

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 Passage

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-29-72

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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 refunds of such tax because of certain nonhighway uses of gas or special fuel 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 in-
3 ference, implication or presumption of legislative con-
4 struction shall be drawn or made by reason of the location
5 or grouping of any particular section or portion of this
6 article.

§11-14-2. Definitions.

1 For purposes of this article:

2 (1) "Actual metered gallons" means, in addition to
3 amounts computed by mechanical devices which measure
4 and record directly in digital terms, all amounts computed
5 by other methods of computing quantities commonly em-
6 ployed by persons engaged in the sale of petroleum prod-
7 ucts, including, but not limited to, tank or barge strappings
8 and other graduated lineal devices.

9 (2) "Aircraft fuel" means gasoline and special fuel
10 suitable for use in any aircraft engine.

11 (3) "Commissioner" or "tax commissioner" means the
12 tax commissioner of the state of West Virginia or his
13 duly authorized agent.

14 (4) "Distributor" or "producer" means and includes
15 every person:

16 (a) Who produces, manufactures, processes or other-
17 wise alters gasoline or special fuel in this state for use or
18 for sale; or

19 (b) Who engages in this state in the sale of gasoline
20 or special fuel for the purpose of resale or for distribu-
21 tion; or

22 (c) Who receives gasoline or special fuel into the
23 cargo tank of a tank wagon in this state for use or sale by
24 such person.

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

29 (6) "Gasoline" means any product commonly or com-
30 mercially known as gasoline, regardless of classification,
31 suitable for use as fuel in an internal combustion engine,
32 except special fuel as hereinafter defined.

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

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

45 (9) "Motor carrier" means any passenger vehicle
46 which has seats for more than nine passengers in addition
47 to the driver, or any road tractor, or any tractor truck,
48 or any truck having more than two axles which is oper-
49 ated or caused to be operated by any person on any high-
50 way in this state.

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

55 (11) "Person" means and includes any individual, firm,
56 partnership, limited partnership, joint adventure, asso-
57 ciation, company, corporation, organization, syndicate,
58 receiver, trust, or any other group or combination acting
59 as a unit, in the plural as well as the singular number,
60 and means and includes the officers, directors, trustees, or
61 members of any firm, partnership, limited partnership,

62 joint adventure, association, company, corporation, or-
63 ganization, syndicate, receiver, trust, or any other group
64 or combination acting as a unit, in the plural as well as
65 the singular number, unless the intention to give a more
66 limited meaning is disclosed by the context.

67 (12) "Petroleum carrier" means any person who hauls
68 or transports gasoline or special fuel within this state
69 or on any navigable rivers which are within the jurisdic-
70 tion of this state.

71 (13) "Purchase" means and includes any acquisition
72 of ownership of property or of a security interest for a
73 consideration.

74 (14) "Receive" means any acquisition of ownership or
75 possession of gasoline or special fuel.

76 (15) "Retail dealer" means any person not a distribu-
77 tor or producer who sells gasoline or special fuel from a
78 fixed location in this state to users.

79 (16) "Sale" means any transfer, exchange, gift, barter,
80 or other disposition of any property or security interest
81 for a consideration.

82 (17) "Special fuel" means any gas or liquid, other
83 than gasoline, used or suitable for use as fuel in an in-
84 ternal combustion engine. The term "special fuel" shall
85 include products commonly known as natural or casing-
86 head gasoline, but shall not include any petroleum prod-
87 uct or chemical compound such as alcohol, industrial
88 solvent, heavy furnace oil, lubricant, etc., not commonly
89 used nor practicably suited for use as fuel in an internal
90 combustion engine.

91 (18) "Supply tank" means any receptacle on a motor
92 vehicle from which gasoline or special fuel is supplied
93 for the propulsion of the vehicle or equipment located
94 thereon, exclusive of a cargo tank. A supply tank includes
95 a separate compartment of a cargo tank used as a supply
96 tank, and any auxiliary tank or receptacle of any kind
97 from which gasoline or special fuel is supplied for the
98 propulsion of the vehicle, whether or not such tank or
99 receptacle is directly connected to the fuel supply line
100 of the vehicle.

101 (19) "Tank wagon" means and includes any motor
102 vehicle or vessel with a cargo tank or cargo tanks ordi-
103 narily used for making deliveries of gasoline or special
104 fuel or both for sale or use.

105 (20) "Tax" includes, within its meaning, interest, addi-
106 tions to tax and penalties, unless the intention to give it
107 a more limited meaning is disclosed by the context.

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

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

§11-14-3. Imposition of tax.

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

§11-14-4. Computation of tax.

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

7 A distributor or producer shall use as the measure of
8 tax all actual metered gallons of special fuel, withdrawn
9 from storage within this state for use, or sold for use, as
10 fuel in an internal combustion engine, or sold, trans-
11 ferred or delivered to its company operated retail storage
12 or any other retail station or user wherein said special
13 fuel storage is for use or for the sale for use as fuel in
14 an internal combustion engine.

15 A retail dealer, or importer, or user shall use as the
16 measure of tax all actual metered gallons of gasoline,
17 not previously included in the measure of tax, received

18 into his storage within this state or used by him as fuel
19 in an internal combustion engine.

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

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

32 This article shall not be construed to require the in-
33 clusion in the measure of tax of any gasoline or special
34 fuel previously included in the measure of tax upon
35 which the tax has been previously paid.

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

§11-14-5. Exemptions from tax.

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

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

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

9 (3) All gallons of gasoline or special fuel sold pur-
10 suant to a government contract, in bulk quantities of
11 five hundred gallons or more, for use in conjunction
12 with any municipal, county, state or federal civil defense
13 program, or to any person on whom is imposed a re-
14 quirement to maintain an inventory of gasoline or special
15 fuel for the purpose of any such program: *Provided,*

16 That fueling facilities used for these purposes are not
17 capable of fueling motor vehicles, and the person in charge
18 of such program has in his possession a letter of authority
19 from the tax commissioner certifying his right to such
20 exemption.

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

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

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

31 (7) All gallons of special fuel for boilers.

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

34 (9) All gallons of gasoline or special fuel used as
35 lubricants, ingredients, or components of any manu-
36 factured product or compound.

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

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

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

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

51 (14) All gallons of special fuel sold for use or con-
52 sumed 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.

1 This article shall not be construed to require the in-
2 clusion in the computation of tax of a distributor or pro-
3 ducer, retail dealer, or importer, of any gasoline or special
4 fuel when the same is exported by a person from this
5 state to another state or nation or territories or possessions
6 thereof, nor to require the inclusion in the computation
7 of tax of any gasoline or special fuel shipped in inter-
8 state commerce while the same is in transportation; but
9 the gallonage of gasoline or special fuel shipped from
10 another state shall be included in the computation of
11 tax as required by this article after the same shall have
12 been divested of its interstate character: *Provided*, That
13 distributors making shipments of gasoline or special fuel
14 into this state may, as a matter of convenience to pur-
15 chasers located in this state, assume and pay the tax
16 imposed by this article when written permission so to
17 do is first obtained from the commissioner.

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

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

11 The reports and taxes due, as imposed by this act, shall
12 be deemed as having been timely filed for the purpose
13 of avoiding interest, additions to tax and penalties only
14 if the postmark date thereon is clearly within the said
15 last day of the calendar month, or is received within such
16 period. If the last day falls on a Saturday or Sunday, or
17 a day which is a legal holiday in the state of West Vir-

18 ginia, filing will be considered timely if it is done on the
19 next succeeding day which is not a Saturday, Sunday or
20 legal holiday.

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

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

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

46 As a further means of obtaining the records, books and
47 papers of a taxpayer or any other person and ascertaining
48 the amount of taxes and the reports due under this article,
49 the commissioner shall have the power to examine wit-
50 nesses under oath; and if any witness shall fail or refuse
51 at the request of the commissioner to grant access to the
52 books, records and papers the commissioner shall certify
53 the facts and the names to the circuit court of the county
54 having jurisdiction of the party and such court shall
55 thereupon issue a subpoena duces tecum to such party
56 to appear before the commissioner, at a place designated
57 within the jurisdiction of such court, on a day fixed.

21 the provisions of this article on gasoline and special fuel
 22 on hand and in inventory on the effective date of such
 23 rate change, which gasoline and special fuel shall have
 24 been included in any previous computation by which the
 25 tax imposed by this article has been paid by him.

26 No refund shall be made under this section unless a
 27 written petition therefor sets forth the circumstances upon
 28 which such refund is claimed. The claim shall be in such
 29 form and with such supporting records as the commis-
 30 sioner prescribes and shall be made under the penalty of
 31 perjury. Petitions for such refund shall be filed with the
 32 commissioner within three years from the end of the
 33 month in which the tax was erroneously or illegally paid
 34 or the gallons were exported or lost by casualty or from
 35 change of rate, as provided in this section.

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

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

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

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

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

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

22 (5) Gasoline consumed in motor boats or other water-
 23 craft operated upon the navigable waters of this state.

24 Such tax shall be refunded upon presentation to the
25 commissioner of an affidavit accompanied by the origi-
26 nal or top copy sales slips or invoices, or certified copies
27 thereof, from the distributor or producer or retail dealer,
28 showing such purchases, together with evidence of pay-
29 ment thereof, which affidavit shall set forth the total
30 amount of such gasoline or special fuel purchased and con-
31 sumed by such user, other than upon any highways of
32 this state, and how used; and the commissioner upon the
33 receipt of such affidavit and such paid sales slips or in-
34 voices shall cause to be refunded such tax paid on gaso-
35 line or special fuel purchased and consumed as aforesaid.

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

**§11-14-12. Partial refund of tax on tax-paid gallonage con-
sumed in buses.**

1 Any person regularly operating any vehicle under a
2 certificate of public convenience and necessity or under
3 a contract carrier permit for transportation of persons,
4 when such person purchases tax-paid gasoline or tax-
5 paid special fuel, as required by this article, in an amount
6 of twenty-five gallons or more, and complies with all the
7 requirements of section eleven, with the exception of
8 off-highway use, may be refunded an amount equal to
9 four and one-half cents per gallon under authority of
10 this section: *Provided*, That said gallons of gasoline or
11 special fuel shall have been consumed in the operation of
12 urban and suburban bus lines, and the majority of

13 passengers use the bus for traveling a distance not exceed-
14 ing forty miles, measured one way, on the same day
15 between their places of abode and their places of work,
16 shopping areas or schools. There shall be presented to
17 the commissioner an affidavit accompanied by proof of
18 such purchase and payment as required by section eleven
19 of this article. The right to a refund under this section
20 shall not be assignable, and any assignment so made shall
21 be void.

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

1 The commissioner may require a taxpayer to file a
2 continuous surety bond in an amount to be fixed by the
3 commissioner, except that the amount shall not be less
4 than one thousand dollars. Upon completion of the filing
5 of such surety bond an annual notice of renewal, only,
6 shall be required thereafter. The surety must be author-
7 ized to engage in business within this state. The bond
8 shall be conditioned upon faithful compliance with the
9 provisions of this article, including the filing of the re-
10 turns and payment of all tax prescribed by this article.
11 Such bond shall be approved by the commissioner as to
12 sufficiency and by the attorney general as to form, and
13 shall indemnify the state against any loss arising from
14 the failure of the taxpayer to pay any tax imposed by
15 this article for any cause whatever.

16 Any surety on a bond furnished hereunder shall be
17 relieved, released and discharged from all liability ac-
18 cruing on such bond after the expiration of sixty days
19 from the date the surety shall have lodged, by certified
20 mail, with the commissioner a written request to be dis-
21 charged. This shall not relieve, release or discharge the
22 surety from liability already accrued, or which shall
23 accrue before the expiration of the sixty-day period.
24 Whenever any surety shall seek discharge as herein
25 provided, it shall be the duty of the principal of such
26 bond to supply the commissioner with another bond, or
27 pledge of property equal in value to the original bond,
28 such pledge to be in the form of a tax lien on the property
29 pledged and said lien shall be duly perfected in the
30 office of the clerk of the county court of the county

31 wherein such property is situated and shall be submitted
32 to the commissioner along with a certified appraisal
33 statement as to the value of the property pledged prior
34 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

3 for eight and one-half cents per gallon on the total gal-
 4 lons of gasoline held in storage by the distributor and
 5 upon which the tax imposed by the former provisions of
 6 this article had been paid at the first moment of the
 7 effective date of this act. The claim of the distributor or
 8 producer will be processed as a tax credit on succeeding
 9 monthly tax returns filed by the distributor with the
 10 commissioner for the amount of one forty-eighth of the
 11 total amount of tax filed as a claim with the commissioner
 12 for the tax-paid gasoline in storage on the effective date
 13 of this act.

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

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

§11-14-18. Jeopardy assessments.

1 If the commissioner believes that the collection of any
 2 tax which he is required to administer will be jeopardized
 3 by delay, he shall thereupon make an assessment of tax,
 4 noting that fact upon the assessment. The amount assessed
 5 shall be immediately due and payable. Unless the tax-
 6 payer against whom a jeopardy assessment is made peti-
 7 tions for reassessment within twenty days after service
 8 of notice of the jeopardy assessment, such an assessment
 9 becomes final. A petition for reassessment by a person
 10 against whom a jeopardy assessment has been made must
 11 be accompanied by such security as the commissioner
 12 may deem necessary to insure compliance with this
 13 article.

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

1 (1) *Interest.*—Taxes imposed by this article, if not paid
 2 when due, shall bear interest at the rate of six percent
 3 per annum from the due date of the return. Each assess-

4 ment or deficiency notice made by the commissioner shall
5 bear interest at the rate of six percent per annum. In all
6 cases of delinquency or extensions of time, interest shall
7 be assessed and collected.

8 (2) *Additions to tax; penalty.*—In the case of any
9 failure to make or file a return or whenever the full
10 amount of the tax or any portion or deficiency thereof
11 has not been paid, as required by this article, unless it
12 be shown that such failure is due to reasonable cause
13 and not due to willful neglect, there may be added to the
14 tax five per centum if a failure is for not more than
15 thirty days, with an additional five per centum for each
16 additional thirty days or fraction thereof during which
17 failure shall continue, not to exceed twenty-five per cen-
18 tum in the aggregate. If no tax is due, the penalty shall
19 be twenty-five dollars per month or fraction thereof for
20 failure to file a tax return.

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

§11-14-20. Notice of assessment; petition for reassessment.

1 The commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (twenty days in the case of jeopardy assessments), either
6 personally or by certified mail, file with the commissioner
7 a petition in writing, verified under oath by said tax-
8 payer or his duly authorized agent having knowledge
9 of the facts, setting forth with particularity the items of
10 the assessment objected to, together with the reasons for
11 objections, said assessment shall become final and con-
12 clusive, not subject to administrative or judicial review,

13 and the amount thereof shall be payable at the end of
14 the thirty-day period (twenty days in the case of a
15 jeopardy assessment). A petition for reassessment shall
16 be deemed to be timely filed if the postmark date thereon
17 is clearly within said thirty days (twenty days in case
18 of jeopardy assessment) of receipt of said assessment by
19 the taxpayer or is received within such period. If the
20 thirtieth day (twentieth day in case of a jeopardy as-
21 sessment) falls on a Saturday or Sunday, filing will be con-
22 sidered timely if it is done on the next succeeding day
23 which is not a legal holiday.

§11-14-21. Hearing; appeals.

1 In every case where a petition for reassessment as
2 above described is filed, the commissioner shall assign a
3 time and place for the hearing of same and shall notify
4 the petitioner of such hearing by written notice at least
5 twenty days in advance thereof, and such hearing shall
6 be held within sixty days from the filing of the petition
7 for reassessment unless continued by agreement or by
8 the commissioner for good cause. The hearing shall be
9 informal and may be conducted by an examiner desig-
10 nated by the commissioner. At such hearing the assess-
11 ment shall constitute prima facie evidence of the claim of
12 the state and the burden of proof shall be upon the tax-
13 payer assessed to show that the assessment is incorrect
14 and contrary to law. In every case where a petition or
15 request for refund as above described is filed and the
16 commissioner has refused to allow said refund in whole
17 or in part, the petitioner may file within thirty days after
18 receipt of the commissioner's decision a written request
19 for hearing. In every case where a request for hearing is
20 filed, the commissioner shall proceed to assign and hold
21 such hearing in accordance with the methods herein pre-
22 scribed for a petition for reassessment. After any such
23 hearing, the commissioner shall, within a reasonable time,
24 give notice in writing of the decision. Unless an appeal
25 is taken within thirty days from service of this notice, the
26 commissioner's decision shall be final.

27 Every assessment made by the commissioner under this
28 article which becomes final and conclusive shall constitute

29 a judgment and may be collected as judgments are col-
30 lected.

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

37 The appeal shall be taken by written notice to the com-
38 missioner and served as an original notice. When said
39 notice is so served it shall, with the return thereon, be
40 filed in the office of the clerk of the circuit court and
41 docketed as other cases with the taxpayer as plaintiff and
42 the commissioner as defendant. Before the appeal is
43 heard, the plaintiff shall file with such clerk a bond for
44 the use of the defendant, with sureties approved by said
45 clerk, the penalty of the bond to be not less than the total
46 amount of the tax, interest, additions to tax and penalties
47 appealed from, and conditioned that the plaintiff shall
48 perform the orders of the court.

49 The court shall hear the appeal and determine anew
50 all questions submitted to on appeal from the determina-
51 tion of the commissioner. In such appeal a certified copy
52 of the commissioner's assessment shall be admissible and
53 shall constitute prima facie evidence of the tax due under
54 the provisions of this article. The court shall render its
55 decree thereon and a certified copy of said decree shall
56 be filed by the clerk of said court with the commissioner
57 who shall then correct the assessment in accordance with
58 said decree. An appeal may be taken by the taxpayer or
59 the commissioner to the supreme court of appeals of this
60 state.

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

1 Whenever any person liable for the tax imposed by
2 this article, by reason of sale or discontinuance, ceases
3 business at any location, the taxes, interest, additions to
4 tax and penalties imposed by this article shall become due
5 and payable immediately and such person shall make a
6 final return within fifteen days after the date of sale or
7 discontinuance. The taxes, interest, additions to tax and

8 penalties shall be a lien upon the property of such person.
 9 In the event of sale, the person purchasing said business
 10 shall withhold sufficient of the purchase money to cover
 11 the amount of such taxes, interest, additions to tax and
 12 penalties due and unpaid until such time as the former
 13 owner shall produce a receipt from the commissioner
 14 showing that the taxes, interest, additions to tax and /s
 15 penalties have been paid, or a certificate indicating no
 16 taxes are due. If the purchaser of the business fails to
 17 withhold purchase money, as above provided, he shall be
 18 personally liable for the payment of the taxes, interest,
 19 additions to tax and penalties accrued and unpaid and
 20 the same shall be recoverable by the commissioner by
 21 action or suit as provided by this article.

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

1 The secretary of state shall withhold the issuance of
 2 any certificate of dissolution or withdrawal in the case
 3 of any corporation organized under the laws of this state
 4 or organized under the laws of another state and ad-
 5 mitted to do business in this state, until the receipt of a
 6 notice from the commissioner to the effect that the tax
 7 levied under this article against any such corporation has
 8 been paid or provided for, if any such corporation is a
 9 taxpayer under this article, or until he shall be notified
 10 by the commissioner that the applicant is not subject to
 11 pay a tax hereunder.

§11-14-24. Collection by distraint; report of collection.

1 The commissioner may distraint upon any goods, chattels
 2 or intangibles represented by negotiable evidences of
 3 indebtedness, of any taxpayer delinquent under this article
 4 for the amount of all taxes, interest, additions to tax and
 5 penalties accrued and unpaid hereunder. The commis-
 6 sioner may require the assistance of the sheriff of any
 7 county of the state in levying such distress in the county
 8 of which such sheriff is an officer. A sheriff so collecting
 9 taxes due hereunder shall be entitled to compensation in
 10 the amount of all additions to tax collected over and
 11 above the principal amount of the tax due, but in no case

12 shall such compensation exceed twenty-five dollars. All
13 taxes, interest, additions to tax and penalties so collected
14 shall be reported within ten days after collection to the
15 commissioner, who shall prescribe by general regulation
16 the manner of remittance of such funds and of allowing
17 the collecting officer the compensation due him under
18 this section.

19 The sheriff shall within five days after receipt of the
20 warrant file with the clerk of the county court a copy
21 thereof and thereupon the clerk shall enter in the judg-
22 ment docket the name of the taxpayer mentioned in the
23 warrant and the amount of the tax, interest, additions to
24 tax and penalties for which the warrant is issued and the
25 date when such copy is filed, and thereupon the amount
26 so docketed shall become a lien upon the title to an
27 interest in real property or chattels real of the person
28 against whom it is issued, in the same manner as a
29 judgment duly docketed in the office of such clerk. The
30 said sheriff shall thereupon proceed upon the same in
31 all respects, with like effect, and in the same manner pre-
32 scribed by law in respect to executions issued against ^{the}
33 property upon judgment of a court of record. If a warrant
34 be returned not satisfied in full, the commissioner shall
35 have the same remedies to enforce the claim for the taxes
36 against the taxpayer as if the state had recovered judg-
37 ment against the taxpayer for the amount of the tax.

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

1 The commissioner may collect any tax, interest, addi-
2 tions to tax and penalties due and unpaid under the pro-
3 visions of this article by appropriate legal proceedings in
4 the county in which the activity taxed was engaged or
5 the taxpayer resides, or by a suit to enforce the lien
6 therefor in any county in which property of the taxpayer
7 may be found; or, if the tax due and unpaid under this
8 article is three hundred dollars or less, by suit in the
9 court of any justice having jurisdiction of the taxpayer or
10 his property. If the failure of any taxpayer to comply
11 with the provisions of this article shall have continued
12 sixty days, the commissioner may proceed to obtain an

13 injunction restraining the taxpayer from doing business
14 in this state until he fully complies with the provisions
15 of this article. In any proceeding under this section upon
16 judgment or decree for the plaintiff he shall be awarded
17 his costs.

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

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

1 The commissioner is hereby invested with full power
2 and authority and it is hereby made his duty to prescribe
3 the necessary forms and to promulgate rules and regula-
4 tions necessary to ascertain, assess and collect the taxes
5 imposed by this article and to enforce the provisions
6 thereof.

**§11-14-27. Secrecy of returns and reciprocal exchange of in-
formation.**

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

11 (2) The commissioner or his duly authorized agent
12 may upon request permit the proper officer or representa-
13 tive of the United States or any state, territory or political
14 subdivision of the United States, to inspect reports, state-
15 ments, or returns filed with the commissioner or may
16 furnish to such officer or representative a copy of any such
17 document, provided such other jurisdiction grants sub-

18 stantially simliar privileges to the commissioner of this
19 state. Subsection one of this section shall not be construed
20 to prohibit the publication of statistics so classified as to
21 prevent the identification of particular reports, state-
22 ments, and returns and the items therein.

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

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

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

§11-14-29. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

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

Russell G. Beale
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1972.

Howard Weason
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Erskine
President of the Senate

Louis N. M. Maurer
Speaker House of Delegates

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

Arthur A. Shouse Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/72

Time 12:30 p.m.