WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 113

(By Mr. McCourt, Mr. President, and Mr. Hubbard, original sponsors)

PASSED March 11, 1972

In Effect July 1, 1972

FILED IN THE OFFICE
OF SECRETARY OF STATE OF WEST VIRGINIA
THIS DATE 3-29-72

John D. Rockefeller, IV
SECRETARY OF STATE
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 113
(MR. McCOURT, MR. PRESIDENT, and MR. HUBBARD,
original sponsors)

[Passed March 11, 1972; in effect July 1, 1972.]

AN ACT to amend and reenact article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing a gasoline and special fuel excise tax act; defining terms; levying a gasoline and special fuel excise tax; providing for the computation of such tax; providing exemptions from such tax; relating to such tax and gasoline or special fuel exported or in interstate commerce; requiring reports and records and specifying requirements with respect thereto and subpoena thereof; specifying the due date of such tax; establishing criminal offenses; providing criminal penalties; relating to refunds because of erroneous or illegal collections, casualty or other losses, exportation or a decrease in the rate of tax, and specifying procedures and the time for filing of petitions for such refunds; relating to partial refund of tax on tax-paid gallonage consumed in certain buses and procedures in connection therewith; relating to taxpayer surety bonds or pledges of property in lieu thereof; relating to the enforcement powers of the tax commissioner and his agents and employees and bonds of such agents and employees; authorizing deductions from such tax for the cost of administration and enforcement; providing for the uses to be made of the tax collected; authorizing certain prepaid tax adjustments; providing for assessment and collection of taxes, interest, and penalties; providing for hearings and appeals; providing for injunctions;
providing for sales or discontinuance of business; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-1. Short title; arrangement of sections or portions of article.
1 This article shall be known and may be cited as the
2 "Gasoline and Special Fuel Excise Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or portion of this article.

§11-14-2. Definitions.
1 For purposes of this article:
2 (1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products, including, but not limited to, tank or barge strappings and other graduated lineal devices.
3 (2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.
4 (3) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his duly authorized agent.
5 (4) "Distributor" or "producer" means and includes every person:
6 (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale; or
7 (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or
(c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.

(5) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule and regulation prescribe other measurement or definition of gallon.

(6) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined.

(7) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained by this state or some taxing subdivision or unit thereof or the federal government or any of its agencies.

(8) "Importer" means every person, resident or non-resident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle, or a person paying the motor carrier road tax as provided for in article fourteen-a of this chapter.

(9) "Motor carrier" means any passenger vehicle which has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck, or any truck having more than two axles which is operated or caused to be operated by any person on any highway in this state.

(10) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(11) "Person" means and includes any individual, firm, partnership, limited partnership, joint adventure, association, company, corporation, organization, syndicate, receiver, trust, or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees, or members of any firm, partnership, limited partnership,
joint adventure, association, company, corporation, organization, syndicate, receiver, trust, or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(12) “Petroleum carrier” means any person who hauls or transports gasoline or special fuel within this state or on any navigable rivers which are within the jurisdiction of this state.

(13) “Purchase” means and includes any acquisition of ownership of property or of a security interest for a consideration.

(14) “Receive” means any acquisition of ownership or possession of gasoline or special fuel.

(15) “Retail dealer” means any person not a distributor or producer who sells gasoline or special fuel from a fixed location in this state to users.

(16) “Sale” means any transfer, exchange, gift, barter, or other disposition of any property or security interest for a consideration.

(17) “Special fuel” means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term “special fuel” shall include products commonly known as natural or casing-head gasoline, but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(18) “Supply tank” means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not such tank or receptacle is directly connected to the fuel supply line of the vehicle.
(19) “Tank wagon” means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

(20) “Tax” includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(21) “Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article and article ten of this chapter.

(22) “User” means any person who purchases gasoline or special fuel for use as fuel and uses such fuel in an internal combustion engine owned or operated by such person.

§11-14-3. Imposition of tax.

There is hereby levied an excise tax of eight and one-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as hereinafter prescribed in this article.


A distributor or producer shall use as the measure of tax all actual metered gallons of gasoline, withdrawn from storage within this state for sale to any other person, or for delivery to any retail service station owned or operated by such distributor or producer, or used as fuel in an internal combustion engine.

A distributor or producer shall use as the measure of tax all actual metered gallons of special fuel, withdrawn from storage within this state for use, or sold for use, as fuel in an internal combustion engine, or sold, transferred or delivered to its company operated retail storage or any other retail station or user wherein said special fuel storage is for use or for the sale for use as fuel in an internal combustion engine.

A retail dealer, or importer, or user shall use as the measure of tax all actual metered gallons of gasoline, not previously included in the measure of tax, received
into his storage within this state or used by him as fuel in an internal combustion engine.

A retail dealer, or importer, or user shall use as the measure of tax all actual metered gallons of special fuel, not previously included in the measure of tax, received into his storage within this state wherein said special fuel storage is for use or for the sale for use as fuel in an internal combustion engine, or used by him as fuel in an internal combustion engine.

A person not a distributor or producer, retail dealer, importer, or user shall use as the measure of tax all actual metered gallons of gasoline or special fuel subject to tax under this article and not previously included in the measure of tax by him or any other person.

This article shall not be construed to require the inclusion in the measure of tax of any gasoline or special fuel previously included in the measure of tax upon which the tax has been previously paid.

The tax imposed by this article shall be in addition to all other taxes of whatever character imposed by any other provisions of law.

§11-14-5. Exemptions from tax.

There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:

(1) All gallons of gasoline or special fuel exported from this state to any other state or nation.

(2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency thereof when delivered in bulk quantities of five hundred gallons or more.

(3) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense program, or to any person on whom is imposed a requirement to maintain an inventory of gasoline or special fuel for the purpose of any such program: Provided,
That fueling facilities used for these purposes are not capable of fueling motor vehicles, and the person in charge of such program has in his possession a letter of authority from the tax commissioner certifying his right to such exemption.

(4) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter.

(5) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines.

(6) All gallons of special fuel for heating any public or private dwelling, building or other premises.

(7) All gallons of special fuel for boilers.

(8) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent.

(9) All gallons of gasoline or special fuel used as lubricants, ingredients, or components of any manufactured product or compound.

(10) All gallons of gasoline or special fuel sold to any municipality or agency thereof for use in vehicles or equipment owned and operated by such municipality or agency thereof and when purchased for delivery in bulk quantities of five hundred gallons or more.

(11) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system.

(12) All gallons of gasoline or special fuel sold for use as aircraft fuel.

(13) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft.

(14) All gallons of special fuel sold for use or consumed in railroad diesel locomotives.
§11-14-6. Gasoline or special fuel exported or in interstate commerce; distributors or producers may pay tax shipments into state.

This article shall not be construed to require the inclusion in the computation of tax of a distributor or producer, retail dealer, or importer, of any gasoline or special fuel when the same is exported by a person from this state to another state or nation or territories or possessions thereof, nor to require the inclusion in the computation of tax of any gasoline or special fuel shipped in interstate commerce while the same is in transportation; but the gallonage of gasoline or special fuel shipped from another state shall be included in the computation of tax as required by this article after the same shall have been divested of its interstate character: Provided, That distributors making shipments of gasoline or special fuel into this state may, as a matter of convenience to purchasers located in this state, assume and pay the tax imposed by this article when written permission so to do is first obtained from the commissioner.

§11-14-7. Due date of reports; reports required; records; examination of records; subpoena.

Every taxpayer subject to the tax imposed by this article shall make, on or before the last day of each month, to the commissioner a report of its operations during the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

The reports and taxes due, as imposed by this act, shall be deemed as having been timely filed for the purpose of avoiding interest, additions to tax and penalties only if the postmark date thereon is clearly within the said last day of the calendar month, or is received within such period. If the last day falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Vir-
ginia, filing will be considered timely if it is done on the
next succeeding day which is not a Saturday, Sunday or
legal holiday.

A taxpayer shall keep such records necessary to verify
the reports and returns required by this article, including
inventories, receipts, disbursements, and any other records
which the commissioner by regulation may prescribe, for
a period of time not less than three years.

Unless otherwise permitted, in writing, by the com­
mmissioner, each delivery ticket or invoice for each pur­
chase or sale of gasoline or special fuel shall be recorded
upon a serially numbered invoice showing the name and
address of the seller and the purchaser, point of delivery,
the date, number of gallons, kind of fuel and the price of
said fuel. The amount of tax shall be indicated separately
or the invoice shall indicate whether or not the tax im­
posed by this article is included in the total price and
such other information as the commissioner may require:
Provided, That these invoicing requirements shall not
apply to cash sales, and a person making such sales shall
maintain such records as may be necessary to verify his
return.

The commissioner may inspect or examine the records,
books, papers, storage tanks, meters and any equipment
records of a taxpayer or any other person to verify the
truth and accuracy of any report or return to ascertain
whether the tax imposed by this article has been properly
paid.

As a further means of obtaining the records, books and
papers of a taxpayer or any other person and ascertaining
the amount of taxes and the reports due under this article,
the commissioner shall have the power to examine wit­
esses under oath; and if any witness shall fail or refuse
at the request of the commissioner to grant access to the
books, records and papers the commissioner shall certify
the facts and the names to the circuit court of the county
having jurisdiction of the party and such court shall
thereupon issue a subpoena duces tecum to such party
to appear before the commissioner, at a place designated
within the jurisdiction of such court, on a day fixed.
§11-14-8. Tax due.

Any person who willfully and knowingly makes a false statement orally or in writing in reference to the purchase or sale of gasoline or special fuel for the purpose of obtaining or attempting to obtain or to assist any other person to obtain or attempt to obtain a credit, refund or reduction of liability for taxes under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars or imprisoned for not more than six months or both fined and imprisoned.


Any person who willfully and knowingly makes a false statement orally or in writing in reference to the purchase or sale of gasoline or special fuel for the purpose of obtaining or attempting to obtain a credit, refund or reduction of liability for taxes under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars or imprisoned for not more than six months or both fined and imprisoned.

§11-14-10. Refund of taxes; gallons exported; casualty loss; change of rate; petition for refund.

The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously or illegally collected from any person.

If any distributor or producer, retail dealer or importer, while he shall be the owner thereof, loses any gallons of gasoline or special fuel through fire, lightning, breakage, flood, or other casualty, which gallons have been previously included in the tax by or for such person, he shall be refunded a sum equal to the amount of the tax paid upon such gallons so lost.

Any distributor or producer, retail dealer or importer or other person who purchases or receives gasoline or special fuel in this state upon which the tax imposed by this article has been paid and who subsequently exports the same from this state (except in a supply tank), shall be entitled to a refund for the amount of tax paid.

Every distributor or producer, retail dealer or importer shall be entitled to a refund from this state of the amount resulting from a change of rate decreasing the tax under
11 the provisions of this article on gasoline and special fuel
12 on hand and in inventory on the effective date of such
13 rate change, which gasoline and special fuel shall have
14 been included in any previous computation by which the
15 tax imposed by this article has been paid by him.
16 No refund shall be made under this section unless a
17 written petition therefor sets forth the circumstances upon
18 which such refund is claimed. The claim shall be in such
19 form and with such supporting records as the commis-
20 sioner prescribes and shall be made under the penalty of
21 perjury. Petitions for such refund shall be filed with the
22 commissioner within three years from the end of the
23 month in which the tax was erroneously or illegally paid
24 or the gallons were exported or lost by casualty or from
25 change of rate, as provided in this section.

§11-14-11. Refund of tax because of certain nonhighway uses.

The tax imposed by this article shall be refunded to
any person who shall buy in quantities of twenty-five
gallons or more, at any one time, tax-paid gasoline or
special fuel, when consumed for the following purposes:

(1) As a special fuel for internal combustion engines
not operated upon highways of this state, or

(2) Gasoline consumed to operate tractors and gas en-
gines or threshing machines for agricultural purposes,
when such operation is not, in whole or in part, upon the
highways of this state, or

(3) Gasoline used by any railway company, subject to
regulation by the public service commission of West Vir-
ginia, for any purpose other than upon the highways of
this state, or

(4) Gasoline consumed in the business of manufactur-
ing or producing natural resources or in mining or drill-
ing therefor, or in the transportation of natural resources
solely by means of unlicensed vehicles or vehicles li-
censed under the motor vehicle laws of this state, either as
a motor fuel or for any other purpose and which gasoline
is not in any part used upon the highways of this state, or

(5) Gasoline consumed in motor boats or other water-
craft operated upon the navigable waters of this state.
Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and consumed by such user, other than upon any highways of this state, and how used; and the commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

The right to receive any refund under the provisions of this section shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the application for such refund is filed with the commissioner, upon forms prescribed by the commissioner, within four months from the month of purchase or delivery of the gasoline or special fuel. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment.

§11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.

Any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, when such person purchases tax-paid gasoline or tax-paid special fuel, as required by this article, in an amount of twenty-five gallons or more, and complies with all the requirements of section eleven, with the exception of off-highway use, may be refunded an amount equal to four and one-half cents per gallon under authority of this section: Provided, That said gallons of gasoline or special fuel shall have been consumed in the operation of urban and suburban bus lines, and the majority of
passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools. There shall be presented to the commissioner an affidavit accompanied by proof of such purchase and payment as required by section eleven of this article. The right to a refund under this section shall not be assignable, and any assignment so made shall be void.

§11-14-13. Surety bonds required; release of surety; new bond.

The commissioner may require a taxpayer to file a continuous surety bond in an amount to be fixed by the commissioner, except that the amount shall not be less than one thousand dollars. Upon completion of the filing of such surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. The bond shall be conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. Such bond shall be approved by the commissioner as to sufficiency and by the attorney general as to form, and shall indemnify the state against any loss arising from the failure of the taxpayer to pay any tax imposed by this article for any cause whatever.

Any surety on a bond furnished hereunder shall be relieved, released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek discharge as herein provided, it shall be the duty of the principal of such bond to supply the commissioner with another bond, or pledge of property equal in value to the original bond, such pledge to be in the form of a tax lien on the property pledged and said lien shall be duly perfected in the office of the clerk of the county court of the county.
wherein such property is situated and shall be submitted
to the commissioner along with a certified appraisal
statement as to the value of the property pledged prior
to the expiration of the original bond.

§11-14-14. Enforcement powers.
1 (1) Any employee or agent of the commissioner so
2 authorized by the commissioner shall have all the law-
3 ful powers delegated to members of the department of
4 public safety to enforce the provisions of this article,
5 when bonded as hereinafter provided in this section.
6 (2) Each employee or agent so authorized by the com-
7 missioner shall execute a bond with security in the sum
8 of thirty-five hundred dollars, payable to the state of
9 West Virginia, and conditioned for the faithful perform-
10 ance of his duties, as such, and such bond shall be ap-
11 proved as to form by the attorney general, and the same
12 shall be filed with the secretary of state and preserved in
13 his office.

§11-14-15. Amounts allowed for administration and enforce-
ment; disposition of tax collected.
1 The commissioner, for the administration and enforce-
2 ment of this article, shall be allowed to expend out of
3 the tax collected thereunder, a sum not to exceed one
4 percent of the tax collected pursuant to the provisions
5 of this article.
6 All tax collected under the provisions of this article,
7 after deducting the costs of administration and enforce-
8 ment as aforesaid, shall be paid into the state treasury
9 and shall be used only for the purpose of construction,
10 reconstruction, maintenance and repair of highways, and
11 payment of the interest and sinking fund obligations on
12 state bonds issued for highway purposes.
13 Unless necessary for such bond requirements, five-
14 fourteenths of the tax collected under the provisions of
15 this article shall be used for feeder and state local service
16 highway purposes.

§11-14-16. Prepaid tax adjustment.
1 A distributor or producer may file a claim with the
2 commissioner on forms provided by the commissioner
for eight and one-half cents per gallon on the total gallons of gasoline held in storage by the distributor and upon which the tax imposed by the former provisions of this article had been paid at the first moment of the effective date of this act. The claim of the distributor or producer will be processed as a tax credit on succeeding monthly tax returns filed by the distributor with the commissioner for the amount of one forty-eighth of the total amount of tax filed as a claim with the commissioner for the tax-paid gasoline in storage on the effective date of this act.

§11-14-17. Assessment of tax when insufficiently returned.

If the commissioner believes that the tax imposed by this article is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.


If the commissioner believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall be immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final. A petition for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by such security as the commissioner may deem necessary to insure compliance with this article.

§11-14-19. Interest; additions to tax; penalties; fraudulent returns; willful failure to file.

(1) Interest.—Taxes imposed by this article, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return. Each assess-
ment or deficiency notice made by the commissioner shall bear interest at the rate of six percent per annum. In all cases of delinquency or extensions of time, interest shall be assessed and collected.

(2) Additions to tax; penalty.—In the case of any failure to make or file a return or whenever the full amount of the tax or any portion or deficiency thereof has not been paid, as required by this article, unless it be shown that such failure is due to reasonable cause and not due to willful neglect, there may be added to the tax five per centum if a failure is for not 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. If no tax is due, the penalty shall be twenty-five dollars per month or fraction thereof for failure to file a tax return.

(3) Fraudulent returns; willful failure to file.—In the case of the filing of any false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, or the filing of a false claim for credit or refund, there shall be added to the tax due a penalty in an amount equal to one hundred per centum of the tax due. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the commissioner.


The commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (twenty days in the case of jeopardy assessments), either personally or by certified mail, file with the commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for objections, said assessment shall become final and conclusive, not subject to administrative or judicial review,
and the amount thereof shall be payable at the end of
the thirty-day period (twenty days in the case of a
jeopardy assessment). A petition for reassessment shall
be deemed to be timely filed if the postmark date thereon
is clearly within said thirty days (twenty days in case
of jeopardy assessment) of receipt of said assessment by
the taxpayer or is received within such period. If the
thirtieth day (twentieth day in case of a jeopardy as-
ment) falls on a Saturday or Sunday, filing will be con-
sidered timely if it is done on the next succeeding day
which is not a legal holiday.


In every case where a petition for reassessment as
above described is filed, the commissioner shall assign a
time and place for the hearing of same and shall notify
the petitioner 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 the petition
for reassessment unless continued by agreement or by
the commissioner for good cause. The hearing shall be
informal and may be conducted by an examiner design-
nated by the commissioner. At such hearing the assess-
ment shall constitute prima facie evidence of the claim of
the state and the burden of proof shall be upon the tax-
payer assessed to show that the assessment is incorrect
and contrary to law. In every case where a petition or
request for refund as above described is filed and the
commissioner has refused to allow said refund in whole
or in part, the petitioner may file within thirty days after
receipt of the commissioner's decision a written request
for hearing. In every case where a request for hearing is
filed, the commissioner shall proceed to assign and hold
such hearing in accordance with the methods herein pre-
scribed for a petition for reassessment. After any such
hearing, the commissioner shall, within a reasonable time,
give notice in writing of the decision. Unless an appeal
is taken within thirty days from service of this notice, the
commissioner's decision shall be final.

Every assessment made by the commissioner under this
article which becomes final and conclusive shall constitute
a judgment and may be collected as judgments are collected.

An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha county, within thirty days after he shall have received notice from the commissioner of his determination as provided in this section.

The appeal shall be taken by written notice to the commissioner and served as an original notice. When said 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 taxpayer as plaintiff and the commissioner as defendant. Before the appeal is heard, the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by said clerk, the penalty of the bond to be not less than the total amount of the tax, interest, additions to tax and penalties appealed from, and conditioned that the plaintiff shall perform the orders of the court.

The court shall hear the appeal and determine anew all questions submitted to on appeal from the determination of the commissioner. In such appeal a certified copy of the commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. 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 commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commissioner to the supreme court of appeals of this state.

§11-14-22. Sale or discontinuance of business.

Whenever any person liable for the tax imposed by this article, by reason of sale or discontinuance, ceases business at any location, the taxes, interest, additions to tax and penalties imposed by this article shall become due and payable immediately and such person shall make a final return within fifteen days after the date of sale or discontinuance. The taxes, interest, additions to tax and
penalties shall be a lien upon the property of such person. In the event of sale, the person purchasing said business shall withhold sufficient of the purchase money to cover the amount of such taxes, interest, additions to tax and penalties due and unpaid until such time as the former owner shall produce a receipt from the commissioner showing that the taxes, interest, additions to tax and penalties have been paid, or a certificate indicating no taxes are due. If the purchaser of the business fails to withhold purchase money, as above provided, he shall be personally liable for the payment of the taxes, interest, additions to tax and penalties accrued and unpaid and the same shall be recoverable by the commissioner by action or suit as provided by this article.

§11-14-23. Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.

The secretary of state shall withhold the issuance of any certificate of dissolution 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 commissioner to the effect that the tax levied under this article against any such corporation has been paid or provided for, if any such corporation is a taxpayer under this article, or until he shall be notified by the commissioner that the applicant is not subject to pay a tax hereunder.


The commissioner may distress upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, of any taxpayer delinquent under this article for the amount of all taxes, interest, additions to tax and penalties accrued and unpaid hereunder. The commissioner may require the assistance of the sheriff of any county of the state in levying such distress in the county of which such sheriff is an officer. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all additions to tax collected over and above the principal amount of the tax due, but in no case
shall such compensation exceed twenty-five dollars. All
taxes, interest, additions to tax and penalties so collected
shall be reported within ten days after collection to the
commissioner, who shall prescribe by general regulation
the manner of remittance of such funds and of allowing
the collecting officer the compensation due him under
this section.

The sheriff shall within five days after receipt of the
warrant file with the clerk of the county court a copy
thereof and thereupon the clerk shall enter in the judg-
ment docket the name of the taxpayer mentioned in the
warrant and the amount of the tax, interest, additions to
tax 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 an
interest in real property or chattels real of the person
against whom it is issued, in the same manner as a
judgment duly docketed in the office of such clerk. The
said sheriff shall thereupon proceed upon the same in
all respects, with like effect, and in the same manner pre-
scribed by law in respect to executions issued against
property upon judgment of a court of record. If a warrant
be returned not satisfied in full, the commissioner shall
have the same remedies to enforce the claim for the taxes
against the taxpayer as if the state had recovered judg-
ment against the taxpayer for the amount of the tax.

§11-14-25. Collection by action or suit; injunction.

The commissioner may collect any tax, interest, addi-
tions to tax and penalties due and unpaid under the pro-
visions of this article by appropriate legal proceedings in
the county in which the activity taxed was engaged or
the taxpayer resides, or by a suit to enforce the lien
therefor in any county in which property of the taxpayer
may be found; or, if the tax due and unpaid under this
article is three hundred dollars or less, by suit in the
court of any justice having jurisdiction of the taxpayer or
his property. If the failure of any taxpayer to comply
with the provisions of this article shall have continued
sixty days, the commissioner may proceed to obtain an
injunction restraining the taxpayer from doing business in this state until he fully complies with the provisions of this article. In any proceeding under this section upon judgment or decree for the plaintiff he shall be awarded his costs.

In the event that a business of a person subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated or was caused to be operated shall, by entry of a proper order in the cause, make provisions for the regular payment of such taxes as the same become due.

§11-14-26. Forms; rules and regulations.

The commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe the necessary forms and to promulgate rules and regulations necessary to ascertain, assess and collect the taxes imposed by this article and to enforce the provisions thereof.

§11-14-27. Secrecy of returns and reciprocal exchange of information.

(1) Except when required in an official investigation, administrative tax hearing or proceedings in court involving taxes payable under this article, and except as provided in subsection two of this section, it shall be unlawful for any officer or employee of the state to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report, statement, or return required to be filed with the commissioner by this article or any regulation of the commissioner issued hereunder.

(2) The commissioner or his duly authorized agent may upon request permit the proper officer or representative of the United States or any state, territory or political subdivision of the United States, to inspect reports, statements, or returns filed with the commissioner or may furnish to such officer or representative a copy of any such document, provided such other jurisdiction grants sub-
stansially similar privileges to the commissioner of this state. Subsection one of this section shall not be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports, statements, and returns and the items therein.

(3) Any taxpayer under this article may, in writing, waive the secrecy rules provided in subsection one of this section for such purpose and such period as he shall therein state, and the commissioner, if he so determines, may thereupon release to designated recipient(s) said taxpayer's tax return or other particulars filed under the provisions of this article.

§11-14-28. Tax a debt; lien of unpaid tax; recordation of lien.

A tax due and unpaid under this article shall be a debt due the state. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer: Provided, That such lien shall be subject to the restrictions and conditions embodied in article ten-c, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and any amendment made or which may hereafter be made thereto.

§11-14-29. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1972.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 27th day of     , 1972.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 3/17/72
Time 12:30 p.m.