

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

*Com. Sub. for*  
SENATE BILL NO. 209

(By Mr. *Cason* [Mr. President] and  
*Mr. McCauley* original sponsor)

PASSED March 8, 1967

In Effect July 1, 1967 ~~Passage~~

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-21-67

#209

**ENROLLED**  
FINANCE  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 209**

(MR. CARSON [MR. PRESIDENT] and MR. McCOURT original sponsors).

[Passed March 8, 1967; in effect July 1, 1967.]

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**

§11-24-3. Meaning of Terms.

§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.

§11-24-7. Allocation and Apportionment.

§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.**

§11-24-13. Returns.

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

§11-24-15. Signing of Returns and Other Documents.

§11-24-16. Declarations of Estimated Tax.

§11-24-17. Payments of Estimated Tax.

**§11-24-18. Extensions of Time.**

**§11-24-19. Requirements Concerning Returns, Notices, Records  
and Statements.**

**§11-24-20. Report of Change in Federal Taxable Income.**

**§11-24-21. Change of Election.**

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

**PART III—Procedure and Administration**

**§11-24-26. General Provisions.**

**§11-24-27. Assessment.**

**§11-24-28. Deficiency Procedure.**

**§11-24-29. Collection.**

**§11-24-30. Lien.**

**§11-24-31. Dstraint.**

**§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.**

**§11-24-38. Crimes.**

**§11-24-39. Disposition of Revenue.**

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

The Legislature hereby finds and declares that the  
2 adoption by this state for its corporation net income tax  
3 purposes of certain provisions of the laws of the United  
4 States relating to the determination of income for federal  
5 income tax purposes will (1) simplify preparation of state  
6 corporation net income tax returns by taxpayers, (2)  
7 improve enforcement of the state corporation net income  
8 tax through better use of information obtained from  
9 federal income tax audits, and (3) aid interpretation of  
10 the state corporation net income tax law through in-  
11 creased use of federal judicial and administrative deter-  
12 minations and precedents.

13 The Legislature does therefore declare that this article  
14 twenty-four be construed so as to accomplish the fore-  
15 going purposes.

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

This article may be cited as the "West Virginia Corpora-  
2 tion Net Income Tax Act". No inference, implication or  
3 presumption of legislative construction shall be drawn or  
4 made by reason of the location or grouping of any par-

5 ticular section or provision or portion of this article, nor  
6 shall the descriptive matter or headings relating to any  
7 part, section, subsection or paragraph be given any legal  
8 effect.

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

**§11-24-3. Meaning of terms.**

(a) *General.*—Any term used in this article shall  
2 have the same meaning as when used in a comparable  
3 context in the laws of the United States relating to federal  
4 income taxes, unless a different meaning is clearly re-  
5 quired by the context or by definition in this article. Any  
6 reference in this article to the laws of the United States  
7 or to the internal revenue code or to the federal income  
8 tax law shall mean the provisions of the laws of the  
9 United States as relate to the determination of income  
10 for federal income tax purposes. All amendments made  
11 to the laws of the United States prior to the first day of  
12 January, one thousand nine hundred sixty-seven, shall  
13 be given effect in determining the taxes imposed by this  
14 article for the tax period beginning the first day of July,

15 one thousand nine hundred sixty-seven, and thereafter,  
16 but no amendment to laws of the United States made on  
17 or after the first day of January, one thousand nine hun-  
18 dred sixty-seven, shall be given effect.

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

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

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

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

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

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

35 (6) The term “taxable year” means the taxable

36 year for which the taxable income of the taxpayer is com-  
37 puted under the federal income tax law.

38 (7) The term "taxpayer" means a corporation sub-  
39 ject to the tax imposed by this article.

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

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

46 (10) The term "compensation" means wages, sala-  
47 ries, commissions and any form of remuneration paid to  
48 employees for personal services.

49 (11) The term "West Virginia taxable income"  
50 means the taxable income of a corporation as defined by  
51 the laws of the United States for federal income tax pur-  
52 poses, adjusted as provided in section six: *Provided, That*  
53 in the case of a corporation having income from business  
54 activity which is taxable without this state, its "West Vir-  
55 ginia taxable income" shall be such portion of its taxable  
56 income as so defined and adjusted as is allocated or ap-



57 portioned to this state under the provisions of section  
58 seven.

59 (12) The term "business income" means income  
60 arising from transactions and activity in the regular  
61 course of the taxpayer's trade or business and includes  
62 income from tangible and intangible property if the ac-  
63 quisition and disposition of the property constitute in-  
64 tegral parts of the taxpayer's regular trade or business  
65 operations.

66 (13) "Nonbusiness income" means all income other  
67 than business income.

68 (14) The term "public utility" means any business  
69 activity to which the jurisdiction of the public service  
70 commission of West Virginia extends under section one,  
71 article two, chapter twenty-four of the code of West Vir-  
72 ginia, as amended.

73 (15) The term "this code" means the code of West  
74 Virginia, one thousand nine hundred thirty-one, as  
75 amended.

76 (16) The term "this state" means the state of West  
77 Virginia.

**§11-24-4. Imposition of tax and rate.**

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

(2) In the case of a taxable year beginning on  
11 the first day of January one thousand nine hundred  
12 sixty-seven and ending on the thirty-first day of De-  
13 cember one thousand nine hundred sixty-seven, a tax  
14 of one-half ( $\frac{1}{2}$ ) of the rate set forth in paragraph  
15 (1) is hereby imposed for such taxable year on the  
16 West Virginia taxable income of every domestic or  
17 foreign corporation engaging in business in this state  
18 or deriving income from property, activity or other  
19 sources in this state, except corporations exempt un-  
20 der section five.

21 (3) In the case of taxable years, other than the  
22 year beginning on the first day of January one thousand  
23 nine hundred sixty-seven, beginning after the thirtieth  
24 day of June one thousand nine hundred sixty-six and  
25 before the first day of July one thousand nine hundred  
26 sixty-seven, a tax is hereby imposed on the West Vir-  
27 ginia taxable income of every domestic or foreign cor-  
28 poration engaging in business in West Virginia or de-  
29 riving income from property, activity or other sources  
30 in this state, except corporations exempt under section  
31 five, in an amount equal to that portion of the tax cal-  
32 culated in the manner set forth in paragraph (1) which  
33 the number of days in such taxable year after the thir-  
34 tieth day of June one thousand nine hundred sixty-seven  
35 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  
2 tax imposed by this article to the extent provided in this  
3 subsection:  
4 (a) Corporations which by reason of their purposes or  
5 activities are exempt from federal income tax: *Provided,*

6 That this exemption shall not apply to the unrelated  
7 business income, as defined in the internal revenue code,  
8 of any such corporation if such income is subject to fed-  
9 eral income tax. Without limiting the generality of the  
10 preceding sentence and notwithstanding any contrary  
11 meaning of such term under the internal revenue code,  
12 for the purposes of subsection (a) the term "unrelated  
13 business income" includes income from the sale by any  
14 private club, as defined in section two, article seven of  
15 chapter sixty of this code, of food and alcoholic liquors,  
16 other than in sealed packages, for consumption on its  
17 premises, and of services related thereto, to its members  
18 and their guests in accordance with the provisions of  
19 section two, article seven of chapter sixty of this code.

20 (b) Banks, banking associations, trust companies,  
21 building and loan associations and savings and loan asso-  
22 ciations.

23 (c) Insurance companies which pay this state a tax  
24 upon premiums: *Provided*, That this exemption shall not  
25 extend to income of any such corporation which is re-  
26 ceived for the use of real property other than property in

27 which any such corporation maintains its place of busi-  
28 ness in this state, whether such income be in the form of  
29 rentals or royalties.

30 (d) Production credit associations organized under the  
31 provisions of the federal "Farm Credit Act of 1933": *Pro-*  
32 *vided*, That this exemption shall not apply to corporations  
33 or associations organized under the provisions of article  
34 four, chapter nineteen of this code.

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

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

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

(a) *General.*—In determining the West Virginia tax-

2 able income of a corporation, its taxable income as defined  
3 for federal income tax purposes shall be adjusted by  
4 the items specified in this section.

5 (b) *Adjustments Increasing Federal Taxable Income.*—

6 There shall be added to federal taxable income (unless  
7 already included in the computation of federal taxable  
8 income):

9 (1) Interest or dividends on obligations or securi-  
10 ties of any state or of a political subdivision or authority  
11 thereof (other than this state and its political subdivisions  
12 and authorities), unless made exempt by compact or  
13 agreement to which this state is a party;

14 (2) Interest or dividend income on obligations or  
15 securities 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 income  
18 taxes;

19 (3) Income taxes imposed by this state or any  
20 other taxing jurisdiction, to the extent deductible in de-  
21 termining federal taxable income and not credited against  
22 federal income tax, and the taxes imposed by this state

23 for which credit against the taxes imposed by section  
24 four is allowed by section nine; and

25 (4) Interest on indebtedness incurred or continued  
26 to purchase or carry obligations or securities the income  
27 from which is exempt from tax under this article, to the  
28 extent deductible in determining federal taxable income.

29 (c) *Adjustments Decreasing Federal Taxable Income.*

30 —There shall be subtracted from federal taxable income:

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

34 (2) Interest or dividend income on obligations or  
35 securities of any authority, commission or instrumen-  
36 tality of the United States to the extent includable in gross  
37 income for federal income tax purposes, but exempt from  
38 state income taxes under the laws of the United States;

39 (3) Any gain from the sale or other disposition  
40 of property having a higher fair market value on the  
41 first day of July one thousand nine hundred sixty-seven  
42 than the adjusted basis at said date for federal income  
43 tax purposes: *Provided*, That the amount of this adjust-

44 ment is limited to that portion of any such gain which  
45 does not exceed the difference between such fair market  
46 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-  
52 tent included in federal taxable income.

53 (d) *Adjustment 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.



64 (e) *Special Adjustments for Expenditures for Water*  
65 *and Air Pollution Control Facilities.*

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

68 (A) subtracted from federal taxable income  
69 the total of the amounts paid or incurred during the tax-  
70 able year for the acquisition, construction or develop-  
71 ment within this state of water pollution control facili-  
72 ties and air pollution control facilities as defined in sec-  
73 tion 48 (h) (12) (B) and (C) of the internal revenue  
74 code, and

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

80 (2) The election referred to in paragraph (1)  
81 of this subsection shall be made in the return filed within  
82 the time prescribed by law (including extensions there-  
83 of) for the taxable year in which such amounts were  
84 paid or incurred. Such election shall be made in such

85 manner, and the scope and application of such election  
86 shall be defined, as the tax commissioner may by regu-  
87 lations prescribe, and shall be irrevocable when made  
88 as to all amounts paid or incurred for any particular  
89 water pollution control facility or air pollution control  
90 facility.

91 (3) Notwithstanding any other provisions of this  
92 subsection or of section seven to the contrary, if the tax-  
93 payer's federal taxable income is subject to allocation  
94 and apportionment under section seven, the adjustments  
95 prescribed in subparagraphs (A) and (B) of paragraph  
96 (1) of this subsection shall (instead of being made to  
97 the taxpayer's federal taxable income before allocation  
98 and apportionment thereof as provided in section seven)  
99 be made to the portion of the taxpayer's net income, com-  
100 puted without regard to such adjustments, allocated and  
101 apportioned to this state in accordance with section seven.

**§11-24-7. Allocation and apportionment.**

(a) *General.*—Any taxpayer having income from busi-  
2 ness activity which is taxable both in this state and in  
3 another state shall allocate and apportion its net income

4 as provided in subsection (d) or by one of the methods  
5 provided in subsection (e). For purposes of this section,  
6 the term "net income" means the taxpayer's federal tax-  
7 able income adjusted as provided in section six.

8 (b) *"Taxable in Another State" Defined.*—For pur-  
9 poses of allocation and apportionment of net income under  
10 this section, a taxpayer is taxable in another state if (1)  
11 in that state the taxpayer is subject to a net income tax, a  
12 franchise tax measured by net income, a franchise tax for  
13 the privilege of doing business, or a corporate stock tax,  
14 or (2) that state has jurisdiction to subject the taxpayer  
15 to a net income tax, regardless of whether, in fact, that  
16 state does or does not subject the taxpayer to such tax.

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

22 (d) *Business Activities Partially Within and Partially*  
23 *Without West Virginia.*—If the business activities of a  
24 taxpayer take place partially within and partially without

25 this state and such taxpayer is also taxable in another  
26 state:

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

32 (2) (A) Net rents and royalties from real prop-  
33 erty located in this state are allocable to this state.

34 (B) Net rents and royalties from tangible per-  
35 sonal property are allocable to this state:

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

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

42 (C) The extent of utilization of tangible per-  
43 sonal property in a state is determined by multiplying  
44 the rents and royalties by a fraction, the numerator of  
45 which is the number of days of physical location of the

46 property in the state during the rental or royalty period  
47 in the taxable year and the denominator of which is the  
48 number of days of physical location of the property every-  
49 where during all rental or royalty periods in the taxable  
50 year. If the physical location of the property during the  
51 rental or royalty period is unknown or unascertainable  
52 by the taxpayer, tangible personal property is utilized in  
53 the state in which the property was located at the time  
54 the rental or royalty payer obtained possession.

55 (3) Interest is allocable to this state if the tax-  
56 payer's commercial domicile is in this state.

57 (4) (A) Patent and copyright royalties are allo-  
58 cable to this state:

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

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

65 (B) A patent is utilized in a state to the extent  
66 that it is employed in production, fabrication, manufac-

67 turing or other processing in the state or to the extent that  
68 a patented product is produced in the state. If the basis of  
69 receipts from patent royalties does not permit allocation  
70 to states or if the accounting procedures do not reflect  
71 states of utilization, the patent is utilized in the state in  
72 which the taxpayer's commercial domicile is located.

73 (C) A copyright is utilized in a state to the  
74 extent that printing or other publication originates in the  
75 state. If the basis of receipts from copyright royalties does  
76 not permit allocation to states or if the accounting pro-  
77 cedures do not reflect states of utilization, the copyright  
78 is utilized in the state in which the taxpayer's commercial  
79 domicile is located.

80 (5) All net income, after deducting those items  
81 specifically allocated under paragraphs (1) through (4),  
82 shall be apportioned to this state by multiplying such net  
83 income by a fraction, the numerator of which is the prop-  
84 erty factor plus the payroll factor, and the denominator  
85 of which is two.

86 (A) The property factor is a fraction, the  
87 numerator of which is the average value of the taxpayer's

88 real and tangible personal property owned or rented and  
89 used in this state during the taxable year and the denomi-  
90 nator of which is the average value of all the taxpayer's  
91 real and tangible personal property owned or rented and  
92 used during the taxable year.

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

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

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

109 and the denominator of which is the total compensation  
110 paid everywhere during the taxable year.

111 (E) Compensation is paid in this state if:

112 (i) the individual's service is performed  
113 entirely within the state; or

114 (ii) the individual's service is performed  
115 both within and without the state, but the service per-  
116 formed without the state is incidental to the individual's  
117 service within the state; or

118 (iii) some of the service is performed in  
119 the state and (1) the base of operations or, if there is no  
120 base of operations, the place from which the service is  
121 directed or controlled is in the state, or (2) the base of  
122 operations or the place from which the service is directed  
123 or controlled is not in any state in which some part of the  
124 service is performed, but the individual's residence is in  
125 this state.

126 (e) *Other Methods of Allocation.*—(1) *General.*—If  
127 the allocation and apportionment provisions of subsection  
128 (d) do not fairly represent the extent of the taxpayer's  
129 business activities in this state, the taxpayer may petition



130 for or the tax commissioner may require, in respect to all  
131 or any part of the taxpayer's business activities, if reason-  
132 able:

133 (A) separate accounting;

134 (B) the exclusion of one of the factors;

135 (C) the inclusion of one or more additional  
136 factors which will fairly represent the taxpayer's business  
137 activity in this state; or

138 (D) the employment of any other method to  
139 effectuate an equitable allocation or apportionment of the  
140 taxpayer's income.

141 (2) *Alternative method for public utilities.*—If the  
142 taxpayer is a public utility and if the allocation and ap-  
143 portionment provisions of subsection (d) do not fairly  
144 represent the taxpayer's business activities in this state,  
145 the taxpayer may petition for or the tax commissioner  
146 may require, as an alternative to the other methods pro-  
147 vided for in paragraph (1) of this subsection, the alloca-  
148 tion and apportionment of the taxpayer's net income in  
149 accordance with any system of accounts prescribed by  
150 the public service commission of this state pursuant to

151 the provisions of section eight, article two, chapter  
152 twenty-four of this code, provided the allocation and ap-  
153 portionment provisions of such system of accounts fairly  
154 represent the extent of the taxpayer's business activities  
155 in this state for the purposes of the tax imposed by this  
156 article.

157           (3) *Burden of Proof.*—In any proceeding before  
158 the tax commissioner or in any court in which employ-  
159 ment of one of the methods of allocation or apportionment  
160 provided for in paragraphs (1) or (2) of this subsection  
161 is sought, on the ground that the allocation and appor-  
162 tionment provisions of subsection (d) do not fairly repre-  
163 sent the extent of the taxpayer's business activities in  
164 this state, the burden of proof shall—

165           (A) If the tax commissioner seeks employ-  
166 ment of one of such methods, be on the tax commis-  
167 sioner, or

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

**§11-24-8. Accounting periods and methods of accounting.**

(a) *Period of Computation of West Virginia Taxable*  
2 *Income.*—For purposes of the tax imposed by this article,

3 a taxpayer's taxable year shall be the same as the tax-  
4 payer's taxable year for federal income tax purposes.

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

9 (c) *Methods of Accounting.*—(1) *Same as federal.*—  
10 A taxpayer's method of accounting under this article  
11 shall be the same as the taxpayer's method of account-  
12 ing for federal income tax purposes. In the absence of any  
13 method of accounting for federal income tax purposes,  
14 West Virginia taxable income for purposes of this article  
15 shall be computed under such method that in the opinion  
16 of the tax commissioner clearly reflects such income.

17 (2) *Change of accounting methods.*—If a taxpay-  
18 er's method of accounting is changed for federal income  
19 tax purposes, his method of accounting for purposes of  
20 this article shall be similarly changed.

21 (d) *Adjustments.*—In computing a taxpayer's West  
22 Virginia taxable income for any taxable year under a  
23 method of accounting different from the method under

24 which the taxpayer's West Virginia taxable income for  
25 the previous year was computed, there shall be taken  
26 into account those adjustments which are determined,  
27 under regulations prescribed by the tax commissioner,  
28 to be necessary solely by reason of the change in order  
29 to prevent amounts from being duplicated or omitted.

30 (e) *Limitation on Additional Tax.—(1) Change other*  
31 *than to installment method.*—If a taxpayer's method of  
32 accounting is changed, other than from an accrual to  
33 an installment method, any additional tax which results  
34 from adjustments determined to be necessary solely by  
35 reason of the change shall not be greater than if such  
36 adjustments were rateably allocated and included for the  
37 taxable year of the change and the preceding taxable  
38 years, not in excess of two, during which the taxpayer  
39 used the method of accounting from which the change  
40 is made.

41 (2) *Change from accrual to installment method.*—  
42 If a taxpayer's method of accounting is changed from an  
43 accrual to an installment method, any additional tax for  
44 the year of such change of method and for any subse-

45 quent year which is attributable to the receipts of in-  
46 stallment payments properly accrued in a prior year shall  
47 be reduced by the portion of tax for any prior taxable  
48 year attributable to the accrual of such installment pay-  
49 ments, under regulations prescribed by the tax com-  
50 missioner.

51 (f) *Application of Federal Accounting Adjustments.*—

52 Notwithstanding any of the other provisions of this sec-  
53 tion, any accounting adjustments made for federal income  
54 tax purposes for any taxable year shall be applied in  
55 computing the taxpayer's taxable income for such taxable  
56 year.

57 (g) *Taxpayer Currently on the Installment Method of*

58 *Accounting.*—If a taxpayer is using the installment  
59 method of accounting at the time of the enactment of this  
60 article, any tax for the year of the enactment of this  
61 article and for any subsequent year which is attributable  
62 to the receipts of installment payments properly accrued  
63 in a period prior to the enactment of this article and  
64 which were subject to the privilege tax as imposed by

65 article thirteen of chapter eleven of this code shall, under  
66 regulations of the tax commissioner, be reduced by the  
67 portion of such privilege tax previously paid on such  
68 receipts.

**§11-24-9. Credits against tax.**

(a) *Credit for Taxes Imposed Under Article Thirteen,*

2 *Chapter Eleven of this Code.*

3 A credit shall be allowed against the tax imposed by  
4 this article equal to the amount of the liability of the  
5 taxpayer for the taxable year for any tax imposed under  
6 article thirteen of chapter eleven of this code: *Provided,*  
7 That the amount of such credit shall not exceed the por-  
8 tion of the tax imposed by this article which is attribut-  
9 able to the West Virginia taxable income derived by the  
10 taxpayer for the taxable year from the business or occupa-  
11 tion with respect to which said tax under article thirteen  
12 was imposed and shall not in any event exceed the tax im-  
13 posed by this article for such taxable year: *Provided*  
14 *further,* That no such credit shall be allowed for any tax  
15 imposed under article thirteen with respect to any period

16 prior to the first day of July, one thousand nine hundred  
17 sixty-seven.

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

20 A credit shall be allowed against the tax imposed by  
21 this article equal to the amount of the liability of the tax-  
22 payer for the taxable year for any tax imposed on the  
23 taxpayer under article twelve-a, chapter eleven of this  
24 code: *Provided*, That the amount of such credit shall not  
25 exceed the portion of the tax imposed by this article  
26 which is attributable to the West Virginia taxable income  
27 derived by the taxpayer for the taxable year from any  
28 source with respect to which said tax under article  
29 twelve-a was imposed and shall not in any event exceed  
30 the tax imposed by this article for such taxable year:  
31 *Provided further*, That no such credit shall be allowed for  
32 any tax imposed under article twelve-a with respect to  
33 any period prior to the first day of July, one thousand nine  
34 hundred sixty-seven.

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

**PART II—RETURNS, DECLARATIONS AND  
PAYMENT OF TAX**

**§11-24-13. Returns.**

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

(b) *Consolidated Returns of Corporations.*—Any cor-  
7 poration subject to tax under this article which is affli-  
8 ated through controlling stock ownership with one or  
9 more other corporations shall be permitted, **under regu-**  
10 **lations** prescribed by the tax commissioner, to **make a**  
11 **consolidated return** showing the consolidated **taxable in-**  
12 **come** of all such affiliated corporations wherever incor-  
13 **porated**, and such other information as the tax commis-  
14 **sioner may require** to establish the West Virginia taxable  
15 **income** of the consolidated group. If such **corporation**  
16 **does not make a consolidated return**, the tax commissioner  
17 **may, if he determines** that the intercompany prices or  
18 **transactions** of such corporation have been **artificially**



19 arranged to shift taxable income from itself to another  
20 member or members of its affiliated group not subject to  
21 tax under this article, require such corporation to make  
22 a consolidated return in order clearly to reflect the taxable  
23 income of such corporation. In the event that such a con-  
24 solidated return is filed, whether voluntarily or by re-  
25 quirement of the tax commissioner, the net income or loss  
26 of each member of the group, after proper intercorporate  
27 eliminations, shall be consolidated pursuant to regulations  
28 prescribed by the tax commissioner to produce the con-  
29 solidated taxable income of the group, and the tax im-  
30 posed by this article shall be computed and assessed upon  
31 the taxable income of the consolidated group, determined  
32 according to the provisions of section seven, in the appli-  
33 cation of which the consolidated group shall be treated  
34 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  
2 article shall pay any tax shown to be due by such return,  
3 without assessment, notice or demand, to the tax com-  
4 missioner on or before the date fixed for filing such re-

5 turn determined without regard to any extension of time  
6 for filing the return. The tax commissioner shall pre-  
7 scribe by regulation the place for filing any return, state-  
8 ment or other document required to be filed by this  
9 article and for the payment of any tax.

**§11-24-15. Signing of returns and other documents.**

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

(b) The making or filing of any return, statement or  
13 other document or copy thereof required to be made or  
14 filed pursuant to this article, including a copy of a federal  
15 return, shall constitute a certification by the person, cor-

16 poration or officer making or filing such return, statement  
17 or other document or copy thereof that the statements  
18 contained therein are true and that any copy filed is a  
19 true copy.

**§11-24-16. Declarations of estimated tax.**

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

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

11 (c) *Contents of Declaration.*—The declaration shall  
12 contain such pertinent information as the tax commis-  
13 sioner may by forms or regulations prescribe, including,  
14 but not limited to, such detailed information as may be  
15 necessary to clearly reflect the estimated West Virginia  
16 taxable income of the corporation for the taxable year.

17 (d) *Amendment of Declaration.*—A corporation may  
18 make amendments of a declaration filed during the tax-  
19 able year under regulations prescribed by the tax com-  
20 missioner.

21 (f) *Time for Filing Declaration.*—If the requirements  
22 of subsection (a) are first met before the first day of the  
23 fourth month of the taxable year a declaration of esti-  
24 mated tax of a corporation shall be filed on or before the  
25 fifteenth day of the fourth month of the taxable year,  
26 except that if the requirements of subsection (a) are first  
27 met—

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

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

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

38 year, the declaration shall be filed on or before the fif-  
39 teenth day of the twelfth month of the taxable year.

40 (g) *Declaration of Estimated Tax of One Hundred*  
41 *Dollars or Less.*—A declaration of estimated tax of a cor-  
42 poration having a total estimated tax for the taxable year  
43 of one hundred dollars or less may be filed at any time on  
44 or before the fifteenth day of the first month of the suc-  
45 ceeding taxable year under regulations of the tax com-  
46 missioner.

47 (h) *Return as Declaration or Amendment.*—If on or  
48 before the fifteenth day of the second month of the suc-  
49 ceeding taxable year a corporation files its return for the  
50 taxable year for which the declaration is required, and  
51 pays therewith the full amount of the tax shown to be due  
52 on the return:

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

58 (2) Such return, if filed on or before such appli-

59 cable date shall be considered an amendment permitted  
60 by subsection (d) if the tax shown on the return is greater  
61 than the estimated tax shown in a declaration previously  
62 made.

**§11-24-17. Payments of estimated tax.**

(a) *Installment Payments.*—The estimated tax of a  
2 corporation with respect to which a declaration is re-  
3 quired shall be paid as follows:

4 (1) If the declaration is filed on or before the  
5 fifteenth day of the fourth month of the taxable year,  
6 the estimated tax shall be paid in four equal installments.  
7 The first installment shall be paid at the time of the filing  
8 of the declaration, and the second, third and fourth in-  
9 stallments shall be paid on the following fifteenth days  
10 of the sixth, ninth and twelfth months of the taxable year,  
11 respectively.

12 (2) If the declaration is filed after the fifteenth  
13 day of the fourth month and not after the fifteenth day  
14 of the sixth month of the taxable year, and is not required  
15 to be filed on or before the fifteenth day of the fourth  
16 month of the taxable year, the estimated tax shall be paid

17 in three equal installments. The first installment shall  
18 be paid at the time of the filing of the declaration, and  
19 the second and third installments shall be paid on the  
20 following fifteenth days of the ninth and twelfth months  
21 of the taxable year, respectively.

22 (3) If the declaration is filed after the fifteenth  
23 day of the sixth month and not after the fifteenth day  
24 of the ninth month of the taxable year, and is not re-  
25 quired to be filed on or before the fifteenth day of the  
26 sixth month of the taxable year, the estimated tax shall  
27 be paid in two equal installments. The first installment  
28 shall be paid at the time of the filing of the declaration,  
29 and the second shall be paid on the following fifteenth  
30 day of the twelfth month of the taxable year.

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

36 (5) If the declaration is filed after the time pre-  
37 scribed therefor, or after the expiration of any extension

38 of time therefor, paragraphs (2), (3), and (4) of this  
39 subsection shall not apply, and there shall be paid at  
40 the time of such filing all installments of estimated tax  
41 payable at or before such time, and the **remaining in-**  
42 **stallments** shall be paid at the times at which, and in the  
43 amounts in which, they would have been payable if the  
44 declaration had been filed when due.

45 (b) *Amendments of Declaration by Any Corporation.*

46 —If any amendment of a declaration is filed by a corpora-  
47 tion, the remaining installments, if any, shall be rateably  
48 increased or decreased (as the case may be) to reflect  
49 **any increase or decrease in the estimated tax by reason**  
50 of such amendment, and if any amendment is made after  
51 the fifteenth day of the ninth month of the taxable year,  
52 any increase in the estimated tax by reason thereof shall  
53 be paid at the time of making such amendment.

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

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



§11-24-18. 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.

(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.

20 (c) *Claims in Bankruptcy or Receivership Proceedings.*

21 —Extension of time for payment of any portion of a claim  
22 for tax allowed in bankruptcy, receivership or similar  
23 proceedings, which is unpaid, may be granted subject to  
24 the same provisions and limitations as in the case of a  
25 deficiency in such tax.

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

§11-24-19. **Requirements concerning returns, notices, records  
and statements.**

(a) *General.*—The tax commissioner may prescribe  
2 regulations as to the keeping of records, the content and  
3 form of returns and statements, and the filing of copies of  
4 federal income tax returns and determinations. The tax  
5 commissioner may require any corporation, by regulation  
6 or notice served upon such corporation, to make such

7 returns, render such statements, or keep such records,  
8 as the tax commissioner may deem sufficient to show  
9 whether or not such corporation is liable under this article  
10 for tax.

11 (b) *Information at Source.*—The tax commissioner  
12 may prescribe regulations and instructions requiring re-  
13 turns of information to be made by any person, including  
14 lessees or mortgagors of real or personal property, fiduci-  
15 aries, employers, and all officers and employees of this  
16 state, or of any municipal corporation or political sub-  
17 division of this state, having the control, receipt, custody,  
18 disposal or payment of interest, rents, salaries, wages,  
19 premiums, annuities, compensations, remunerations,  
20 emoluments or other fixed or determinable gains, profits  
21 or income, except interest coupons payable to bearer.

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

**§11-24-20. Report of change in federal taxable income.**

If the amount of a taxpayer's federal taxable income  
2 reported on its federal income tax return for any taxable  
3 year is changed or corrected by the United States internal  
4 revenue service or other competent authority, or as the  
5 result of a renegotiation of a contract or subcontract with  
6 the United States, the taxpayer shall report such change  
7 or correction in federal taxable income within ninety days  
8 after the final determination of such change, correction or  
9 renegotiation, or as otherwise required by the tax com-  
10 missioner, and shall concede the accuracy of such de-  
11 termination or state wherein it is erroneous. Any tax-  
12 payer filing an amended federal income tax return shall  
13 also file within ninety days thereafter an amended return  
14 under this article, and shall give such information as the  
15 tax commissioner may require. The tax commissioner  
16 may by regulation prescribe such exceptions to the re-  
17 quirements of this section as he deems appropriate.

**§11-24-21. Change of election.**

Any election expressly authorized by this article, other  
2 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

§11-24-26. General provisions.

(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-  
8 pose of ascertaining the correctness of any returns or for  
9 the purpose of making an estimate of any taxpayer's in-  
10 come subject to tax under this article shall have the power  
11 to examine or cause to be examined, by any agent or  
12 any representative designated by the tax commissioner,  
13 any books, papers, records or memoranda bearing upon  
14 the matters required to be included in the return and  
15 may require the attendance of the person rendering the  
16

17 return or the attendance of any other person having  
18 knowledge in the premises and may take testimony and  
19 may require material proof with power to administer  
20 oath to such person or persons.

21 (c) *Returns by Tax Commissioner.*—If any taxpayer  
22 fails to file a return at the time required by law or by  
23 regulation made under authority of law, the tax commis-  
24 sioner may proceed to make a return from any informa-  
25 tion available.

26 (d) *Secrecy of Returns.*—Except when required in an  
27 official investigation or proceedings in court involving  
28 taxes payable under this article and except as provided  
29 in paragraph (e) of this subsection, it shall be unlawful  
30 for any officer or employee of the state to divulge or  
31 make known in any manner the amount of income or any  
32 particulars set forth or disclosed in any report, declara-  
33 tion or return required to be filed with the tax commis-  
34 sioner by this article or by any regulation of the tax com-  
35 missioner issued hereunder.

36 (e) *Reciprocal Exchange.*—The tax commissioner may  
37 permit the proper officer of the United States or any state,

38 territory or political subdivision of the United States, or  
39 his authorized representative, to inspect reports, declara-  
40 tions, or returns filed with the tax commissioner or may  
41 furnish to such officer or representative a copy of any  
42 such document provided such other jurisdiction grants  
43 substantially similar privileges to the tax commissioner  
44 or to the attorney general of this state. Subsection (d) of  
45 this section shall not be construed to prohibit the publica-  
46 tion of statistics so classified as to prevent the identifica-  
47 tion of particular reports and the items thereof.

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

**§11-24-27. Assessment.**

(a) *Assessment of Deficiencies.*—Whenever the tax  
2 commissioner shall determine that any tax due under this  
3 article has not been paid in full, the tax commissioner  
4 shall make an assessment against the taxpayer of such  
5 deficiency in tax, addition to tax, interest or penalties as  
6 he may find to be due, and shall serve the taxpayer with

7 written notice of such assessment, either in person or by  
8 certified mail. For purposes of this article such written  
9 notice is termed a "notice of assessment".

10 (b) *Jeopardy Assessment*.—If the tax commissioner  
11 believes that the assessment or collection of a deficiency,  
12 as defined in subsection (a), or the collection of any tax  
13 due under this article, will be jeopardized by delay, he  
14 shall, notwithstanding the provisions of section twenty-  
15 eight of this article, immediately make an assessment of  
16 such deficiency or such tax due (together with all addi-  
17 tional amounts, interest or penalties provided for by this  
18 article), noting that fact upon the assessment. The amount  
19 so assessed shall be immediately due and payable, and  
20 a notice of assessment and demand for the payment  
21 thereof shall be served upon the taxpayer. Unless the  
22 taxpayer against whom a jeopardy assessment is made  
23 petitions the tax commissioner for reassessment within  
24 twenty days after service of notice of the jeopardy assess-  
25 ment, such assessment shall become final: *Provided*, That  
26 the tax commissioner may, upon the written request of  
27 the taxpayer made within such twenty day period, show-



28 ing reasonable cause therefor, grant an extension of time  
29 not to exceed thirty additional days within which such  
30 petition may be filed. A petition for reassessment by a  
31 taxpayer against whom or which a jeopardy assessment  
32 has been made shall be accompanied by such security as  
33 the tax commissioner may deem necessary to insure com-  
34 pliance with this article. If such petition for reassessment  
35 is filed, accompanied by the necessary security, the pro-  
36 visions for hearing, determination and appeal set forth in  
37 section twenty-eight shall then be applicable.

38 (c) *Abatement of Assessments.*—The tax commis-  
39 sioner may abate in whole or in part any assessment  
40 which he shall determine to be erroneous.

**§11-24-28. Deficiency procedure.**

(a) *Informal Proceedings.*—(1) *General.*—Prior to as-  
2 sessing a deficiency and giving a notice of assessment as  
3 provided in section twenty-seven, the tax commissioner  
4 shall notify the taxpayer in writing by certified mail that  
5 he proposes to make such assessment and shall afford  
6 the taxpayer in person or by his representative an oppor-  
7 tunity to be heard with respect to the proposed assess-

8 ment, either by the filing of a written protest against the  
9 proposed assessment or by informal conference or both.

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

23 (3) *Time and place for hearing.*—The tax com-  
24 missioner shall assign a time and place for any hearing on  
25 the proposed assessment and shall notify the taxpayer of  
26 such hearing by written notice at least twenty days in  
27 advance thereof and such hearing shall be held within  
28 sixty days from the filing of a written protest or within

29 ninety days after the date of the tax commissioner's notice  
30 of the proposed assessment, whichever is later, unless  
31 continued by agreement or by the tax commissioner for  
32 cause.

33 (4) *Determination by tax commissioner.*—(A)  
34 After the hearing on a proposed assessment the tax com-  
35 missioner shall, within a reasonable time, give the tax-  
36 payer written notice of his determination. If the tax com-  
37 missioner determines that any tax is due from the tax-  
38 payer, he shall make an assessment as provided in section  
39 twenty-seven (a).

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

46 (C) Except as provided in subsection (b) (2),  
47 any assessment made pursuant to section twenty-seven  
48 (a) and subsection (a) of this section shall be payable at  
49 the expiration of ninety days from the date of the notice

50 of assessment unless the taxpayer takes an appeal from  
51 such assessment as provided in subsection (c) of this sec-  
52 tion.

53 (b) *Exceptions for Mathematical Errors; Collection of*  
54 *Balance Due on Return Without a Remittance.—(1)*  
55 When a mathematical error appears on the face of a return  
56 (including an overstatement of the credit for the amount  
57 paid as estimated tax), the tax commissioner shall correct  
58 such error and notify the taxpayer, in writing, of the  
59 deficiency in tax; and the taxpayer shall have fifteen days  
60 after receipt of such notice within which to pay such  
61 deficiency. If the taxpayer fails to pay such deficiency  
62 within fifteen days, the tax commissioner shall, notwith-  
63 standing the provisions of subsection (a) of this section,  
64 promptly make an assessment of such deficiency in tax  
65 against the taxpayer and shall give the taxpayer written  
66 notice thereof.

67 (2) If a taxpayer files a mathematically correct  
68 return which reflects a balance due of the tax imposed by  
69 this article, and if no payment thereof has been made, the  
70 tax commissioner shall notify the taxpayer, in writing, of

71 the amount of tax, additions to tax, interest or penalties  
72 due, and the taxpayer shall have fifteen days after receipt  
73 of such notice within which to make such payment. If  
74 the taxpayer fails to make payment within such fifteen  
75 day period the tax commissioner shall, notwithstanding  
76 the provisions of subsection (a) of this section, promptly  
77 make an assessment against the taxpayer for such amount  
78 due and shall give the taxpayer written notice thereof.  
79 Notwithstanding the provisions of subsection (c) of this  
80 section, the amount of such assessment shall be immedi-  
81 ately due and payable.

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

88 (2) The appeal shall be taken by the filing of a  
89 petition and notice which petition and notice shall be  
90 served upon the tax commissioner as an original notice.  
91 When said petition and notice is so served it shall, with

92 the return thereon, be filed in the office of the clerk of the  
93 circuit court and docketed as other cases with the tax-  
94 payer as plaintiff and the tax commissioner as defendant.  
95 Before the appeal is heard, the plaintiff shall file with  
96 such clerk a bond for the use of the defendant, with sure-  
97 ties approved by said clerk, the penalty of the bond to be  
98 not less than the total amount of the tax, interest and  
99 penalties appealed from, and conditioned that the plaintiff  
100 shall perform the orders of the court; except that in lieu  
101 of said bond, the tax commissioner may upon a proper  
102 showing find and certify to said clerk that the properties  
103 of the plaintiff subject to the liens imposed by sections  
104 twenty-nine and thirty of this article are adequate to  
105 secure the performance of the orders of the court.

106 (3) The court shall hear the appeal and determine  
107 anew all questions submitted to it on appeal from the  
108 determination of the tax commissioner. Any pleadings  
109 filed by the taxpayer or the tax commissioner may be  
110 amended upon leave of the court any time prior to the  
111 final determination by the court. In such appeal a certi-  
112 fied copy of the tax commissioner's notice of assessment

113 shall be admissible and shall constitute prima facie evi-  
114 dence of the tax due under the provision of this article:  
115 *Provided*, That the tax commissioner shall have the  
116 burden of proof on any new issue raised by him subse-  
117 quent to the commencement of the appeal proceeding. The  
118 court shall render its decree thereon and a certified copy  
119 of said decree shall be filed by the clerk of said court  
120 with the tax commissioner who shall then correct the as-  
121 sessment in accordance with said decree. An appeal may  
122 be taken by the taxpayer or the tax commissioner to the  
123 supreme court of appeals of this state.

**§11-24-29. Collection.**

(a) *General.*—The tax commissioner shall collect the  
2 taxes, additions to tax, interest and penalties imposed  
3 by this article. In addition to all other remedies avail-  
4 able for the collection of debts due the state, the tax  
5 commissioner may proceed by foreclosure of the lien pro-  
6 vided in section thirty, or by distraint and sale under  
7 section thirty-one. Every assessment made by the tax  
8 commissioner under this article which has become final  
9 and is not subject to appeal by the taxpayer under sec-

10 tion twenty-eight (c) shall constitute a judgment and  
11 may be collected as judgments are collected.

12 (b) *Prerequisite to Final Settlement with Nonresident*  
13 *Contractor: User Personally Liable.*

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

23 (2) If any person shall fail to withhold as provided  
24 herein, such person shall be personally liable for the pay-  
25 ment of all such taxes, and the same shall be recoverable  
26 by the tax commissioner by appropriate legal proceed-  
27 ings.

28 (c) *Prerequisite for Issuance of Certificate of Disso-*  
29 *lution or Withdrawal of Corporation.*—The secretary of  
30 state shall withhold the issuance of any certificate of dis-



31 solution or withdrawal in the case of any corporation  
32 organized under the laws of this state, or organized under  
33 the laws of another state and admitted to do business in  
34 in this state, until the receipt of a notice from the tax  
35 commissioner to the effect that the tax imposed by this  
36 article against any such corporation has been paid or pro-  
37 vided for, if any such corporation is a taxpayer under this  
38 article, or until the secretary of state shall be notified by  
39 the tax commissioner that the applicant is not liable for  
40 any tax imposed by this article.

41 (d) *Prerequisite to Final Settlement with State or*  
42 *Political Subdivision Contractor; Penalty.* All state,  
43 county, district and municipal officers and agents making  
44 contacts on behalf of the state of West Virginia, or any  
45 political subdivision thereof, shall withhold payment, in  
46 the final settlement of any such contract, until the receipt  
47 of a certificate from the tax commissioner to the effect  
48 that all taxes imposed by this article against the con-  
49 tractor have been paid. Any official violating this section  
50 shall be guilty of a misdemeanor and, on conviction there-  
51 of, shall be fined not more than one thousand dollars or

52 imprisoned not exceeding one year in the county jail, or  
53 shall be subject to fine and imprisonment in the discre-  
54 tion of the court.

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

68 (2) The successor in business of any such person shall  
69 withhold so much of the purchase money as will satisfy  
70 the tax, interest, additions to tax and penalties which may  
71 be due until the former owner shall produce a receipt  
72 from the tax commissioner evidencing the payment there-  
73 of. If the purchaser of a business or stock of goods shall

74 fail to withhold purchase money as above provided, and  
75 such tax, interest, additions to tax and penalties remain  
76 unpaid after expiration of the thirty-day period allowed  
77 for payment thereof, the purchaser shall be personally  
78 liable for the payment of all such tax, interest, additions  
79 to tax and penalties, and the same shall be recoverable by  
80 the tax commissioner by action or suit as provided by  
81 this section.

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

88 (g) *“Person” Defined.*—The term “person” as used in  
89 this section includes, but is not limited to, any individual,  
90 firm, partnership, limited partnership, joint venture, as-  
91 sociation, corporation, organization, receiver, estate, trust  
92 or any other group or combination acting as a unit.

93 (h) *“Contractor” Defined.*—The term “contractor” as  
94 used in this section means any person engaged in the

95 business of furnishing labor or materials or both labor  
96 and materials in the fulfillment of any contract, either  
97 written or oral, for the construction, alteration, repair  
98 or improvement of a new or existing building or structure  
99 or any part thereof or for the alteration, improvement  
100 or development of real property.

**§11-24-30. Lien.**

(a) If any person liable to pay any tax assessed under  
2 this article neglects or refuses to pay the same within ten  
3 days after written notice of assessment of the same, the  
4 amount of said tax, including any additions to tax, interest  
5 and penalties, together with any costs that may accrue,  
6 shall become a lien in the favor of the state of West Vir-  
7 ginia upon all property and rights to property whether  
8 real or personal belonging to such person.

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

13 (c) The lien imposed by this section shall be subject to  
14 the restrictions and conditions embodied in article ten-c,

15 chapter thirty-eight of this code and any amendment made  
16 or which may hereafter be made thereto.

17 (d) The tax commissioner, pursuant to regulations pre-  
18 scribed by him, may issue his certificate of release of any  
19 lien imposed pursuant to this section upon finding that the  
20 liability for the amount assessed has been fully satisfied  
21 or has become legally unenforceable or is adequately se-  
22 cured by bond or other security.

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

**§11-24-31. Distraint.**

If any tax imposed by this article required to be paid at  
2 the time a return is filed, or any portion of such tax be  
3 not so paid, or if an assessment of the tax be made by the  
4 tax commissioner and notice thereof be given as required  
5 by this article and such assessment has become final and  
6 is not subject to appeal by the taxpayer under section  
7 twenty-eight (c), or if any installment of a tax be not  
8 paid within thirty days after the same becomes due, the  
9 tax commissioner may issue a warrant directed to the

10 sheriff of any county of the state commanding him to levy  
11 upon and sell the real and personal property of the tax-  
12 payer owing the same found within his county for the pay-  
13 ment of the amount thereof with the added penalties,  
14 interest, and the cost of executing the warrant, and to  
15 return such warrant to the tax commissioner and pay to  
16 him the money collected by virtue thereof by a time to be  
17 therein specified and not less than sixty days from the  
18 date of such warrant. In case the tax commissioner shall  
19 find that the collection of a tax would be jeopardized by  
20 the delay of thirty days, as above provided, he may issue  
21 his warrant within said period. The sheriff shall within  
22 five days after the receipt of the warrant file with the  
23 clerk of the county court a copy thereof and thereupon  
24 the clerk shall enter in the judgment docket the name of  
25 the taxpayer mentioned in the warrant and the amount of  
26 the tax or portion thereof and penalties for which the  
27 warrant is issued and the date when such copy is filed and  
28 thereupon the amount so docketed shall become a lien  
29 upon the title to and interest in real property or chattels  
30 real of the person against whom it is issued in the same

31 manner as a judgment duly docketed in the office of such  
32 clerk. The said sheriff shall thereupon proceed upon the  
33 same in all respects, with like effect, and in the same man-  
34 ner prescribed by law in respect to executions issued  
35 against property upon judgments of a court of record, and  
36 shall be entitled to the same fees for his services in exe-  
37 cuting the warrant, to be collected in the same manner.  
38 In the discretion of the tax commissioner a warrant of  
39 like terms, force and effect may be issued and directed to  
40 any officer or employee of the tax commissioner and in  
41 the execution thereof such officer or employee shall have  
42 all the powers conferred by law upon sheriffs, but shall  
43 be entitled to no fee or compensation in excess of actual  
44 expenses paid in the performance of such duty. If a war-  
45 rant be returned not satisfied in full, the tax commissioner  
46 shall have the same remedies to enforce the claim for  
47 taxes against the taxpayer as if the state had recovered  
48 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  
2 overpayment of any tax, addition to tax, interest or pen-

3 alties imposed by this article, whether by reason of error  
4 on the part of the taxpayer or an erroneous assessment of  
5 tax, the tax commissioner shall refund the amount of the  
6 overpayment to the taxpayer. If any overpayment is not  
7 refunded within six months from the date a claim for the  
8 refund thereof is filed by the taxpayer, interest shall be  
9 paid upon the amount of such overpayment at the rate of  
10 six per centum per annum from the date of the overpay-  
11 ment. The tax commissioner may prescribe by regulation  
12 the form and content of a claim for refund.

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

18 (c) *Petitions for Refund*.—In the event that any over-  
19 payment of tax, addition to tax, interest or penalty paid  
20 under this article is not refunded or credited pursuant to  
21 subsection (a) or (b) within six months after the filing  
22 of a claim for the refund thereof, or in the event such  
23 claim is denied by the tax commissioner, the taxpayer



24 may file a petition for refund pursuant to section two (a)  
25 of article one, chapter eleven of this code. Notwithstand-  
26 ing the period of limitations prescribed in said section, a  
27 taxpayer may file a petition for refund at the latest within  
28 six months after a final determination by the United  
29 States internal revenue service or other competent au-  
30 thority of an overpayment in the taxpayer's federal in-  
31 come tax liability.

**§11-24-33. Limitations on assessment.**

(a) *General Rule.*—The amount of any tax imposed by  
2 this article shall be assessed within five years after the due  
3 date of the return: *Provided*, That in the case of a false or  
4 fraudulent return filed with the intent to evade tax or in  
5 the case no return is filed the tax may be assessed or a  
6 proceeding in court for the collection of such tax may be  
7 begun at any time: *Provided further*, That in the event the  
8 tax commissioner notifies the taxpayer of a proposed as-  
9 sessment pursuant to section twenty-eight, within five  
10 years after the due date of the return, the assessment may  
11 be made when the tax commissioner makes the determi-  
12 nation 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  
18 determination by the United States internal revenue serv-  
19 ice or other competent authority of a deficiency in the  
20 taxpayer's federal income tax liability, the period of  
21 limitation upon assessment of a deficiency reflecting said  
22 final determination in the tax imposed by this article shall  
23 not expire until ninety days after the tax commissioner is  
24 advised of the determination by the taxpayer as provided  
25 in section twenty.

**§11-24-34. Limitations on collection.**

No proceeding shall be maintained in any court to collect  
2 any tax imposed by this article or to subject any property  
3 to sale under the lien provided for in section thirty after  
4 the expiration of the period of limitation on assessment  
5 provided in section thirty-three, unless the tax was as-  
6 sessed prior to the expiration of such period.

**§11-24-35. Interest.**

Taxes imposed by this article, if not paid when due,  
2 shall bear interest at the rate of six per centum per annum  
3 from the due date of the return. Each assessment made  
4 by the tax commissioner shall bear interest at the rate  
5 of six per centum per annum from the date thereof if  
6 not paid within ten days from receipt of notice thereof by  
7 the taxpayer.

**§11-24-36. Additions to tax.**

(a) *Delinquency.*—In the case of any failure to make or  
2 file a return or whenever the full amount of the tax or  
3 any portion thereof has not been paid as required by this  
4 article, unless it be shown that such failure be due to  
5 reasonable cause there shall be added to the tax five per  
6 centum if a failure is not for more than thirty days with  
7 an additional five per centum for each additional thirty  
8 days or fraction thereof during which failure shall con-  
9 tinue not to exceed twenty-five per centum in the aggre-  
10 gate. The amount so added to any tax shall be collected  
11 at the same time and in the same manner and as a part  
12 of the tax unless the tax has been paid before the dis-

13 covery of the neglect by the tax commissioner in which  
14 case the amount so added shall be collected in the same  
15 manner as the tax: *Provided*, That in all cases of delin-  
16 quency, interest shall be assessed.

17 (b) *Fraud*.—In the case of the filing of any false or  
18 fraudulent return with intent to evade the tax imposed by  
19 this article, or in the case of a wilful failure to file a re-  
20 turn with intent to evade the tax, there shall be added to  
21 the tax an amount equal to fifty per centum thereof which  
22 shall be in lieu of the addition to the tax provided for in  
23 subsection (a). The burden of proving fraud, wilfulness,  
24 or intent to evade tax shall be upon the tax commissioner.

**§11-24-37. Penalties.**

(a) *Failure to Collect, Account For, And Pay Over  
2 Tax, or Attempt to Defeat or Evade Tax*.—Any person re-  
3 quired under this article to collect, account for, and pay  
4 over any tax imposed by this article, who wilfully fails  
5 to truthfully account for and pay over such tax, and any  
6 person who wilfully attempts in any manner to evade  
7 or defeat any tax imposed by this article or the payment  
8 thereof, shall, in addition to other penalties provided by

9 law, be liable to a money penalty equal to the total  
10 amount evaded, or not collected, or not accounted for and  
11 paid over. No penalty shall be imposed under section  
12 thirty-six for any offense to which this section is ap-  
13 plicable.

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

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

**§11-24-38. Crimes.**

(a) *Failure to File Returns, Submit Information, or*  
2 *Pay Tax.*—Any person required under this article to pay  
3 any tax or estimated tax, or required by law to make a  
4 return or declaration, keep any records, or supply any  
5 information, for the purpose of the computation, assess-  
6 ment, or collection of any tax or estimated tax imposed by

7 this article, who, at the time or times required by law,  
8 wilfully fails to pay such tax or estimated tax, make such  
9 return or declaration, keep such records, or supply such  
10 information, or wilfully furnishes false and fraudulent in-  
11 formation, shall, in addition to other penalties provided  
12 by law, be guilty of a misdemeanor and, upon conviction  
13 thereof, be fined not more than one thousand dollars or  
14 imprisoned for not more than one year, or both, together  
15 with the costs of prosecution.

16 (b) *Failure to Collect and Pay Over Tax, or Attempt*  
17 *to Defeat or Evade Tax.*—Any person required under this  
18 article to collect, account for, and pay over any tax im-  
19 posed by this article, who wilfully fails to collect or truth-  
20 fully to account for and pay over such tax, and any person  
21 who wilfully attempts in any manner to evade or defeat  
22 any tax imposed by this article or the payment thereof,  
23 shall in addition to other penalties provided by law, be  
24 guilty of a misdemeanor and, upon conviction thereof, be  
25 fined not more than one thousand dollars or imprisoned  
26 for not more than one year, or both, together with the  
27 costs of prosecution.

28 (c) *False Returns or Certification.*—Any person who  
29 wilfully makes and subscribes a return which he does not  
30 believe to be true and correct as to every material matter,  
31 or who wilfully makes a certification (as defined in sub-  
32 section (b) of section fifteen) that is false, shall be guilty  
33 of a misdemeanor, and, upon conviction thereof, shall be  
34 fined not more than one thousand dollars or imprisoned  
35 for not more than one year, or both, together with the  
36 costs of prosecution.

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

43 (e) *State Officers or Employees.*—Any officer or em-  
44 ployee of the state who violates subsection (d) of section  
45 twenty-six shall be guilty of a misdemeanor, and, upon  
46 conviction thereof, shall be fined not more than one  
47 thousand dollars or imprisoned for not more than one  
48 year, or both, together with the costs of prosecution.

49 (f) *Certificate of Tax Commissioner As Evidence.*—The  
50 certificate of the tax commissioner to the effect that  
51 a tax has not been paid, that a return has not been filed,  
52 or that information has not been supplied as required  
53 by or under the provisions of this article shall be evidence  
54 that such tax has not been paid, that such return has not  
55 been filed, or that such information has not been supplied.

56 (g) *Venue.*—The tax commissioner or any other public  
57 officer initiating proceedings against any person under  
58 this section shall do so in the county wherein such person  
59 resides, or if such person be a nonresident, then in the  
60 county wherein such nonresident is employed, or, if  
61 such nonresident is not employed in this state then in  
62 the county in which the seat of the state government is  
63 located.

**§11-24-39. Disposition of revenue.**

Pursuant to the Legislature's authority under section  
2 one of article ten of the Constitution of this state, where-  
3 by the Legislature is authorized to impose a tax upon  
4 incomes of persons and corporations and to classify and  
5 graduate the tax on all incomes according to the amount



6 thereof and to exempt from taxation incomes below a  
7 minimum to be fixed by the Legislature, and whereby  
8 revenues so derived may be appropriated as the Legisla-  
9 ture may provide, of the revenue collected under this  
10 article the state treasurer shall retain in his hands such  
11 amount as the tax commissioner may determine to be  
12 necessary for refunds to which taxpayers shall be entitled  
13 under this article and on or before the tenth day of each  
14 month the state treasurer shall, after reserving such  
15 refund amount, pay all interests, penalties and taxes col-  
16 lected under this article, and remaining to his credit in  
17 banks, banking houses or trust companies at the close  
18 of business on the last day of the preceding month, into  
19 the general fund of the state treasury.

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

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

(b) *Severability.*—If any provision of this article or  
4 the application thereof shall for any reason be adjudged  
5 by any court of competent jurisdiction to be invalid, such  
6

7 judgement shall not affect, impair or invalidate the re-  
8 mainder of said article, but shall be confined in its opera-  
9 tion to the provision thereof directly involved in the con-  
10 troversy in which such judgment shall have been ren-  
11 dered, and the applicability of such provision to other  
12 persons or circumstances shall not be affected thereby.

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

William Tempas  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Howard Nease  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Howard W. Carson  
President of the Senate

H. Laban White  
Speaker House of Delegates

The within approved this the 21  
day of March, 1967.

Hueyt C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/21/67

Time 2:20pm