-
sonable cause therefor, grant an extension of time within
which such protest may be filed.

(3) Time and place for hearing.—The tax com-
missioner shall assign a time and place for any hearing on
the proposed assessment and shall notify the taxpayer of
such hearing by written notice at least twenty days in
advance thereof and such hearing shall be held within
sixty days from the filing of a written protest or within
nine days after the date of the tax commissioner's notice of the proposed assessment, whichever is later, unless continued by agreement or by the tax commissioner for cause.

(4) Determination by tax commissioner.—(A) After the hearing on a proposed assessment the tax commissioner shall, within a reasonable time, give the taxpayer written notice of his determination. If the tax commissioner determines that any tax is due from the taxpayer, he shall make an assessment as provided in section twenty-seven (a).

(B) If the taxpayer fails to file a written protest when required to do so by the tax commissioner, or if the taxpayer fails to request an informal hearing, or if the taxpayer having requested a hearing fails to appear, the tax commissioner shall then, in any case, make an assessment as provided in section twenty-seven (a).

(C) Except as provided in subsection (b) (2), any assessment made pursuant to section twenty-seven (a) and subsection (a) of this section shall be payable at the expiration of ninety days from the date of the notice.
of assessment unless the taxpayer takes an appeal from such assessment as provided in subsection (c) of this section.

(b) Exceptions for Mathematical Errors; Collection of Balance Due on Return Without a Remittance.—(1) When a mathematical error appears on the face of a return (including an overstatement of the credit for the amount paid as estimated tax), the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency in tax; and the taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the tax commissioner shall, notwithstanding the provisions of subsection (a) of this section, promptly make an assessment of such deficiency in tax against the taxpayer and shall give the taxpayer written notice thereof.

(2) If a taxpayer files a mathematically correct return which reflects a balance due of the tax imposed by this article, and if no payment thereof has been made, the tax commissioner shall notify the taxpayer, in writing, of
the amount of tax, additions to tax, interest or penalties due, and the taxpayer shall have fifteen days after receipt of such notice within which to make such payment. If the taxpayer fails to make payment within such fifteen day period the tax commissioner shall, notwithstanding the provisions of subsection (a) of this section, promptly make an assessment against the taxpayer for such amount due and shall give the taxpayer written notice thereof. Notwithstanding the provisions of subsection (c) of this section, the amount of such assessment shall be immediately due and payable.

(c) Appeal.—(1) An appeal may be taken by the taxpayer to the circuit court of the county in which the taxpayer engages in or carries on business, or, at the election of the taxpayer, to the circuit court of the county in which the seat of the state government is located, within ninety days after the date of the notice of assessment.

(2) The appeal shall be taken by the filing of a petition and notice which petition and notice shall be served upon the tax commissioner as an original notice. When said petition and notice is so served it shall, with
the return thereon, be filed in the office of the clerk of the

circuit court and docketed as other cases with the tax-
payer as plaintiff and the tax commissioner as defendant.

Before the appeal is heard, the plaintiff shall file with

such clerk a bond for the use of the defendant, with sure-
ties approved by said clerk, the penalty of the bond to be

not less than the total amount of the tax, interest and

penalties appealed from, and conditioned that the plaintiff

shall perform the orders of the court; except that in lieu

of said bond, the tax commissioner may upon a proper

showing find and certify to said clerk that the properties

of the plaintiff subject to the liens imposed by sections

twenty-nine and thirty of this article are adequate to

secure the performance of the orders of the court.

(3) The court shall hear the appeal and determine

anew all questions submitted to it on appeal from the
determination of the tax commissioner. Any pleadings

filed by the taxpayer or the tax commissioner may be

amended upon leave of the court any time prior to the

final determination by the court. In such appeal a certi-

died copy of the tax commissioner's notice of assessment
shall be admissible and shall constitute prima facie evidence of the tax due under the provision of this article:

Provided, That the tax commissioner shall have the burden of proof on any new issue raised by him subsequent to the commencement of the appeal proceeding. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

§11-24-29. Collection.

(a) General.—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 commissioner may proceed by foreclosure of the lien provided in section thirty, or by distraint and sale under section thirty-one. Every assessment made by the tax commissioner under this article which has become final and is not subject to appeal by the taxpayer under sec-
(b) Prerequisite to Final Settlement with Nonresident Contractor: User Personally Liable.

(1) Any person contracting with a nonresident contractor subject to the provisions of this article shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six per centum of the contract price, as will in such person's opinion be sufficient, until the receipt of a certificate from the tax commissioner to the effect that all taxes imposed by this article against the contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided herein, such person shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the tax commissioner by appropriate legal proceedings.

(c) Prerequisite for Issuance of Certificate of Dissolution or Withdrawal of Corporation.—The secretary of state shall withhold the issuance of any certificate of dis-
solution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a notice from the tax commissioner to the effect that the tax imposed by this article against any such corporation has been paid or provided for, if any such corporation is a taxpayer under this article, or until the secretary of state shall be notified by the tax commissioner that the applicant is not liable for any tax imposed by this article.

(d) Prerequisite to Final Settlement with State or Political Subdivision Contractor; Penalty. All state, county, district and municipal officers and agents making contacts on behalf of the state of West Virginia, or any political subdivision thereof, shall withhold payment, in the final settlement of any such contract, until the receipt of a certificate from the tax commissioner to the effect that all taxes imposed by this article against the contractor have been paid. Any official violating this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or
imprisoned not exceeding one year in the county jail, or
shall be subject to fine and imprisonment in the discre-
tion of the court.

(e) Payment When Person Sells Out or Quits Business; Lien.—If any person subject to tax under this article
sells out his or its business or stock of goods, or shall
cease doing such business, any tax, interest, additions to
tax and penalties imposed by this article shall become
due and payable immediately, and such person shall make
a final return and remit the entire tax that may be charge-
able against him because of all business done, within
thirty days after selling out his or its business or stock of
goods, or ceasing to do such business. The tax imposed
by this article shall be a lien upon the property of such
person.

(2) The successor in business of any such person shall
withhold so much of the purchase money as will satisfy
the tax, interest, additions to tax and penalties which may
be due until the former owner shall produce a receipt
from the tax commissioner evidencing the payment there-
of. If the purchaser of a business or stock of goods shall
fail to withhold purchase money as above provided, and such tax, interest, additions to tax and penalties remain unpaid after expiration of the thirty-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of all such tax, interest, additions to tax and penalties, and the same shall be recoverable by the tax commissioner by action or suit as provided by this section.

(f) *Injunction.*—If the taxpayer fails to comply with any of the provisions of this article for a period of more than sixty days, the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article.

(g) "*Person* Defined.*—The term "person" as used in this section includes, but is not limited to, any individual, firm, partnership, limited partnership, joint venture, association, corporation, organization, receiver, estate, trust or any other group or combination acting as a unit.

(h) "*Contractor* Defined.*—The term "contractor" as used in this section means any person engaged in the
business of furnishing labor or materials or both labor
and materials in the fulfillment of any contract, either
written or oral, for the construction, alteration, repair
or improvement of a new or existing building or structure
or any part thereof or for the alteration, improvement
or development of real property.


(a) If any person liable to pay any tax assessed 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 additions to tax, interest
and penalties, together with any costs that may accrue,
shall become a lien in the favor of the state of West Vir-
ginia upon all property and rights to property whether
real or personal belonging to such person.

(b) The lien imposed by this section shall arise at the
time the assessment is made and shall continue until the
liability for the amount so assessed shall be satisfied or
becomes unenforceable by reason of lapse of time.

(c) 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.

(d) The tax commissioner, pursuant to regulations prescribed 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 satisfied or has become legally unenforceable or is adequately secured by bond or other security.

(e) For purposes of this section, the meaning of the term "person" is the same as that provided in section twenty-nine (g).


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 and such assessment has become final and is not subject to appeal by the taxpayer under section twenty-eight (c), or if any installment of a tax be not paid within thirty days after the same becomes due, the tax commissioner may issue a warrant directed to the
sheriff of any county of the state commanding him to levy
upon and sell the real and personal property of the tax-
payer owing the same found within his county for the pay-
ment of the amount thereof with the added penalties,
interest, and the cost of executing the warrant, and to
return such warrant to the tax commissioner 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 provided, he may issue
his warrant within said period. The sheriff shall within
five days after the receipt of the warrant 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 warrant 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 man-
ner prescribed by law in respect to executions issued
against property upon judgments of a court of record, and
shall be entitled to the same fees for his services in exe-
cuting 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 compensation in excess of actual
expenses paid in the performance of such duty. If a war-
rant be returned not satisfied 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.

§11-24-32. Overpayments, credits and refunds.

(a) Refunding of Overpayments.—In the case of any
overpayment of any tax, addition to tax, interest or pen-
alties imposed by this article, whether by reason of error on the part of the taxpayer 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 per annum from the date of the overpayment. The tax commissioner may prescribe by regulation the form and content of a claim for refund.

(b) *Credits.*—At the request of the taxpayer and with the approval of the tax commissioner, the amount of any overpayment (including interest) may be applied by the taxpayer as a credit against the taxpayer's liability for taxes under this article for subsequent periods.

(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) 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.

§11-24-33. Limitations on assessment.

(a) General Rule.—The amount of any tax imposed by this article shall be assessed within five 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 proposed assessment pursuant to section twenty-eight, within five years after the due date of the return, the assessment may be made when the tax commissioner makes the determination provided in section twenty-eight.
13 (b) Extension By Agreement.—The tax commissioner
14 and the taxpayer may by a written agreement extend the
15 period within which the tax may be assessed in accordance
16 with regulations promulgated by the tax commissioner.
17 (c) Deficiency In Federal Tax.—In the event of a final
determination by the United States internal revenue serv-
ice 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 determination 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 twenty.

§11-24-34. 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 thirty after
the expiration of the period of limitation on assessment
provided in section thirty-three, unless the tax was as-
essed prior to the expiration of such period.
§11-24-35. 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.

§11-24-36. 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 thereof has not been paid as required by this article, unless it be shown that such failure be due to reasonable cause 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 dis-
covery 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 wilful failure to file a return with intent to evade the tax, there shall be added to the tax an amount equal to fifty per centum thereof which shall be in lieu of the addition to the tax provided for in subsection (a). The burden of proving fraud, wilfulness, or intent to evade tax shall be upon the tax commissioner.

§11-24-37. Penalties.

(a) Failure to Collect, Account For, 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 wilfully fails to truthfully account for and pay over such tax, and any person who wilfully 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. No penalty shall be imposed under section
thirty-six for any offense to which this section is ap-
plicable.

(b) "Person" Defined.—The term "person" as used in
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.

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


(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 purpose of the computation, assess-
ment, 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 in-
formation, 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.

(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 im-
posed by this article, who willfully fails to collect or truth-
fully 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 wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, or who wilfully makes a certification (as defined in subsection (b) of section fifteen) 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, together with the costs of prosecution.

(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 subsection (d) of section twenty-six 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.
49  (f) Certificate of Tax Commissioner As Evidence.—The certificate of the tax commissioner 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 evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

56  (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.


Pursuant to the Legislature's authority under section one of article ten of the Constitution of this state, whereby the Legislature is authorized to impose a tax upon incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount
thereof and to exempt from taxation incomes below a minimum to be fixed by the Legislature, and whereby revenues so derived may be appropriated as the Legislature may provide, 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 and on or before the tenth day of each month the state treasurer shall, after reserving such refund amount, pay all interests, 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.

§11-24-40. Effective date; severability.

(a) Effective Date.—The provisions of this article shall take effect on the first day of July, one thousand nine hundred sixty-seven.

(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
judgement shall not affect, impair or invalidate the re-
mainder of said article, but shall be confined in its opera-
tion to the provision thereof directly involved in the con-
troversy in which such judgment shall have been ren-
dered, 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.

William J. Harper
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Herbert Tope
Clerk of the Senate

J. A. Blackshear
Clerk of the House of Delegates

Howard W. Carver
President of the Senate

W. Robert White
Speaker House of Delegates

The within approved this the 21

day of March, 1967.

Herbert C. Smith
Governor