

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 371

(By Mr. Brotherton, Mr. President, & Mr. Hamilton)



PASSED March 11 1978

In Effect July 1, 1978 ~~Passage~~



110-571

ENROLLED

Senate Bill No. 371

(By MR. BROTHERTON, MR. PRESIDENT, and MR. HAMILTON)

[Passed March 11, 1978; in effect July 1, 1978.]

AN ACT to repeal section twenty-one, article eleven; sections eight, eleven and thirteen, article twelve; sections seven, ten, eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty, article twelve-a; sections six, seven, seven-a, seven-b, eight, eight-a, eleven, twelve, fourteen, fifteen, sixteen, sixteen-a, twenty, twenty-two and twenty-four, article thirteen; sections seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven and twenty-eight, article fourteen; sections fourteen, fifteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, article fourteen-a; sections eighteen, eighteen-b, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c, twenty-four-d, twenty-four-e, twenty-four-f, twenty-seven and twenty-eight, article fifteen; sections thirteen, fourteen, fifteen, sixteen, seventeen, twenty-four and twenty-five, article fifteen-a; sections eight, thirteen, fourteen, fifteen and sixteen, article seventeen; sections five-a, five-c, five-d, five-e, five-f, five-g, six and seven, article nineteen; sections eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twenty-one; sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six and thirty-seven, article twenty-four; all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter eleven by adding thereto a new article, designated article ten; to amend and reenact sections nine, ten, eleven, thirteen, fourteen-a, fourteen-b, fifteen, sixteen, eighteen, twenty, twenty-five and twenty-seven,

article eleven of said chapter eleven; to further amend said article eleven by adding thereto a new section, designated section twenty-nine; to amend and reenact section one, article eleven-a of said chapter eleven; to amend and reenact section seven, article eleven-b of said chapter eleven; to amend and reenact sections five, seven, nine, ten, fourteen and fifteen, article twelve of said chapter eleven; to further amend said article twelve by adding thereto a new section, designated section eighteen; to amend article twelve-a of said chapter eleven by adding thereto two new sections, designated sections six-a and twenty-three; to amend and reenact sections nine, thirteen and eighteen, article thirteen of said chapter eleven; to further amend said article thirteen by adding thereto a new section, designated section twenty-seven; to amend and reenact sections seven, ten, eleven, eleven-a, twelve, nineteen and twenty-five, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section thirty; to amend and reenact sections five, eleven and sixteen, article fourteen-a of said chapter eleven; to further amend said article fourteen-a by adding thereto a new section, designated section twenty-seven; to amend and reenact sections four-b, sixteen, seventeen and twenty-three, article fifteen of said chapter eleven; to further amend said article fifteen by adding thereto a new section, designated section thirty-two; to amend and reenact sections twelve, twenty-one and twenty-two, article fifteen-a of said chapter eleven; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-eight; to amend and reenact sections ten, twelve, seventeen and nineteen, article seventeen of said chapter eleven; to further amend said article seventeen by adding thereto a new section, designated section twenty-two; to amend and reenact sections five-b, seven-a and ten, article nineteen of said chapter eleven; to further amend said article nineteen by adding thereto a new section, designated section twelve; to amend and reenact section seventy-five, article twenty-one of said chapter eleven; to further amend said article twenty-one by adding thereto a new section, designated section ninety-

five; to amend and reenact section thirty-eight, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto a new section, designated section forty-one; and to amend and reenact sections eight and nine, article twenty-five of said chapter eleven, and to amend and reenact section nineteen-a, article two of chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the administration, assessment and collection of all taxes administered by the state tax commissioner, except ad valorem taxes on real and personal property and the corporate license tax, and enforcement procedures in connection therewith; providing for adoption of the "West Virginia tax procedure and administration act", setting forth certain legislative findings; relating to application of such act; defining terms used in such act; relating as to such act to: rules and regulations and forms; investigations; subpoenas and subpoenas duces tecum and penalty for disobedience or neglect thereof; returns by tax commissioner; secrecy of returns and criminal penalty for violation; reciprocal exchange of information; inspection of business and occupation tax returns; service of notice; release of administrative decisions; timely filing and paying; time for performance of acts where last day falls on Saturday, Sunday or legal holiday; enforcement of article by tax commissioner with assistance of prosecuting attorney; mathematical errors resulting in underpayment; collection of balance due on return without remittance; assessment, jeopardy assessment, amended assessment, abatement of assessment, procedures and finality of assessment where no protest; notice of assessment and reassessment procedures including petitions for reassessment; hearings, hearing procedures and burdens of proof; appeals and appeal procedures including right of appeal, venue, petition and notice of appeal, appeal bond and burden of proof; collection of taxes and collection procedures generally; collection procedures and liabilities involving persons other than taxpayer; prerequisite to final settlement of contracts with nonresident contractors, requirement to withhold and personal liability of user; prereq-

uisite for issuance of certificate of dissolution or withdrawal of corporations; prerequisite to final settlement of contracts with this state or political subdivision, and civil penalty for violation; effect of tax commissioner certificates; payment when person sells out or quits business and lien for unpaid taxes; successor in business required to withhold for unpaid taxes and personal liability for failure; injunctions; costs for collection proceedings; creation, duration, recordation and release of liens; distress warrants including execution by tax commissioner; refunds and credits of overpayments and refunds and credits of gasoline and special fuels excise tax and motor carrier road tax; procedures for claiming refund or credit including the filing and determination of claim, hearing, appeals to circuit courts, decision of the court, authority to make refund or establish credit, form of claim, when return constitutes claim, applicability of refund procedure, refund procedure provided is exclusive, and assessment to recover erroneous refunds or credits; period of limitation on filing claim for refund or credit, extension of time for filing claim by agreement, special rule where agreement to extend time for making assessment, overpayment of federal tax, special rule for deficiency in business and occupation or carrier income taxes, exception for gasoline and special fuel excise tax and motor carrier road tax, and transition rules; periods of limitation on assessments, agreement for extension of period, special rule where deficiency in federal tax and transition rules; periods of limitation on collection, exception for false or fraudulent return or where no return filed, exception for inheritance tax lien, and extension of time by agreement; interest due on underpayments; underpayment of estimated business and occupation tax; interest due on erroneous refunds and credits; interest paid on overpayments except no interest paid where tax refunded or credited within ninety days, six month exception for income tax refunds, no interest paid on overpayment of tax imposed by articles twelve, fourteen and fourteen-a of chapter eleven; interest treated as tax; no interest charged on interest; interest charged on penalties and additions to tax and special rule where payment

made within fifteen days after notice and demand; additions to tax for failure to file return or failure to remit tax shown to be due on a return and special rule, additions to tax for negligence or intentional disregard of rules and regulations, additions to tax for filing of false or fraudulent return with intent to evade or failure to file return with intent to evade and procedure for collecting additions to tax; penalty for failure to collect, account for, and pay over tax, or attempt to defeat or evade tax; penalty for furnishing false or fraudulent withholding statement or failure to furnish statement; penalty for fraudulent claim for refund or credit; procedure for collection of penalty; providing for the effective date of said act and other pertinent dates, establishing transition rules in application of said act, preserving former provisions of law as to existing liens and assessments and tax liabilities for periods prior to the effective date of the act and authorizing a taxpayer election in connection therewith under certain circumstances; providing a severability rule; tax, lien for tax and limitations upon collection, extension of time pending settlement of estate, payments and collection, report of transfers by county commission; transfer of bonds or stocks standing in the name of decedent and reports by corporation with liability for noncompliance and penalty, annuity and investment contracts, payments to beneficiaries under such contracts with notice of payment to tax commissioner and penalties for noncompliance, assessment by tax commissioner, assessment of transfers not reported to commissioner, amended assessment and recordation, settlement by state tax commissioner of dispute as to relationship between decedent and transferee, liability of fiduciaries and sureties and revocation of their authority, inspection of books and records with criminal penalty for failure to exhibit, and making the provisions of said "West Virginia tax procedure and administration act" applicable, all of the inheritance and transfer tax; relating to procedure and authority for compromise of inheritance and death taxes of the interstate compromise of inheritance and death taxes; relating to imposition of additions to tax, penalties and interest for nonpayment of inheritance tax,

of the interstate arbitration of inheritance and death taxes; relating to time for which registration certificates granted and power of the tax commissioner to cancel certificates after hearing, display of registration certificate, injunction against collection of tax prohibited; providing for information of whether person is registered to be public information, penalty for default, collection of back taxes, notice to commissioner of discontinuance of business and liability of transferor and transferee, collection by civil action, hearing and appeal procedure before cancellation of registration certificate, enforcement, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the business franchise registration certificate tax; relating to report of change in federal taxable income, and making the provision of the "West Virginia tax procedure and administration act" applicable, all of the annual tax on incomes of certain carriers; relating to tax year, receivership or insolvency proceedings, agents for collection of delinquent taxes, and making the "West Virginia procedure and administration act" applicable, all of the business and occupation tax; relating to due date of reports, required reports, keeping of records, examination of records, subpoena powers, examination of witnesses, refunds of taxes illegally collected, refunds for gallonage exported or lost, refunds of taxes because of change of tax rate, claims for refund and period of limitation on refund claims, refund of tax because of certain nonhighway uses including procedures and content of claim for refund and period of limitations on claims for refund, refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services, including procedures and content of claim for refund and period of limitation on claims for refund, right to refund not assignable, partial refund of tax on tax-paid gallonage consumed in buses including procedures and content of claim for refund, penalty for failure to file required return where no tax due, receivership or insolvency proceedings, and making the "West Virginia tax procedure and administration act" applicable, all of the gasoline and special fuels excise tax; relating to

reports of carriers, joint reports, records, inspection of records, subpoenas and witnesses, refunds and claims for refund and procedures therefor including surety bonds, penalty for failure to file required return when no tax is due, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the motor carrier road tax; relating to liability of purchaser and assessment and collection from purchaser, tax returns, payment and date due of returns, personal liability of officers of association or corporation for any default of association or corporation, keeping and preservation of records, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the consumers sales and service tax; relating to bond to secure payment, examination of books and records, canceling or revoking of business franchise registration certificate for noncompliance with use tax law after notice and hearing, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the use tax; relating to refunds, required reports, due dates of reports, keeping of records, inspection of records and stocks, examination of witnesses under oath and court summons of persons and books and records for failure to appear or allow investigation, enforcement powers including all lawful powers delegated to members of department of public safety, assistance in enforcement by state department of public safety and performance bond, penalty for failure to file required return when no tax is due, criminal penalties for certain offenses and violations and presumptions, when cigarettes deemed contraband and the seizure and sale thereof, concurrent jurisdiction of courts and magistrate courts for trial of misdemeanors, and making all the provisions of the "West Virginia tax procedure and administration act" applicable, all of the cigarette tax act; relating to additional penalty for late filing of return or late payment, seizure and forfeiture and sale of soft drink syrups by commissioner for collection of tax including procedures for sale, penalties and crimes, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the soft drink tax; relating to

employer's liability for withheld taxes and withheld tax being deemed money held in trust, and making the provisions of the "West Virginia procedure and administration act" applicable, all of the personal income tax; relating to criminal penalty for failure to file returns, submit information, or pay tax, criminal penalty for failure to collect and pay over tax, or attempt to defeat or evade tax, criminal penalty for making a false return or certification, definition of term person, evidence of failure to pay tax or make return or supply required information, venue for criminal proceedings, and making the provisions of the "West Virginia procedure and administration act" applicable, all of the corporation net income tax; relating to denial of claim, violation of article, assessment, interest, penalties, criminal penalty for fraudulent claim, hearing on denial of claim, all of the tax relief for elderly homeowners and renters; providing for additions to tax, penalties and interest in connection with all such taxes; relating to limitation on collection of taxes due the state or any political subdivision thereof; making the provisions of said "West Virginia tax procedure and administration act" applicable to all such taxes; establishing criminal offenses; and providing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article eleven; sections eight, eleven and thirteen, article twelve; sections seven, ten, eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty, article twelve-a; sections six, seven, seven-a, seven-b, eight, eight-a, eleven, twelve, fourteen, fifteen, sixteen, sixteen-a, twenty, twenty-two and twenty-four, article thirteen; sections seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven and twenty-eight, article fourteen; sections fourteen, fifteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, article fourteen-a; sections eighteen, eighteen-b, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c, twenty-four-d, twenty-four-e, twenty-four-f, twenty-seven and twenty-eight, article fifteen; sections thirteen, fourteen, fifteen, sixteen, seventeen, twenty-four and twenty-five, article fifteen-a; sections eight, thirteen,

fourteen, fifteen and sixteen, article seventeen; sections five-a, five-c, five-d, five-e, five-f, five-g, six and seven, article nineteen; sections eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twenty-one; sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, **thirty-five**, thirty-six and thirty-seven, article twenty-four; all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter eleven be amended by adding thereto a new article, designated article ten; that sections nine, ten, eleven, thirteen, fourteen-a, fourteen-b, fifteen, sixteen, eighteen, twenty, twenty-five and twenty-seven, article eleven of said chapter eleven be amended and reenacted; that said article eleven be further amended by adding thereto a new section, designated section twenty-nine; that section one, article eleven-a of chapter eleven be amended and reenacted; that section seven, article eleven-b of said chapter eleven be amended and reenacted; that sections five, seven, nine, ten, fourteen and fifteen, article twelve of said chapter eleven be amended and reenacted; that said article twelve be further amended by adding thereto a new section, designated section eighteen; that article twelve-a of said chapter eleven be amended by adding thereto two new sections, designated sections six-a and twenty-three; that sections nine, thirteen and eighteen, article thirteen of said chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section twenty-seven; that sections seven, ten, eleven, eleven-a, twelve, nineteen and twenty-five, article fourteen of said chapter eleven be amended and reenacted; that said article fourteen be further amended by adding thereto a new section, designated section thirty; that sections five, eleven and sixteen, article fourteen-a of said chapter eleven be amended and reenacted; that said article fourteen-a be further amended by adding thereto a new section, designated section twenty-seven; that sections four-b, sixteen, seventeen and twenty-three, article fifteen of said chapter eleven be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section thirty-two; that sections twelve, twenty-one and twenty-two, article fifteen-a of said chapter

eleven be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-eight; that sections ten, twelve, seventeen and nineteen, article seventeen of said chapter eleven be amended and reenacted; that said article seventeen be further amended by adding thereto a new section, designated section twenty-two; that sections five-b, seven-a and ten, article nineteen of said chapter eleven be amended and reenacted; that said article nineteen be further amended by adding thereto a new section, designated section twelve; that section seventy-five, article twenty-one of said chapter eleven be amended and reenacted; that said article twenty-one be further amended by adding thereto a new section, designated section ninety-five; that section thirty-eight, ^{as} article twenty-four of said chapter eleven be amended and reenacted; that said article twenty-four be further amended by adding thereto a new section, designated section forty-one; that sections eight and nine, article twenty-five be amended and reenacted; all of chapter eleven of said code, and that section nineteen-a, article two of chapter fifty-five of said code be amended and reenacted; all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 adoption by this state of certain uniform procedures for
3 the assessment and collection of the taxes administered
4 by the tax commissioner to which this article applies
5 will (1) simplify the administration and collection of
6 taxes, and (2) promote efficiency and uniformity of ap-
7 plication in the administration of the tax laws. The
8 Legislature does therefore declare that this article ten
9 be construed so as to accomplish the foregoing purposes.

§11-10-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia Tax
2 Procedure and Administration Act." No inference, im-
3 plication or presumption of legislative construction shall
4 be drawn or made by reason of the location or grouping
5 of any particular section or provision or portion of this

6 article, and no legal effect shall be given to any descrip-
7 tive matter or headings relating to any part, section,
8 subsection or paragraph of this article.

§11-10-3. Application of this article.

1 The provisions of this article shall apply to the inheri-
2 tance and transfer taxes and interstate compromise and
3 arbitration of inheritance and death taxes, the business
4 franchise registration certificate tax, the annual tax on
5 incomes of certain carriers, the business and occupation
6 tax, the consumers sales and service tax, the use tax,
7 the cigarette tax, the soft drinks tax, the personal in-
8 come tax, the corporation net income tax, the gasoline
9 and special fuel excise tax, the motor carrier road tax,
10 and the tax relief for elderly homeowners and renters
11 administered by the state tax commissioner. This article
12 shall not apply to ad valorem taxes on real and personal
13 property, the corporate license tax, or any other tax
14 not listed hereinabove.

§11-10-4. Definitions.

1 For the purpose of this article, the term:
2 (a) "Person" shall include, but is not limited to, any
3 individual, firm, partnership, limited partnership, co-
4 partnership, joint adventure, association, corporation,
5 municipal corporation, organization, receiver, estate,
6 trust, guardian, executor, administrator, and also any
7 officer, employee, or member, of any of the foregoing
8 who, as such officer, employee, or member, is under a
9 duty to perform or is responsible for the performance
10 of an act prescribed by the provisions of this article
11 and the provisions of any of the other articles of this
12 chapter which impose taxes administered by the tax
13 commissioner, unless the intention to give a more limited
14 or broader meaning is disclosed by the context of this
15 article or any of the other articles of this chapter which
16 impose taxes administered by the tax commissioner.
17 (b) "State" means any state of the United States or
18 the District of Columbia.
19 (c) "Tax" or "taxes" includes within the meaning
20 thereof taxes specified in section three of this article,
21 additions to tax, penalties and interest, unless the in-

22 tention to give the same a more limited meaning is dis-
23 closed by the context.

24 (d) "Tax commissioner" or "commissioner" means
25 the tax commissioner of the state of West Virginia or
26 his delegate.

27 (e) "Taxpayer" means any person required to file a
28 return for any tax administered under this article, or
29 any person liable for the payment of any tax admin-
30 istered under this article.

31 (f) "Tax administered under this article" means any
32 tax to which this article applies as set forth in section
33 three of this article.

34 (g) "This code" means the code of West Virginia,
35 one thousand nine hundred thirty-one, as amended.

36 (h) "This state" means the state of West Virginia.

**§11-10-5. General provisions; regulations and forms; investi-
gations; subpoena and subpoena duces tecum; re-
turns by tax commissioner; secrecy of returns;
crime; reciprocal exchange; inspection of business
and occupation tax returns; release of administra-
tive decisions; service of notice; timely filing and
paying; time of performance of acts where last
day falls on Saturday, Sunday, or legal holiday;
enforcement of article.**

1 (a) *Regulations and forms.*—The tax commissioner
2 shall administer and enforce each tax to which this
3 article applies and, in connection therewith, shall pre-
4 scribe all necessary forms. The commissioner may make
5 all needful rules and regulations for the taxes to which
6 this article applies as provided in the State Adminis-
7 trative Procedures Act in chapter twenty-nine-a of this
8 code: *Provided*, That all rules and regulations of the
9 tax commissioner presently in effect on the effective
10 date of this article shall remain in full force and effect
11 until amended or repealed by the tax commissioner in
12 the manner prescribed by law.

13 (b) *Investigations.*—For the purpose of ascertaining
14 the correctness of any tax return or assessment and
15 for the purpose of making an estimate of any taxpayer's
16 liability for any tax administered under this article,

17 and for the further purpose of conducting the hearings
18 provided for in section nine of this article, the tax com-
19 missioner shall have the power to examine or cause to
20 be examined, by any agent or representative designated
21 by the tax commissioner, any books, papers, records,
22 memoranda, inventory or equipment bearing upon the
23 matters required to be included in the tax return, may
24 make test checks of tax yield, and may require the
25 attendance of the person rendering the tax return or
26 the attendance of any other person having knowledge
27 of the matters contained therein and may take testi-
28 mony and may require material proof with power to
29 administer oath to such person or persons.

30 (c) *Subpoena and subpoena duces tecum.*—For the
31 efficient administration of the powers vested in the tax
32 commissioner by subsection (b), the tax commissioner
33 shall have the power to issue subpoenas and subpoenas
34 duces tecum, in the name of his agency, and compel
35 the attendance of witnesses and the production of books,
36 papers, records, documents and testimony at the time
37 and place specified. Every such subpoena and subpoena
38 duces tecum shall be served at least five days before the
39 return date thereof by personal service made by any
40 person over eighteen years of age. Service of subpoenas
41 and subpoenas duces tecum shall be the responsibility
42 of the tax commissioner or his delegate. Any person,
43 except a person in the employ of the state tax depart-
44 ment, who serves any such subpoena or subpoena duces
45 tecum shall be entitled to the same fee as sheriffs who
46 serve witness subpoenas for the circuit courts of this
47 state. Upon motion made promptly and in any event
48 before the time specified in a subpoena or subpoena
49 duces tecum for compliance therewith, the circuit court
50 of the county in which the person upon whom any such
51 subpoena or subpoena duces tecum was served resides,
52 has his or its principal place of business or is employed,
53 or the circuit court of the county in which any such
54 subpoena or subpoena duces tecum was served, or the
55 judge of any such circuit court in vacation, may grant
56 any relief with respect to any such subpoena or sub-
57 poena duces tecum which any such circuit court, under

58 the "West Virginia Rules of Civil Procedure for Trial
59 Courts of Record," could grant, and for any of the same
60 reasons, with respect to any such subpoena or sub-
61 poena duces tecum issued from any such circuit court.
62 In case of disobedience or neglect of any subpoena or
63 subpoena duces tecum served on any person, or the
64 refusal of any witness to testify to any matter regarding
65 which he may be lawfully interrogated, the circuit court
66 of Kanawha County or of the county in which such
67 person resides, has his or its principal place of business
68 or is employed, or the judge thereof in vacation, upon
69 application by the tax commissioner, shall compel obedi-
70 ence by attachment proceedings for contempt as in
71 the case of disobedience of the requirements of a sub-
72 poena or subpoena duces tecum issued from such circuit
73 court or a refusal to testify therein. Witnesses sub-
74 poenaed under this subsection shall testify under oath
75 or affirmation.

76 (d) *Returns by tax commissioner.*—If any taxpayer
77 fails to file a return at the time required by law or by
78 regulation made under authority of law, the tax com-
79 missioner may proceed to make a return from any in-
80 formation available.

81 (e) *Secrecy of returns.*—Except when required in an
82 official investigation into the amount of tax due under
83 any article administered under this article or in any
84 proceeding before a court of competent jurisdiction to
85 collect or ascertain the amount of such tax and except
86 as provided in subsections (f), (g) and (h), it shall be
87 unlawful for any officer or employee of this state to
88 divulge or make known in any manner the tax return,
89 or any part thereof of any individual, firm, or corpora-
90 tion, or disclose information concerning the personal
91 affairs of any individual or the business of any single
92 firm or corporation, or disclose the amount of income,
93 or any particulars set forth or disclosed in any report,
94 declaration or return required to be filed with the tax
95 commissioner by any article of this chapter imposing
96 any tax administered under this article or by any
97 rule or regulation of the tax commissioner issued
98 thereunder.

99 Any officer or employee of this state who violates
100 this subsection shall be guilty of a misdemeanor, and,
101 upon conviction thereof, shall be fined not more than
102 one thousand dollars or imprisoned for not more than
103 one year, or both, together with costs of prosecution.
104

105 Any person protected by the provisions of this article
106 may, in writing, waive the secrecy provisions of this
107 subsection for such purpose and such period as he shall
108 therein state, and the commissioner, if he so determines,
109 may thereupon release to designated recipients such
110 taxpayer's return or other particulars filed under the
111 provisions of the tax articles administered under the
112 provisions of this article.

113 This subsection shall not be construed to prohibit the
114 publication or release of statistics so classified as to prevent
115 the identification of particular reports and the
116 items thereof.

117 (f) *Reciprocal exchange.*—The tax commissioner may
118 permit the proper officer of the United States, or the
119 District of Columbia, or any other state, or any political
120 subdivision of this state, or his authorized representative,
121 to inspect reports, declarations or returns filed
122 with the tax commissioner or may furnish to such officer
123 or representative a copy of any such document provided
124 such other jurisdiction grants substantially similar privileges
125 to the tax commissioner or to the attorney
126 general of this state.

127 (g) *Inspection of business and occupation tax returns*
128 *by municipalities.*—The tax commissioner shall, upon the
129 written request of the mayor of any West Virginia
130 municipality having a business and occupation tax or
131 privilege tax, allow the duly authorized agent of such
132 municipality to inspect and make copies of the state
133 business and occupation tax return filed by taxpayers
134 of such municipality, for the purpose of securing information
135 for municipal tax purposes provided such
136 municipality allows the tax commissioner the right to
137 inspect or make copies of the municipal business and
138 occupation tax returns of such municipality.

139 (h) *Release of administrative decisions.*—The tax
140 commissioner may, in his discretion, release his admin-
141 istrative decisions, or a summary thereof, to the public:
142 *Provided*, That, unless waived in writing by the tax-
143 payer, any identifying characteristics or facts about the
144 taxpayer shall be omitted or modified to such an extent
145 so as to not disclose the name or identity of the
146 taxpayer.

147 (i) *Service of notice.*—Notices of assessments and
148 administrative decisions shall be served upon the tax-
149 payer either by personal service or by certified
150 mail.

151 (j) *Timely filing and paying.*

152 (1) *Delivery in person.*—If any return, claim, state-
153 ment, or other document required to be filed, or any
154 payment required to be made within a prescribed period
155 or on or before a prescribed date, is delivered in
156 person on or before such date to the tax commissioner,
157 or the appropriate division or officer of the tax depart-
158 ment, at Charleston, West Virginia, during normal busi-
159 ness hours of the tax department, it shall be timely
160 filed.

161 (2) *Timely mailing.*—If any return, claim, statement
162 or other document, required to be filed, or any payment
163 required to be made within a prescribed period or on
164 or before a prescribed date under authority of the
165 provisions of any article of this chapter imposing any
166 tax administered under this article is after such period
167 or such date, delivered by United States mail to the
168 tax commissioner or the state tax department, the
169 date of the United States postmark stamped on the
170 cover in which such return, claim, statement, or other
171 document or payment is mailed shall be deemed to be
172 the date of delivery or the date of payment, as the case
173 may be, provided the following mailing requirements
174 are met:

175 (A) The postmark date falls within the prescribed
176 period or on or before the prescribed date for filing
177 (including any extension granted for such filing) of
178 the return, claim, statement or other document, or for

179 making the payment (including any extension granted
180 for such payment), and

181 (B) The return, claim, statement, other document
182 or payment was, within the time prescribed in sub-
183 paragraph (A), deposited in the mail in the United States
184 in an envelope or other appropriate wrapper, postage
185 prepaid, properly addressed to the tax commissioner
186 or the state tax department.

187 (3) Postmarks.—This subsection shall apply in the
188 case of postmarks not made by the United States post
189 office only if and to the extent provided by rules or
190 regulations prescribed by the tax commissioner.

191 (4) Registered and certified mailing.—For purposes
192 of this subsection, if any return, claim, statement, or
193 other document or payment is sent by United States
194 registered or certified mail, the date of registration
195 or certification shall be deemed the postmark date.

196 (5) Last date for filing or payment.—The last date
197 for timely filing or timely making payment shall in-
198 clude any extension of time authorized by law or regu-
199 lation and any extension of time granted in writing by
200 the tax commissioner.

201 (k) *Time for performance of acts where last day*
202 *falls on Saturday, Sunday or legal holiday.*—When the
203 last day prescribed under authority of any article of
204 this chapter imposing any tax administered under this
205 article for performing any act falls on Saturday, Sun-
206 day or a legal holiday, the performance of such act
207 shall be considered timely if it is performed on the
208 next succeeding day which is not a Saturday, Sunday
209 or a legal holiday. For purposes of this subsection, the
210 last day for the performance of any act shall be deter-
211 mined by including any authorized extension of time;
212 and the term “legal holiday” means a legal holiday
213 in this state.

214 (1) *Enforcement.*—The enforcement of any of the
215 provisions of this article or the provisions of any article
216 of this chapter administered under this article, in any
217 of the courts of this state shall be under the exclusive
218 jurisdiction of the tax commissioner, who shall require
219 the assistance of and act through the prosecuting attorney

220 of any county where suit is brought. Such prosecuting
221 attorney shall receive no fees or compensation in addi-
222 tion to the salary paid by the county to such offices,
223 for services rendered in enforcing this article or any of
224 the other articles of this chapter administered under
225 this article.

**§11-10-6. Mathematical errors; collection of balance due on
return without a remittance.**

1 (a) *Mathematical error.*—When it appears to the tax
2 commissioner that the taxpayer has made a mathematical
3 error (including an overstatement of the credit for the
4 amount paid as estimated tax), the tax commissioner
5 shall correct such error and notify the taxpayer, in
6 writing, of the deficiency in tax. The taxpayer shall
7 have fifteen days after receipt of such notice within
8 which to pay such deficiency. If the taxpayer fails to
9 pay such deficiency within fifteen days, the tax commis-
10 sioner shall make an assessment of such deficiency in
11 accordance with section seven and shall give the tax-
12 payer written notice thereof.

13 (b) *Collection of balance due.*—If a taxpayer files a
14 mathematically correct return which reflects a balance
15 due of any tax administered under this article, and if
16 full payment thereof has not been made, the tax com-
17 missioner shall notify the taxpayer, in writing, of the
18 amount of tax, additions to tax, penalties or interest due.
19 The taxpayer shall have fifteen days after receipt of
20 such notice within which to make payment. If the tax-
21 payer fails to make payment within such fifteen-day
22 period, the tax commissioner shall proceed under section
23 eleven of this article to collect the amount due.

§11-10-7. Assessment.

1 (a) *General.*—If the tax commissioner believes that
2 any tax administered under this article has been in-
3 sufficiently returned by a taxpayer, either because the
4 taxpayer has failed to properly remit the tax, or has
5 failed to make a return, or has made a return which is
6 incomplete, deficient or otherwise erroneous, he may

7 proceed to investigate and determine or estimate the tax
8 liability and make an assessment therefor.

9 (b) *Jeopardy assessments.*—If the tax commissioner
10 believes that the collection of any tax administered under
11 this article will be jeopardized by delay, he shall there-
12 upon make an assessment of tax, noting that fact upon
13 the assessment. The amount assessed shall immediately
14 be due and payable. Unless the taxpayer against whom
15 a jeopardy assessment is made petitions for reassessment
16 within twenty days after service of notice of the jeopardy
17 assessment, such assessment shall become final: *Pro-*
18 *vided,* That upon written request of the taxpayer made
19 within such twenty-day period, showing reasonable
20 cause therefor, the tax commissioner may grant an
21 extension of time not to exceed thirty additional days
22 within which such petition may be filed. If a taxpayer
23 against whom a jeopardy assessment has been made
24 petitions for reassessment or requests an extension of
25 time to file a petition for reassessment, the petition or
26 request shall be accompanied by such security as the
27 tax commissioner may deem necessary to insure com-
28 pliance with the applicable provisions of this chapter. If
29 such petition for reassessment is filed, accompanied by the
30 necessary security, the provisions for hearing, determina-
31 tion and appeal set forth in sections nine and ten shall
32 then be applicable.

33 (c) *Abatement or amendment of assessment.*—The tax
34 commissioner may abate or amend, in whole or in part,
35 any assessment whenever he ascertains that such assess-
36 ment is improper or incomplete in any material re-
37 spect.

§11-10-8. Notice of assessment; petition for reassessment.

1 The tax commissioner shall give the taxpayer written
2 notice of any assessment or amended assessment made
3 pursuant to this article. Unless the taxpayer to whom a
4 notice of assessment, or amended assessment, is given
5 shall, within sixty days after service thereof (except in
6 the case of jeopardy assessments, as to which the time
7 for filing a petition is specified in section seven), either
8 personally or by certified mail, file with the tax com-

9 missioner a petition in writing, verified under oath by
10 the taxpayer or his duly authorized agent, having knowl-
11 edge of the facts, setting forth with particularity the
12 items of the assessment objected to, together with the
13 reasons for the objections, the assessment or amended
14 assessment shall become final and not subject to either
15 administrative or judicial review under the provisions
16 of sections nine and ten of this article. The amount of
17 an assessment or amended assessment shall be due and
18 payable on the day following the date upon which the
19 assessment or amended assessment becomes final.

§11-10-9. Hearing procedure.

1 When a petition for reassessment provided for in sec-
2 tion eight of this article, or a petition for refund or credit
3 provided for in section fourteen of this article, is filed
4 within the time prescribed by said sections for such
5 filing, or a hearing is requested pursuant to the provisions
6 of any other article of this chapter which is administered
7 under this article, the tax commissioner shall assign a
8 time and place for a hearing upon the same and shall
9 notify the petitioner of such hearing by written notice
10 at least twenty days in advance thereof. Such hearing
11 shall be held within ninety days from the date of filing
12 the petition or other written request for hearing unless
13 continued by agreement of the parties or by the tax
14 commissioner for good cause.

15 The hearing shall be informal and shall be conducted
16 in an impartial manner by the tax commissioner or a
17 hearing examiner designated by him. If the hearing is
18 on a petition for reassessment the burden of proof shall
19 be upon the taxpayer to show the assessment is incorrect
20 and contrary to law, either in whole or in part. If the
21 hearing is on a petition for refund or credit, the petitioner
22 shall also have the burden of proof.

23 After any hearing as above provided for, the tax
24 commissioner shall, within a reasonable time, give notice
25 in writing of his decision. Unless an appeal from the
26 decision of the tax commissioner rendered in any such
27 hearing is taken, pursuant to the provisions of section
28 ten of this article, within sixty days after service of such

29 notice, the tax commissioner's decision shall become final
30 and conclusive and not subject to either administrative
31 or judicial review. The amount, if any, due the state
32 under such decision shall be due and payable on the
33 day following the date upon which such decision becomes
34 final. The amount, if any, due the taxpayer under such
35 decision shall be promptly refunded, or the same may
36 be credited pursuant to section fourteen of this article.

§11-10-10. Appeals.

1 (a) *Right of appeal.*—A taxpayer may appeal the ad-
2 ministrative decision of the tax commissioner issued
3 under section nine or fourteen of this article, by taking
4 an appeal to the circuit courts of this state within sixty
5 days after being served with notice of the administrative
6 decision.

7 (b) *Venue.*—The appeal may be taken in the circuit
8 court of any county:

- 9 (1) wherein the activity taxed was engaged in; or
- 10 (2) wherein the taxpayer resides; or
- 11 (3) wherein the will of the decedent was probated
- 12 or letters of administration granted; or
- 13 (4) to the circuit court of Kanawha County.

14 (c) *Petition for appeal.*—The appeal proceeding shall
15 be instituted by filing a petition with the circuit court,
16 or the judge thereof in vacation, within the sixty-day
17 period prescribed in subsection (a). The clerk of the
18 circuit court shall within ten days after date the petition
19 is filed, serve the tax commissioner with a copy of the
20 same by registered or certified mail. This petition shall
21 be in writing, verified under oath by the taxpayer, or his
22 duly authorized agent, having knowledge of the facts,
23 set forth with particularity the items of the administra-
24 tive decision or the assessment objected to, together with
25 the reasons for such objections.

26 (d) *Appeal bond.*—Before the appeal is heard, the
27 taxpayer shall file with the clerk of the circuit court a
28 cash bond or a corporate surety bond approved by the
29 clerk. The surety must be qualified to do business in this
30 state. These bonds shall be conditioned that the taxpayer
31 shall perform the orders of the court. The penalty of this

32 bond shall be not less than the total amount of tax,
33 additions to tax, penalties and interest for which the
34 taxpayer was found liable in the administrative decision
35 of the tax commissioner. Notwithstanding the foregoing
36 and in lieu of such bond, the tax commissioner may, upon
37 a sufficient showing by the taxpayer, certify to the
38 clerk of the circuit court that the assets of the taxpayer
39 subject to the lien imposed by section twelve of this
40 article, or other indemnification, are adequate to secure
41 performance of the orders of the court.

42 (e) *Appeal*.—The court shall hear the appeal and de-
43 termine anew all questions submitted to it on appeal
44 from the determination of the tax commissioner. In
45 such appeal a certified copy of the tax commissioner's
46 notice of assessment and administrative decision thereon
47 shall be admissible and shall constitute prima facie
48 evidence of the tax due under the provisions of those
49 articles of this chapter to which this article is applicable.
50 The court shall render its decree thereon and a certified
51 copy of said decree shall be filed by the clerk of the
52 court with the tax commissioner who shall then correct
53 the assessment in accordance with the decree. An appeal
54 may be taken by the taxpayer or the tax commissioner to
55 the supreme court of appeals of this state.

§11-10-11. Collection.

1 (a) *General*.—The tax commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by
3 this article or any of the other articles of this chapter
4 to which this article is applicable. In addition to all
5 other remedies available for the collection of debts due
6 this state, the tax commissioner may proceed by fore-
7 closure of the lien provided in section twelve, or by
8 distraint and sale under section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable*.—

11 (1) Any person contracting with a nonresident con-
12 tractor subject to the taxes imposed by articles thirteen,
13 twenty-one and twenty-four of this chapter, shall with-
14 hold payment, in the final settlement of such contract, of
15 such sufficient amount, not exceeding six percent of the

16 contract price, as will in such person's opinion be suffi-
17 cient to cover such taxes, until the receipt of a certificate
18 from the tax commissioner to the effect that the above
19 referenced taxes imposed against the nonresident con-
20 tractor have been paid or provided for.

21 (2) If any person shall fail to withhold as provided
22 herein, such person shall be personally liable for the
23 payment of all such taxes attributable to the contract,
24 not to exceed six percent of the contract price. The same
25 shall be recoverable by the tax commissioner by appro-
26 priate legal proceedings.

27 (c) *Prerequisite for issuance of certificate of dissolu-*
28 *tion or withdrawal of corporation.*—The secretary of state
29 shall withhold the issuance of any certificate of dissolu-
30 tion or withdrawal in the case of any corporation orga-
31 nized under the laws of this state, or organized under
32 the laws of another state and admitted to do business in
33 this state, until the receipt of a certificate from the tax
34 commissioner to the effect that every tax administered
35 under this article imposed against any such corporation
36 has been paid or provided for, or that the applicant is
37 not liable for any tax administered under this article.

38 (d) *Prerequisite to final settlement of contract with*
39 *this state or political subdivision; penalty.*—All state,
40 county, district and municipal officers and agents making
41 contracts on behalf of this state or any political sub-
42 division thereof shall withhold payment, in the final
43 settlement of any such contract, until the receipt of a
44 certificate from the tax commissioner to the effect that
45 the taxes imposed by articles thirteen, twenty-one and
46 twenty-four of this chapter against the contractor have
47 been paid or provided for. If the transaction embodied
48 in such contract or the subject matter of the contract is
49 subject to county or municipal business and occupation
50 tax, then such payment shall also be withheld until re-
51 ceipt of a release from such county or municipality to
52 the effect that all county or municipal business and occu-
53 pation taxes levied or accrued against the contractor have
54 been paid. Any official violating this section shall be
55 subject to a civil penalty of one thousand dollars, re-

56 coverable as a debt in a civil action brought by the tax
57 commissioner.

58 (e) *Limited effect of tax commissioner's certificates.*—
59 The certificates of the tax commissioner provided for in
60 subsections (b), (c) and (d) of this section shall not
61 bar subsequent investigations, assessments, refunds and
62 credits with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *lien.*—

65 (1) If any person subject to any tax administered
66 under this article sells out his or its business or stock
67 of goods, or ceases doing business, any tax, additions to
68 tax, penalties and interest imposed by this article or any
69 of the other articles of this chapter to which this article
70 is applicable shall become due and payable immediately
71 and such person shall, within thirty days after selling
72 out his or its business or stock of goods or ceasing to do
73 business, make a final return or returns and pay any tax
74 or taxes which may be due. The unpaid amount of any
75 such tax shall be a lien upon the property of such person.

76 (2) The successor in business of any such person
77 shall withhold so much of the purchase money as will
78 satisfy any tax, additions to tax, penalties and interest
79 which may be due until the former owner shall produce
80 a receipt from the tax commissioner evidencing the pay-
81 ment thereof. If the purchaser of a business or stock of
82 goods shall fail to withhold purchase money as provided
83 above, and if any such tax, additions to tax, penalties
84 and interest remain unpaid after expiration of the thirty-
85 day period allowed for payment thereof, the purchaser
86 shall be personally liable for the payment of any such
87 tax, additions to tax, penalties and interest and the same
88 shall be recoverable by the tax commissioner by action
89 as provided by this section.

90 (g) *Injunction.*—If the taxpayer fails for a period of
91 more than sixty days to fully comply with any of the
92 provisions of this article or of any other article of this
93 chapter to which this article is applicable, the tax com-
94 missioner may institute a proceeding to secure an in-
95 junction to restrain the taxpayer from doing business in

96 this state until the taxpayer fully complies with the
97 provisions of this article or any of such other articles.

98 (h) *Costs*.—In any proceeding under this section, upon
99 judgment or decree for the tax commissioner, he shall
100 be awarded his costs.

§11-10-12. Liens.

1 (a) *General*.—Any tax, additions to tax, penalties
2 or interest due and payable under this article or any
3 of the other articles of this chapter to which this article
4 is applicable shall be a debt due this state. It shall
5 be a personal obligation of the taxpayer and shall be
6 a lien upon the real and personal property of the tax-
7 payer.

8 (b) *Duration of lien*.—The lien created by this sec-
9 tion shall continue until the liability for the tax, addi-
10 tions to tax, penalties and interest is satisfied or be-
11 comes unenforceable by reason of lapse of time.

12 (c) *Recordation*.—The lien created by this section
13 shall be subject to the restrictions and conditions em-
14 bodied in article ten-c, chapter thirty-eight of this code
15 and any amendment made or which may hereafter be
16 made thereto.

17 (d) *Release*.—The tax commissioner, pursuant to
18 rules or regulations prescribed by him, may issue his
19 certificate of release of any lien created pursuant to this
20 section when the debt is adequately secured by bond
21 or other security. He shall issue his certificate of re-
22 lease when the debt secured has been satisfied. The
23 certificate of release shall be issued in duplicate. One
24 copy shall be forwarded to the taxpayer, and the other
25 copy shall be forwarded to the clerk of the county com-
26 mission of the county wherein the lien is recorded. The
27 clerk of the county commission shall record the release
28 without payment of any fee and such recordation shall
29 constitute a release and full discharge of the lien.

§11-10-13. Distraint.

1 If any tax administered under this article is required
2 to be paid at the time a return is filed and if any portion
3 of such tax is not so paid, or if an assessment of tax is

4 made by the tax commissioner and notice thereof is
5 given as required by this article and such assessment
6 has become final and is not subject to administrative
7 or judicial review, the tax commissioner may issue a
8 warrant directed to the sheriff of any county of this
9 state commanding him to levy upon and sell the real
10 and personal property, including intangibles represented
11 by negotiable evidences of indebtedness, of the tax-
12 payer owning the same found within his county for
13 the payment of the amount of all taxes, additions to
14 tax, penalties and interest accrued and unpaid under
15 any of the articles of this chapter to which this article
16 is applicable. A sheriff so collecting taxes due here-
17 under shall be entitled to compensation in the amount
18 of all additions to tax collected over and above the prin-
19 cipal amount of tax, penalties and interest due, but in
20 no case shall such compensation exceed one hundred
21 dollars. The sheriff shall return such warrant to the
22 tax commissioner and pay to him the money collected
23 by virtue thereof by the time specified in the warrant,
24 but not later than sixty days from the date of such
25 warrant. In the discretion of the tax commissioner, a
26 warrant of like terms, force and effect may be issued
27 and directed to any officer or employee of the state
28 tax department and in the execution thereof such officer
29 or employee shall have all powers conferred by law
30 upon sheriffs, but shall be entitled to no fee or compen-
31 sation in excess of all reasonable and necessary ex-
32 penses actually paid in the performance of such duty.
33 If a warrant is returned not satisfied in full, the tax
34 commissioner may proceed to enforce the claim for taxes
35 by civil action.

§11-10-14. Overpayments; credits; refunds; and limitations.

1 (a) *Refunds or credits of overpayments.*—In the case
2 of overpayment of any tax, additions to tax, penalties
3 or interest imposed by this article or any of the other
4 articles of this chapter to which this article is applicable,
5 the tax commissioner shall, subject to the provisions
6 of this article, refund to the taxpayer the amount of the
7 overpayment or, if the taxpayer so elects, apply the

8 same as a credit against the taxpayer's liability for such
9 tax for other periods. The refund or credit shall in-
10 clude any interest due the taxpayer under the provisions
11 of section seventeen of this article.

12 (b) *Refunds or credit of gasoline and special fuel*
13 *excise tax or motor carrier road tax.*—Any person who
14 seeks a refund or credit of gasoline and special fuel
15 excise tax under the provisions of sections ten, eleven
16 or twelve of article fourteen or the provisions of sec-
17 tions nine or eleven of article fourteen-a of this chapter
18 shall file his claim for refund or credit in accordance
19 with the provisions of such sections. The ninety-
20 day time period for determination of these claims pro-
21 vided in subsection (d) shall not apply to such claims
22 for refund or credit.

23 (c) *Claims for refund or credit.*—No refund or credit
24 shall be made unless the taxpayer has timely filed a
25 claim for refund or credit with the tax commissioner.
26 A person against whom an assessment or an adminis-
27 trative decision has become final shall not be entitled
28 to file a claim for refund or credit with the tax com-
29 missioner as prescribed herein. The tax commissioner
30 shall determine the taxpayer's claim and notify the tax-
31 payer in writing of his determination.

32 (d) *Petition for refund or credit; hearing.*—If the
33 taxpayer is not satisfied with the tax commissioner's
34 determination of his claim for refund or credit, or if
35 the tax commissioner has not determined the taxpayer's
36 claim within ninety days after such claim was filed, or
37 six months in the case of claims for refund or credit
38 of the taxes imposed by articles twenty-one and twenty-
39 four of this chapter, after the filing thereof, the tax-
40 payer may file with the tax commissioner, either per-
41 sonally or by certified mail, a petition for refund or
42 credit: *Provided*, That no petition for refund or credit
43 may be filed more than sixty days after the taxpayer
44 is served with notice of denial of his claim. The petition
45 for refund or credit shall be in writing, verified under
46 oath by the said taxpayer or his duly authorized agent
47 having knowledge of the facts, and shall set forth with
48 particularity the items of the determination objected to,

49 together with the reasons for the objections. When a
50 petition for refund or credit is properly filed, the pro-
51 cedures for hearing and for decision prescribed in sec-
52 tion nine shall be followed.

53 (e) *Appeal*.—An appeal from the tax commissioner's
54 decision upon the petition for refund or credit may be
55 taken by the taxpayer in the same manner and under
56 the same procedure as that set forth in section eleven
57 relating to an appeal from the tax commissioner's deci-
58 sion on a petition for reassessment, but no bond shall
59 be required of the taxpayer.

60 (f) *Decision of the court*.—Where the appeal is to
61 review an administrative decision on a petition for re-
62 fund or credit, the court may determine the legal rights
63 of the parties but in no event shall it enter a judgment
64 for money.

65 (g) *Refund made or credit established*.—The tax
66 commissioner shall promptly issue his requisition on
67 the treasury or establish a credit, as requested by the
68 taxpayer, for any amount finally administratively or
69 judicially determined to be an overpayment of any tax
70 administered under this article. The auditor shall issue
71 his warrant on the treasurer for any refund req-
72 uisitioned under this subsection payable to the tax-
73 payer entitled to the refund, and the treasurer shall
74 pay such warrant out of the fund into which the amount
75 so refunded was originally paid.

76 (h) *Forms for claim for refund or a credit; where*
77 *return shall constitute claim*.—The tax commissioner
78 may prescribe by rule or regulation the forms for claims
79 for refund or credit. Notwithstanding the foregoing,
80 where the taxpayer has overpaid the tax imposed by
81 article twenty-one or article twenty-four of this chapter,
82 a return signed by the taxpayer which shows on its
83 face that an overpayment of such tax has been made shall
84 constitute a claim for refund or a credit.

85 (i) *Remedy exclusive*.—The procedure provided by
86 this section shall constitute the sole method of obtaining
87 any refund or any credit, it being the intent hereof
88 that the procedure set forth in this article shall be in
89 lieu of any other remedy, including the uniform de-

claratory judgments act embodied in chapter fifty-five, article thirteen of this code and the provisions of section two-a, article one of this chapter.

(j) *Applicability of this section.*—The provisions of this section shall apply to refunds or credits of any tax, additions to tax, penalties or interest imposed by any article of this chapter to which this article is applicable, for any refund or credit sought after the first day of July, one thousand nine hundred seventy-eight, irrespective of whether the claim of refund or credit is for a tax period ending prior to that date.

(k) *Erroneous refund or credit.*—If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and may make an assessment or institute civil action to recover the amount of such refund or credit.

(l) *Limitation on claims for refund or credit.*—

(1) General rule.—Whenever a taxpayer claims to be entitled to a refund or credit of any tax, additions to tax, penalties or interest paid into the treasury of this state, such taxpayer shall, except as provided in subsection (d), file his claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid, and not thereafter.

(2) Extension of time for filing claim by agreement.—The tax commissioner and the taxpayer may enter into written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment.—Notwithstanding subdivisions (1) and (2) of this subsection, if an agreement is made under the provisions of section fifteen of this article

131 extending the time period in which an assessment of a
132 tax can be made, then the time period for filing a claim
133 for refund or credit for an overpayment of the same
134 tax made during the periods subject to assessment under
135 the extension agreement shall also be extended for the
136 period of the extension agreement plus ninety days.

137 (4) Overpayment of federal tax.—Notwithstanding
138 subdivisions (1) and (2) of this subsection, in the event
139 of a final determination by the United States internal
140 revenue service or other competent authority of an over-
141 payment in the taxpayer's federal income tax liability,
142 the period of limitation upon claiming a refund reflect-
143 ing such final determination in taxes imposed by articles
144 twelve-a, twenty-one and twenty-four of this chapter
145 shall not expire until six months after such determination
146 is made by the United States internal revenue ser-
147 vice or other competent authority.

148 (5) Deficiencies in business and occupation or carrier
149 income taxes.—Notwithstanding subdivisions (1) and (2)
150 of this subsection, in the event of a final administrative
151 or judicial determination of a deficiency in the tax-
152 payer's liability for taxes imposed by articles twelve-a
153 and thirteen of this chapter, the period of limitation
154 upon claiming a refund reflecting such final determina-
155 tion in the taxes imposed by articles twenty-one and
156 twenty-four of this chapter shall not expire until six
157 months after such final determination is made.

158 (6) Exception for gasoline and special fuel excise tax
159 and motor carrier road tax.—This subsection (k) shall not
160 apply to refunds of gasoline and special fuel excise tax
161 or motor carrier road tax sought under the provisions
162 of article fourteen or article fourteen-a of this chap-
163 ter.

164 (7) Transition rules.—The general rule prescribed in
165 subdivision (1) of this subsection shall be subject to
166 the following transition rules:

167 (A) *For tax periods ending prior to July 1, 1967.—*
168 With respect to any tax imposed for any period ending
169 prior to the first day of July, one thousand nine hundred
170 sixty-seven, the taxpayer must file his claim within three
171 years from the date of payment and not thereafter.

172 (B) *For tax periods ending on or after July 1, 1967,*
173 *but prior to January 1, 1979.*—With respect to any tax
174 imposed for any period ending after the first day of
175 July, one thousand nine hundred sixty-seven, but prior to
176 the first day of January, one thousand nine hundred
177 seventy-nine, taxpayer must file his claim within five
178 years from the date of payment and not thereafter.

179 (C) *For tax periods ending after December 31, 1978,*
180 *but prior to January 1, 1980.*—With respect to any tax
181 imposed for any period ending after the thirty-first day
182 of December, one thousand nine hundred seventy-eight,
183 but prior to the first day of January, one thousand nine
184 hundred eighty, taxpayer must file his claim within four
185 years from the date of payment and not thereafter.

§11-10-15. Limitations on assessment.

1 (a) *General rule.*—The amount of any tax, additions
2 to tax, penalties and interest imposed by this article or
3 any of the other articles of this chapter to which this
4 article is applicable shall be assessed within three years
5 after the due date of the returns: *Provided*, That in the
6 case of a false or fraudulent return filed with the intent
7 to evade tax, or in case no return is filed, the assessment
8 may be made at any time.

9 (b) *Extension by agreement.*—The tax commissioner
10 and the taxpayer may enter into written agreements to
11 extend the period within which the tax commissioner
12 may make an assessment against the taxpayer which
13 period shall not exceed two years. The period so agreed
14 upon may be extended for additional periods not in excess
15 of two years each by subsequent agreements in writing
16 made before the expiration of the period previously
17 agreed upon.

18 (c) *Deficiency in federal tax.*—Notwithstanding sub-
19 section (a), in the event of a final determination by the
20 United States internal revenue service or other com-
21 petent authority of a deficiency in the taxpayer's federal
22 income tax liability, the period of limitation upon assess-
23 ment of a deficiency reflecting such final determination
24 in the net income tax imposed by article twelve-a and
25 the taxes imposed by articles twenty-one and twenty-
26 four of this chapter shall not expire until ninety days

27 after the tax commissioner is advised of the determina-
28 tion by the taxpayer as provided in section six-a of
29 said article twelve-a, section fifty-nine of said article
30 twenty-one and section twenty of said article twenty-
31 four, or until the period of limitations upon assessment
32 provided in subsection (a) has expired, whichever ex-
33 pires the later.

34 (d) *Transition rules.*—The general rule prescribed in
35 subsection (a) of this section shall be subject to the
36 following transition rules:

37 (1) *For tax periods ending prior to January 1, 1979.*—
38 With respect to any tax period ending prior to the first
39 day of January, one thousand nine hundred seventy-
40 nine, the amount of tax, additions to tax, penalties and
41 interest shall be assessed within five years after the due
42 date of the return or the date the return was filed,
43 whichever expires the later, except as provided for a
44 false or fraudulent return.

45 (2) *For tax periods ending after December 31, 1978,*
46 *but prior to January 1, 1980.*—With respect to any tax
47 imposed for any period ending after the thirty-first day
48 of December, one thousand nine hundred seventy-eight,
49 but prior to the first day of January, one thousand nine
50 hundred eighty, the amounts of tax, additions to tax,
51 penalties and interest shall be assessed within four years
52 after the due date of the return or the date the return was
53 filed, whichever expires the later, except as provided
54 for a false or fraudulent return.

§11-10-16. Limitations on collection.

1 (a) *Where assessment is issued.*—Every proceeding
2 instituted by the tax commissioner for the collection of
3 the amount found to be due under an assessment which
4 has become final of any tax, additions to tax, penalties or
5 interest imposed by this article or any of the other articles
6 of this chapter to which this article is applicable, irre-
7 spective of whether such proceeding shall be instituted in
8 a court or by utilization of other methods provided by
9 law for the collection of such tax, additions to tax, penalty
10 or interest, shall be brought or commenced within five

11 years after the date on which such assessment has be-
12 come final.

13 (b) *Where assessment is not issued.*—Every proceeding
14 instituted by the tax commissioner for the collection of
15 the amount determined to be due by methods provided by
16 law other than the issuance of an assessment, of any tax,
17 additions to tax, penalties or interest imposed by this
18 article or any of the other articles of this chapter to
19 which this article is applicable, irrespective of whether
20 such proceeding shall be instituted in a court or by utili-
21 zation of other methods provided by law for the collec-
22 tion of such tax, additions to tax, penalties or interest,
23 shall be brought or commenced within five years after the
24 date on which the taxpayer filed the annual return re-
25 quired to be filed by any of the articles of this chapter
26 and, if no annual return is required, such five-year period
27 shall begin on the day after the latest periodical return
28 required to be filed in any year is filed.

29 (c) *Exception as to false or fraudulent return or no*
30 *return.*—In the case of the filing of a false or fraudulent
31 return, or in case no return is filed, the limitations speci-
32 fied in this section shall not apply.

33 (d) *Exception as to inheritance tax liens.*—This section
34 shall not apply to, or in any manner affect, the inheritance
35 tax liens created by sections nine and eighteen, article
36 eleven of this chapter.

37 (e) *Extension of time for institutions of collection pro-*
38 *ceedings by agreement.*—The tax commissioner and the
39 taxpayer may enter into written agreement to extend the
40 period within which the tax commissioner may institute
41 proceedings for the collection of the amount found to be
42 due under an assessment which has become final, or the
43 amount determined to be due by methods provided by
44 law other than the issuance of the assessment, of any tax,
45 additions to tax, penalties or interest imposed by this
46 article or any of the other articles of this chapter to
47 which this article is applicable. Such period shall not
48 exceed two years. The period so agreed upon may be ex-
49 tended for additional periods not in excess of two years
50 each by subsequent agreements in writing made before
51 the expiration of the period previously agreed upon.

§11-10-17. Interest.

1 (a) *Underpayments.*—If any amount of a tax admin-
2 istered under this article is not paid on or before the last
3 date prescribed for payment, interest on such amount at
4 the rate of eight percent per annum shall be paid for
5 the period from such last date to the date paid. For
6 purposes of this subsection, the last date prescribed for
7 payment shall be the due date of the return and shall
8 be determined without regard to any extension of time
9 for payment.

10 (b) *Underpayment of estimated business and occupa-*
11 *tion tax.*—In the case of an underpayment of estimated
12 tax by a person who is taxable under the provisions of
13 article thirteen of this chapter, there shall be added to
14 the amount of tax due under section four of said article
15 thirteen, from the date such tax should have been paid,
16 interest in the amount of eight percent per annum. An
17 underpayment of estimated tax means the application of
18 rates set forth in this article against estimated values or
19 gross income which constitutes less than eighty percent
20 of actual receipts.

21 (c) *Erroneous refund or credit.*—If any refund is
22 made or credit is established upon an erroneous claim for
23 refund or credit, interest on such amount refunded or
24 credited at the rate of eight percent per annum shall be
25 paid by the claimant from the date the refund was made
26 or the credit was taken to the date such amount is re-
27 covered.

28 (d) *Overpayments.*—Interest shall be allowed and
29 paid at the rate of eight percent per annum upon any
30 amount which has been finally administratively or judi-
31 cially determined to be an overpayment in respect of
32 each tax administered under this article except the taxes
33 imposed by articles twelve, fourteen and fourteen-a of
34 this chapter. Such interest shall be allowed and paid
35 for the period commencing with the date of the filing by
36 taxpayer of a claim for refund or credit with the tax
37 commissioner and ending with the date of final adminis-
38 trative or judicial determination of overpayment. The
39 tax commissioner shall, within thirty days after such
40 final determination of entitlement to refund, issue his

41 requisition or establish a credit as requested by the
42 taxpayer. Whenever the tax commissioner fails or re-
43 fuses to issue any such requisition or establish such credit
44 within said thirty-day period, the interest provided
45 herein shall commence to accrue anew until performance
46 by the tax commissioner. The acceptance of such refund
47 check or credit shall be without prejudice to any right
48 of the taxpayer to claim any additional overpayment
49 and interest thereon.

50 (e) *Applicable rules.*—

51 (1) No interest payable on tax refunded or credited
52 within ninety days after claim for refund or credit is
53 filed.—In the event of any overpayment of any tax ad-
54 ministered under this article, except the taxes imposed
55 by articles twenty-one and twenty-four of this chapter,
56 where the tax commissioner issues his requisition or
57 establishes a credit as requested by the taxpayer within
58 ninety days after the date of the filing by the taxpayer
59 of a claim for refund or credit, no interest shall be
60 allowed under this section.

61 (2) No interest payable where personal income tax
62 and corporation net income tax refunded or credited
63 within six months after claim for refund or credit is
64 filed.—In the event of any overpayment of the taxes
65 imposed by articles twenty-one and twenty-four of this
66 chapter, where the tax commissioner issues his requis-
67 tion or establishes a credit as requested by the taxpayer
68 within six months after the date of the filing by the
69 taxpayer of a claim for refund or credit, no interest shall
70 be allowed under this section.

71 (3) Interest treated as tax.—Interest prescribed under
72 this section on any tax shall be collected and paid in
73 the same manner as taxes.

74 (4) No interest on interest.—No interest under this
75 section shall be imposed on the interest provided by this
76 section.

77 (5) Interest on penalties or additions to tax.—Interest
78 shall be imposed under subsection (a) on any assessable
79 penalty or additions to tax only if such penalty or addi-
80 tions to tax is not paid within fifteen days from the date
81 of notice and demand therefor, and in such case interest

82 shall be imposed only for the period from the date of
83 the notice and demand to the date of payment.

84 (6) Payments made within fifteen days after notice
85 and demand.—If notice and demand is made for payment
86 of any amount, and if such amount is paid within fifteen
87 days after the date of such notice and demand, interest
88 under this section on the amount so paid shall not be
89 imposed for the period after the date of such notice and
90 demand.

§11-10-18. Additions to tax.

1 (a) *Failure to file return or pay tax due.*—

2 (1) In the case of failure to make or file a required re-
3 turn of any tax administered under this article, unless it
4 is shown that such failure is due to reasonable cause and
5 not due to willful neglect, there shall be added to the
6 amount required to be shown as tax on such return five
7 percent of the amount of such tax if the failure is for more
8 than one month, with an additional five percent for each
9 additional month or fraction thereof during which such
10 failure continues, not exceeding twenty-five percent in
11 the aggregate: *Provided*, That this addition to tax shall
12 be imposed only on the net amount of tax due;

13 (2) In the case of failure to pay the amount shown as
14 tax on any required return of any tax administered under
15 this article on or before the date prescribed for payment
16 of such tax (determined with regard to any extension of
17 time for payment), unless it is shown that such failure is
18 due to reasonable cause and not due to willful neglect,
19 there shall be added to the amount shown as tax on such
20 return one half of one percent of the amount of such tax
21 if the failure is for not more than one month, with an
22 additional one half of one percent for each additional
23 month or fraction thereof during which such failure
24 continues, not exceeding twenty-five percent in the aggre-
25 gate: *Provided, however*, That the addition to tax shall
26 be imposed only on the net amount of tax due;

27 (b) *Limitation and special rule.*—In computing addi-
28 tions to tax under this section, only one of the para-
29 graphs of subsection (a) shall be applicable to any one
30 taxable period. If the correct amount of tax due is less

31 than the amount shown on the return, paragraphs (1)
32 and (2) of subsection (a) shall apply only to the lower
33 amount.

34 (c) *Negligence or intentional disregard of rules and*
35 *regulations.*—In the case of underpayment of any tax
36 administered under this article which is due to negli-
37 gence or intentional disregard of rules and regulations
38 (but without intent to defraud), there shall be added to
39 the amount of tax due five percent of the amount of
40 such tax if the underpayment due to negligence or in-
41 tentional disregard of rules and regulations is for more
42 than one month, with an additional five percent for each
43 additional month or fraction thereof during which such
44 underpayment continues, not exceeding twenty-five per-
45 cent in the aggregate: *Provided*, That this additions to
46 tax shall be imposed only on the net amount of tax due
47 and shall be in lieu of the additions to tax provided for
48 in subsection (a).

49 (d) *False or fraudulent return.*—In the case of the
50 filing of any false or fraudulent return with intent to
51 evade any such tax, or in the case of willful failure to
52 file a return with intent to evade tax, there shall be
53 added to the tax due an amount equal to fifty percent
54 thereof which shall be in lieu of the additions to tax
55 provided for in subsections (a) and (c). The burden of
56 proving fraud, willfulness, or intent to evade tax shall
57 be upon the tax commissioner.

58 (e) *Additions to tax treated as tax.*—Additions to tax
59 prescribed under this section on any tax shall be assessed,
60 collected and paid in the same manner as taxes.

§11-10-19. Penalties.

1 (a) *Failure to collect, account for, and pay over tax,*
2 *or attempt to defeat or evade tax.*—Any person required
3 to collect, account for and pay over any tax administered
4 under this article, who willfully fails truthfully to account
5 for and pay over such tax, and any person who willfully
6 attempts in any manner to evade or defeat any such tax
7 or the payment thereof, shall, in addition to other penal-
8 ties provided by law, be liable for a money penalty equal
9 to the total amount evaded, or not collected, or not ac-

10 counted for and paid over. No additions to tax shall be
11 imposed under section eighteen for any offense to which
12 this subsection is applicable.

13 (b) *Fraudulent statement or failure to furnish state-*
14 *ment to employees.*—Any person required under the
15 provisions of section seventy-two, article twenty-one of
16 this chapter to furnish a statement to an employee, who
17 willfully furnishes a false or fraudulent statement, or
18 who willfully fails to furnish a statement in the manner,
19 at the time, and showing the information required by
20 said section, or regulations prescribed thereunder, shall
21 for each such failure be subject to a money penalty of
22 fifty dollars.

23 (c) *Fraudulent claim for refund or credit.*—In the
24 case of the filing of a false or fraudulent claim for refund
25 or credit with the intent to defraud this state, there shall
26 be added to such amount erroneously refunded or credited
27 a penalty equal to fifty percent thereof. No additions to
28 tax shall be imposed under section eighteen for any
29 offense to which this subsection is applicable. The burden
30 of proving fraud or intent to defraud shall be upon the
31 tax commissioner.

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

§11-10-20. Effective date; transition rules.

1 (a) The provisions of this article shall take effect on
2 the first day of July, one thousand nine hundred seventy-
3 eight, except to the extent modified in this section.

4 (b) The provisions of sections one through fourteen
5 shall apply on and after the effective date of this article
6 irrespective of when the tax liability arose: *Provided,*
7 That when the assessment has been made prior to the
8 effective date of this article, the rights and duties of the
9 taxpayer and the state of West Virginia shall be de-
10 termined with regard to the assessment, hearing and
11 appeals therefrom by the laws of the state of West Vir-
12 ginia as they existed prior to the effective date hereof,
13 which laws shall be preserved and continued with respect
14 to such assessment, hearing and appeals as fully and
15 completely as if set forth in extenso herein.

16 (c) The provisions of sections fifteen through nineteen
17 shall apply only with respect to taxes imposed for periods
18 ending on or after the effective date of this article.
19 Tax liabilities, if any, arising prior to the effective date
20 of this article shall, with respect to additions to tax,
21 penalties and interest, be determined, administered and
22 assessed as if this act and the sections and articles it
23 amends and reenacts or repeals had not been amended
24 and reenacted or repealed, and the rights and duties
25 of the taxpayers and the state of West Virginia shall
26 be fully and completely preserved.

27 (d) Notwithstanding subsection (c) above, the pro-
28 visions of sections sixteen, seventeen, eighteen and nine-
29 teen of this article may apply to tax liabilities arising
30 during any period prior to the effective date of this
31 article if (1) the tax commissioner has not issued an
32 assessment with respect to such prior period, or (2)
33 the tax commissioner has issued such assessment which is
34 or may be the subject of a petition for reassessment and
35 his decision thereon has not been issued as of the effective
36 date of this article, and the taxpayer elects to have all
37 of the provisions of sections sixteen, seventeen, eighteen
38 and nineteen of this article apply as fully as if the same
39 had been in effect at the time the tax liability arose.
40 Such election shall be made within sixty days after
41 assessment or within sixty days after the effective date
42 of this article whichever last occurs. No election under
43 this subsection shall serve to shorten the statute of lim-
44 itations upon assessments otherwise applying to tax
45 liabilities arising prior to the effective date of this article.

§11-10-21. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-
3 stitutional or invalid, such unconstitutionality or in-
4 validity shall not affect, impair or invalidate other pro-
5 visions or applications of the article, and to this end
6 the provisions of this article are declared to be severable.

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

§11-11-9. Lien for tax; limitations upon collection.

1 Notwithstanding the limitations found in article ten

2 of this chapter, all taxes imposed by this article upon
3 any transfer, and the additions to tax, penalties and
4 interest that may accrue thereon, shall, until paid, be
5 and remain a charge and lien upon the property trans-
6 ferred, superior to any lien created after such transfer,
7 and no title shall vest or be transferred as to any such
8 property, except subject to the lien for such taxes, addi-
9 tions to tax, penalties and interest, and no such property
10 shall be transferred or delivered, in whole or in part,
11 until the payment into the treasury of the state of the
12 amount of such tax: *Provided*, That this restriction shall
13 not apply to the transfer or delivery of twenty-five hun-
14 dred dollars or less from the balance of a joint bank
15 account of which the decedent was a co-owner when such
16 transfer or delivery is to the surviving co-owner or co-
17 owners and such a co-owner or co-owners are within
18 the class designated in section two (a) of this article.
19 The person to whom the property is transferred, if he
20 shall receive the same before the tax thereon is paid,
21 and the executors, administrators and trustees having
22 charge of every estate so transferred, shall be personally
23 liable for such tax, additions to tax, penalties and in-
24 terest until its payment: *Provided, however*, That such
25 lien and the tax, additions to tax, penalties and interest
26 represented thereby shall not be enforceable or col-
27 lectible either against the property or from any person
28 whatsoever after the expiration of ten years from and
29 after the death of the decedent whose property is sub-
30 ject to tax under the provisions of this article, whether
31 there has been a qualification or not upon the estate of
32 the decedent. The limitation aforesaid shall apply re-
33 gardless of whether or not a personal representative
34 has been appointed or qualified upon the estate of the
35 decedent: *Provided further*, That the limitation of ten
36 years prescribed by this section shall not be construed
37 to apply to any suit or proceeding now pending and
38 undetermined, commenced prior to the tenth day of June,
39 one thousand nine hundred forty-nine, for the enforce-
40 ment of any such lien otherwise legally enforceable but
41 for said limitation.

§11-11-10. Extension of time pending settlement of estate.

1 Whenever it shall be necessary in the settlement of
2 any estate to retain property or funds for the purpose of
3 paying any liability, the amount or validity of which
4 is not determined, the time for payment of the whole
5 or a proportionate part of such tax may be extended to
6 await disposition of such claim.

§11-11-11. Payments and collection.

1 All taxes imposed by this article shall be due and
2 payable at the death of the transferor and if paid within
3 ten months after the death of the transferor, a discount
4 of three percent shall be allowed and deducted. If not
5 paid within eleven months after the death of the trans-
6 feror, taxes due under this article shall be subject to
7 the provisions of article ten of this chapter regarding
8 additions to tax, penalties and interest, to be computed
9 from the expiration of eleven months from the date of
10 the death of the transferor until paid. The tax commis-
11 sioner may upon written application extend the time
12 for payment of such taxes on such terms and conditions
13 as he may require.

14 The provisions of this section as amended to take
15 effect on the first day of July, one thousand nine hun-
16 dred seventy-six, shall apply to estates of all decedents
17 dying on or after the first day of July, one thousand
18 nine hundred seventy-six and the provisions of this sec-
19 tion eleven, article eleven, chapter eleven of the code of
20 West Virginia, one thousand nine hundred thirty-one,
21 as amended, in effect prior to the first day of said July
22 shall apply to the estates of all decedents dying before
23 said date.

§11-11-13. Report of transfers by county commission.

1 The county commissions of all counties of the state, or
2 the clerks thereof, shall make reports in all decedent
3 estates and in all cases where a transfer otherwise occurs
4 when required by the tax commissioner. Such clerks
5 may ascertain when a transfer has occurred by reference
6 to the filing of a will, the appointment of a fiduciary,
7 or the admission to record of a deed or other writing

8 intended to take effect in possession or enjoyment, at or
9 after the death of the maker thereof, or appearing to be
10 in contemplation of his death, or be based on any infor-
11 mation otherwise derived, and shall report the same to
12 the tax commissioner. Such a report shall be made
13 quarterly as soon as possible after the first day of Janu-
14 ary, April, July and October in each year, and shall
15 relate to all such matters as were not covered by any
16 previous report. A special report may be made by the
17 clerk at any time. If there be no reason to believe that
18 any such transfer has been made since the date of the
19 last preceding report, that fact shall be stated in such
20 quarterly report, but if there be reason to believe that
21 such a transfer has been made, such quarterly or special
22 report shall show the nature thereof; the name of the *OK. J.C.P.D.*
23 decedent, deviser, grantor, vendor, bargainer or donor;
24 the name or other description, and the address of the
25 person or corporation to or for whose use or benefit any
26 property may be transferred, and the relationship, if
27 any, between such person and the person from whom the
28 property is transferred, ~~and the relationship, if any, be-~~
29 ~~tween such person and the person from whom the~~ *OK. J.C.P.D.*
30 ~~property is transferred,~~ as far as the commission or clerk
31 may have any information respecting such matters; the
32 nature of the property transferred, with such general
33 description and approximate valuation as the commis-
34 sion or clerk may be able to give. Any other person,
35 whether interested in such property or not, may make
36 a like report to the tax commissioner. Every such report,
37 whether by the clerk or by any other person, shall be
38 filed by the tax commissioner, and retained in his office
39 until the tax, additions to tax, penalties and interest be
40 paid on the transfers therein mentioned, or until it shall
41 be ascertained that they are not subject to tax, and shall
42 then be destroyed; and at all times such report shall
43 be confidential and privileged, and its contents shall not
44 be inspected or made known by anyone, except by the
45 tax commissioner as to any report made by a clerk, when
46 there shall be a question whether such clerk has com-
47 plied with the provisions of this article.

§11-11-14a. Transfer of bonds or stocks standing in the name of decedent; reports by corporations.

1 No corporation incorporated under the law of this
2 state, and no registration or transfer agent thereof,
3 shall register or transfer any bonds or stock of the cor-
4 poration standing in the name of a decedent or joint
5 names of a decedent and one or more persons or in
6 trust for a decedent until ten days' notice to the tax
7 commissioner of the time of the transfer and until the
8 tax commissioner shall consent thereto in writing. A
9 corporation or agent registering bonds or making a trans-
10 fer without the consent of the tax commissioner under
11 this section shall be liable for any tax thereafter as-
12 sessed on account of the transfer of such securities to-
13 gether with accrued additions to tax, penalties and in-
14 terest as provided for in article ten of this chapter,
15 plus an additional penalty of one thousand dollars. This
16 liability may be enforced in the manner provided in
17 section eleven, article ten of this chapter.

18 If a corporation not incorporated in this state and
19 owning property in the state, or the registration or
20 transfer agent thereof, shall register or transfer on its
21 books, bonds or stock of the corporation standing in the
22 name of a resident decedent before taxes accruing under
23 this article with respect to the transfer of such bonds
24 or stock on the death of the decedent have been paid,
25 such corporation or agent shall become liable for the
26 payment of such taxes, additions to tax, penalties and
27 interest. Property held by such a corporation or agent
28 in this state shall be subject to execution to satisfy any
29 liability of the corporation or agent under this section.
30 A receipt or certificate of authority signed by the tax
31 commissioner shall be full protection to either a domestic
32 or foreign corporation or agent thereof in the transfer
33 of any such bonds or stock.

34 The tax commissioner shall have authority to require
35 that any reports necessary to a proper enforcement of
36 this article be made by any corporation subject to the
37 provisions of this section.

§11-11-14b. Annuity and investment contracts; payments to beneficiaries; notices to tax commissioner; penalties.

1 Every corporation, partnership, association, individual,
2 order or society authorized to transact annuity contracts,
3 investment contracts, or similar types or forms of policy
4 or contract business within this state which shall pay
5 to any named beneficiary, estate or trustee upon the
6 death of a resident of this state, the proceeds of any
7 such contract or policy shall, on the date of such payment,
8 give notice thereof, in writing, to the tax commissioner
9 of West Virginia, stating (a) the amount of such pay-
10 ment, (b) the name and address of each beneficiary,
11 and (c) the time and manner of payment: *Provided*,
12 That such notice shall not be required (1) when the
13 policy or contract involved or the payment to be made
14 is fifteen hundred dollars or less and is payable to the
15 class designated in section two (a) of this article, and
16 (2) when the amount of the policy or payment to be
17 made is one thousand dollars or less.

18 Any such company so authorized to do business in
19 this state, failing or refusing to comply with the pro-
20 visions of this section, shall thereby become liable to
21 the state for any amount of tax, additions to tax, penalties
22 and interest which may be due on the amount of pay-
23 ment concerning which such company failed or refused
24 to file the notice prescribed by this section.

§11-11-15. Assessment by tax commissioner.

1 The tax commissioner shall as soon as may be, from
2 the statements and reports made by the clerk and the
3 personal representative or trustees or other person as
4 aforesaid, from the inventory of the estate, if there be
5 one, and from such other information as he may be able
6 to procure, ascertain whether any transfer of any prop-
7 erty be subject to a tax under the provisions of this
8 article, and if it be subject to tax, shall ascertain and
9 assess the amount of the tax to which it is subject. If
10 in his opinion the transfer of any of the property so
11 transferred is taxable under the provisions of this ar-
12 ticle, he shall make his assessment to that effect.

13 Notwithstanding the provisions of article ten of this
14 chapter, the notice of assessment shall set out: (a) The
15 amount of such property liable to such tax; (b) the rate
16 of tax thereon; (c) the names of the beneficiaries thereof;
17 (d) their degree of relationship to the decedent; and
18 (e) the amount of tax; and it shall be the duty of the
19 county clerk and personal representative of every such
20 estate, and if there be no personal representative the
21 beneficiaries thereof, to show in their report to the tax
22 commissioner the information upon which to base such
23 assessment. The tax commissioner shall make duplicate
24 notices of his assessment, one of which he shall forward
25 to such personal representative, trustee, grantee, vendee
26 or bargainee. If the tax is not paid within sixty days
27 after service of the notice of assessment, the tax com-
28 missioner may forward the other notice of assessment
29 to the clerk of the county commission of the county
30 wherein the property, or the greater part thereof in
31 value is located, which notice of assessment shall be re-
32 corded by the clerk in the trust deed book in his office
33 and the notice shall be indexed in the judgment lien
34 docket.

§11-11-16. Transfers not reported to commissioner.

1 If any transfer be not reported to the tax commissioner
2 by the clerk of the county commission or the executor,
3 administrator, trustee, grantee, vendee, bargainee or
4 donee, or other person, the tax commissioner may proceed,
5 upon such information as he can obtain, to inquire and
6 determine whether any such transfer is subject to tax
7 under this article, and what tax, additions to tax, penal-
8 ties and interest, if any, should be assessed, and shall
9 proceed as to any such transfer and the property passing
10 thereby, in all respects, as if the same had been reported
11 to him as required by this article.

ex. 9.

§11-11-18. Amended assessment; recordation.

1 Notwithstanding the provisions of article ten of this
2 chapter or that any such notice of assessment may have
3 been made and recorded, if it afterward appear to the
4 tax commissioner that the transfer of the property men-
5 tioned in such notice of assessment, or any part thereof,

6 is subject to any tax in addition to that mentioned in
7 such notice of assessment, or that it is taxable in a case
8 where such notice of assessment showed that it was not
9 liable to such tax, he shall assess the proper tax thereon
10 in addition to any tax which may have been theretofore
11 assessed, and shall forthwith prepare a notice of amended
12 assessment in duplicate, and forward one of such notices
13 to each of the persons to whom his original notice of
14 assessment was required to be forwarded. The notice of
15 amended assessment, so forwarded to the clerk of the
16 county commission, shall by him be forthwith recorded
17 in the same book in which trust deeds and mortgages are
18 recorded and he shall index the notice in the judgment
19 or tax lien docket, and from the time of its admission to
20 the record, shall constitute a lien on the property on
21 which tax is assessed, for the amount of such taxes, addi-
22 tions to tax, penalties and any interest accruing thereon,
23 until the same are paid, except as against purchasers
24 for value, before such admission to record, and without
25 notice of such additional liability, and except as against
26 those who may claim under such purchaser, having pur-
27 chased for valuable consideration without notice of such
28 liability.

**§11-11-20. Settlement by tax commissioner of dispute as to
relationship between decedent and transferee.**

1 The tax commissioner may compromise and settle the
2 amounts of any such tax when there is a controversy
3 as to the relationship between the former owner of the
4 property and the person to whom it is transferred.

§11-11-25. Liability of fiduciaries and sureties.

1 Every fiduciary, and the sureties on his official bond,
2 shall be liable to the state for any taxes, additions to
3 tax, penalties and interest payable to the state on the
4 estate of his decedent, to the amount of the moneys and
5 the value of the property which come into his hands as
6 such fiduciary, and for the proceeds of all sales of real
7 estate received by him under the provisions hereof; and
8 if any such fiduciary fail to perform any of the duties
9 imposed on him by this article, he and his sureties shall
10 be liable upon his bond for any damages resulting from

11 such failure, the county commission under whose order
12 he qualified may revoke his authority, and he and his
13 sureties shall be liable to the same proceedings as if his
14 authority had been revoked for any other cause.

§11-11-27. Inspection of books by tax commissioner; crime.

1 In addition to the tax commissioner's powers set forth
2 in section five, article ten of this chapter, every person
3 having in his possession or control any book or paper
4 containing any information respecting property trans-
5 ferred, as aforesaid, shall, at the request of the tax com-
6 missioner, exhibit the same to him or to the prosecuting
7 attorney of the county, and any person in interest shall
8 make written answer under oath to any questions which
9 the tax commissioner may put in writing concerning
10 such property. Any person failing to comply with the
11 provisions of this section shall be guilty of a misde-
12 meanor, and, upon conviction thereof, be fined not less
13 than ten nor more than five hundred dollars.

§11-11-29. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article eleven with like effect as if said act were appli-
5 cable only to the tax imposed by this article eleven and
6 were set forth in extenso in this article eleven: *Provided*,
7 That where it is expressly and specifically provided in
8 this article eleven that a particular provision of this
9 article eleven shall govern and control notwithstanding
10 any provision contained in said article ten, such particular
11 provision of this article eleven shall govern and control.

**ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE
AND DEATH TAXES.**

§11-11A-1. Procedure and authority.

1 When the state tax commissioner claims that a decedent
2 was domiciled in this state at the time of his death and
3 the taxing authorities of another state or states make a
4 like claim on behalf of their state or states, the state tax
5 commissioner may make a written agreement of com-
6 promise with the other taxing authorities and the execu-

7 tor or administrator that a certain sum shall be accepted
8 in full satisfaction of any and all inheritance taxes im-
9 posed by this state, including any additions to tax interest
10 or penalties to the date of filing the agreement. The
11 agreement shall also fix the amount to be accepted by
12 the other states in full satisfaction of death taxes. The
13 executor or administrator is hereby authorized to make
14 such agreement. Either the state tax commissioner or
15 the executor or administrator shall file the agreement, or
16 a duplicate, with the authority that would be empowered
17 to assess inheritance taxes for this state if there had
18 been no agreement; and thereupon the tax shall be
19 deemed conclusively fixed as therein provided. Unless
20 the tax is paid within thirty days after filing the agree-
21 ment, additions to tax, interest and penalties shall there-
22 after accrue upon the amount fixed in the agreement but
23 the time between the decedent's death and the filing shall
24 not be included in computing the same.

**ARTICLE 11B. INTERSTATE ARBITRATION OF INHERITANCE
AND DEATH TAXES.**

§11-11B-7. Additions to tax, penalties and interest.

1 In any case where it is determined by the board that
2 the decedent died domiciled in this state, additions to tax,
3 interest and penalties, if otherwise imposed by law, for
4 nonpayment of inheritance taxes between the date of
5 the agreement and of filing of the determination of the
6 board as to domicile, shall not exceed eight percent per
7 annum.

**ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFI-
CATE TAX.**

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to cancel certificate.**

1 All annual certificates issued under the provisions of
2 section four of this article shall be for a period of one
3 year beginning the first day of July and ending the
4 thirtieth day of the following June.

5 If a registrant shall at any time knowingly or will-
6 fully file false data or information required by section
7 four of this article, or shall willfully refuse or neglect
8 to file any tax report or to pay the tax, additions to tax,

9 penalties, or interest, or any part thereof, required by
10 chapter eleven of the code of West Virginia of one thou-
11 sand nine hundred thirty-one, as amended, the tax com-
12 missioner may cancel his certificate. Before canceling
13 any such certificate, the tax commissioner shall set a
14 hearing as prescribed in this article and notify the per-
15 son by certified mail not less than twenty days prior
16 to the hearing date to appear and show cause why such
17 registration certificate should not be canceled.

§11-12-7. Display of registration certificate; injunction; public information.

1 Any person to whom a certificate of registration shall
2 be issued under the provisions of section four of this
3 article, shall keep such certificate posted in a conspicuous
4 position in the place where the privilege of such business
5 is exercised. Such certificate of registration shall be
6 produced for inspection whenever required by the tax
7 commissioner or by any law-enforcement officers of this
8 state, county or municipality wherein the privileges to
9 conduct business is exercised.

10 No injunction shall issue from any court in the state
11 enjoining the collection of any business registration
12 certificate tax required herein; and any person claiming
13 that any business certificate is not due, for any reason,
14 shall pay the same under protest and petition the tax com-
15 missioner for a refund in accordance with the provisions
16 of section fourteen, article ten of this chapter.

17 If any person engaging in or prosecuting any business,
18 or trade, contrary to any other provisions of this article,
19 whether without obtaining a business certificate there-
20 for before commencing the same, or by continuing the
21 same after the termination of the effective period of any
22 such business certificate, the circuit court or the judge
23 thereof in vacation, of the county in which such violation
24 occurred, shall, upon proper application in the name of
25 the state, and after ten days' written notice thereof to
26 such person, grant an injunction prohibiting such per-
27 son from continuing such business, activity or trade
28 until he has fully complied with the provisions of this
29 article. The remedy provided in this section shall be

30 in addition to all other penalties and remedies pro-
31 vided by law.

32 The tax commisisoner shall make available, when
33 requested, information as to whether a person is reg-
34 istered to do business in the state of West Virginia.

§11-12-9. Penalties.

1 In addition to the provisions of article ten of this
2 chapter, any person engaging in or prosecuting any
3 business contrary to the provisions of this article, whether
4 without obtaining a business registration certificate
5 therefor before commencing the same, or by continuing
6 the same after the termination of the effective period
7 of any such certificate may, in addition to paying the
8 business registration tax, additions to tax, penalties and
9 interest, be liable for a penalty of fifty dollars for each
10 month or fraction thereof during which he has been in
11 default of the business registration tax. It shall be the
12 duty of the tax commissioner to collect the full amount
13 of the business registration tax, additions to tax, interest,
14 and all penalties imposed.

§11-12-10. Collection of back taxes; notice of discontinuance of business.

1 Any person engaging in or prosecuting any business
2 contrary to provisions of this article, whether without
3 obtaining a certificate therefor before commencing the
4 same, or by continuing the same after the termination
5 of the effective period of such certificate, shall, in addi-
6 tion to all other penalties provided by law, be liable for
7 the payment of all back business franchise registration
8 taxes and the additions to tax, penalties and interest due
9 thereon and the penalties imposed by this article for a
10 period not exceeding three years.

11 Whenever any person ceases to engage in business
12 within this state by reason of the discontinuance, sale
13 or transfer or by any other means of disposition of the
14 business, it shall be his duty to notify the tax commis-
15 sioner in writing of the discontinuance, sale or transfer
16 or other disposition of the business, the date thereof
17 and the name and address of the seller or transferor
18 and purchaser or transferee thereof.

19 Unless the notice shall have been given to the tax
20 commissioner as above provided, such seller or trans-
21 feror and purchaser or transferee shall be jointly liable
22 to the state of West Virginia for the amount of all taxes,
23 additions to tax, penalties and interest due and unpaid
24 under the provisions of this article or article ten of this
25 chapter.

§11-12-14. Hearing; appeal.

1 Any person adversely affected by an order or decision
2 of the tax commissioner, or his representative, relating
3 to the granting or the canceling of the certificate, may
4 appeal from such determination by requesting a hearing
5 before the tax commissioner, or his examiner, if
6 such request is made within sixty days from receipt
7 of such order or decision. The hearing shall be held
8 as provided in section nine, article ten of this chapter
9 and the taxpayer may take an appeal as provided in
10 section ten of said article ten.

§11-12-15. Enforcement.

1 Any employee of the state tax department so desig-
2 nated by the tax commissioner shall have all the lawful
3 powers delegated to members of the department of
4 public safety to enforce the provisions of this article in
5 any county or municipality of this state, and such em-
6 ployee shall, before entering upon the discharge of his
7 duties, execute a bond with security in the sum of thirty-
8 five hundred dollars, payable to the state of West Vir-
9 ginia, conditioned for the faithful performance of his
10 duties as such, and such bond shall be approved as to
11 form by the attorney general, and the same shall be
12 filed with the secretary of state and preserved in his
13 office.

§11-12-18. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the business franchise
4 registration tax imposed by this article twelve, sections
5 one through seventeen with like effect as if said act
6 were applicable only to such business franchise regis-

7 tration tax imposed by this article twelve and were set
8 forth with respect thereto in extenso in this article
9 twelve.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-6a. Report of change in federal taxable income.

1 If the amount of a taxpayer's federal taxable income
2 reported on his 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 changes
7 or correction in federal taxable income within ninety days
8 after the final determination of such change, correction,
9 or 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 taxpayer
12 filing an amended federal income tax return shall also
13 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.

§11-12A-23. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article twelve-a with like effect as if said act were
5 applicable only to the tax imposed by this article twelve-a
6 and were set forth in extenso in this article twelve-a.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-9. Tax year.

1 The assessment of taxes made under the provisions
2 of article ten of this chapter and the returns required
3 therefor shall be for the year ending on the thirty-first
4 day of December. If the taxpayer, in exercising a privi-
5 lege taxable under this article, keeps the books reflecting
6 the same on a basis other than the calendar year, he may,
7 with the assent of the tax commissioner, make his annual

8 returns and pay taxes for the year covering his accounting
9 period, as shown by the method of keeping his books.

§11-13-13. Receivorship or insolvency proceedings.

1 In the event a business subject to the tax imposed by
2 this article shall be operated in connection with a re-
3 ceivorship or insolvency proceeding, the court under
4 whose direction such business is operated shall, by the
5 entry of a proper order in the cause, make provision for
6 the regular payment of such taxes as the same become
7 due.

§11-13-18. Agents for collection of delinquent taxes.

1 The tax commissioner may, with the approval of the
2 governor, appoint not more than twelve agents for the
3 entire state for the collection of delinquent taxes, de-
4 linquent license taxes and all additions to tax, penalties
5 and interest. All delinquent taxes, delinquent license
6 taxes and all additions to tax, penalties and interest so
7 collected shall be, by the tax commissioner, paid into
8 the state treasury to the credit of the state general fund.
9 The salary of every such agent appointed shall be de-
10 termined by the state tax commissioner by and with the
11 approval of the governor.

§11-13-27. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article thirteen with like effect as if said act were appli-
5 cable only to the tax imposed by this article thirteen and
6 were set forth in extenso in this article thirteen.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-7. Due date of reports; reports required; records to be kept; examination of records; subpoena powers; examination of witnesses.

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
4 the preceding month as the commissioner may require
5 and such other reports from time to time as the com-
6 missioner may deem necessary. The reports prescribed

7 herein are required although a tax might not be due, or
8 no business transacted, for the period covered by the
9 report. For good cause shown, the commissioner may
10 extend the time for filing said reports for a period not
11 exceeding thirty days.

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

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

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

40 In addition to the tax commissioner's powers set forth
41 in section five, article ten of this chapter, the commis-
42 sioner may inspect or examine the records, books, papers,
43 storage tanks, meters and any equipment records of a
44 taxpayer or any other person to verify the truth and
45 accuracy of any report or return to ascertain whether the
46 tax imposed by this article has been properly paid.

47 In addition to the tax commissioner's powers set forth

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

**§11-14-10. Refund of taxes illegally collected, etc., refund
for gallonage exported or lost; change of rate;
claim for refund.**

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

6 If any distributor or producer, retail dealer or im-
7 porter, while he shall be the owner thereof, loses any
8 gallons of gasoline or special fuel through fire, lightning,
9 breakage, flood, or other casualty, which gallons have
10 been previously included in the tax by or for such per-
11 son, he shall be refunded a sum equal to the amount
12 of the tax paid upon such gallons so lost.

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

20 Every distributor or producer, retail dealer or im-
21 porter shall be entitled to a refund from this state of the
22 amount resulting from a change of rate decreasing the
23 tax under the provisions of this article on gasoline and
24 special fuel on hand and in inventory on the effective

25 date of such rate change, which gasoline and special fuel
26 shall have been included in any previous computations
27 by which the tax imposed by this article has been paid
28 by him.

29 No refund shall be made under this section unless a
30 written claim for refund is filed setting forth the cir-
31 cumstances upon which such refund is claimed. A claim
32 for refund shall be subject to the provisions of section
33 fourteen, article ten of this chapter. It shall be in such
34 form and supported with such records as the commis-
35 sioner may prescribe and shall be made under the pen-
36 alty of perjury. Claims for refund shall be filed with
37 the commissioner within three years from the end of
38 the month in which the tax was erroneously or illegally
39 paid or the gallons were exported or lost by casualty or
40 from change of rate, as provided in this section. Such
41 claim for refund shall also be subject to the provisions
42 of section fourteen, article ten of this chapter.

§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
8 engines or threshing machines for agricultural purposes,
9 when such operation is not, in whole or in part, upon
10 the highways of this state, or

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

15 (4) Gasoline consumed in the business of manufac-
16 turing or producing natural resources or in mining or
17 drilling therefor, or in the transportation of natural re-
18 sources solely by means of unlicensed vehicles or ve-
19 hicles licensed under the motor vehicle laws of this
20 state, either as a motor fuel or for any other purpose and

21 which gasoline is not in any part used upon the highways
22 of this state, or

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

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

38 The right to receive any refund under the provisions
39 of this section shall not be assignable and any assignment
40 thereof shall be void and of no effect, nor shall any pay-
41 ment be made to any person other than the original
42 person entitled thereto using gasoline or special fuel
43 as hereinbefore in this section set forth. The commis-
44 sioner shall cause a refund to be made under the au-
45 thority of this section only when the claim for such
46 refund is filed with the commissioner, upon forms pre-
47 scribed by the commissioner, within four months from
48 the month of purchase or delivery of the gasoline or
49 special fuel except that any application for refund made
50 under authority of subdivision (2) above shall be filed
51 within twelve months from the month of purchase or
52 delivery of such gasoline or special fuel. Any claim for
53 a refund not timely filed shall not be construed to be or
54 constitute a moral obligation of the state of West Vir-
55 ginia for payment. Such claim for refund shall also be
56 subject to the provisions of section fourteen, article ten
57 of this chapter.

§11-14-11a. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.

1 Upon certification by the county commission to the
2 state tax commissioner that an organization in the county
3 is a bona fide volunteer fire department, nonprofit ambu-
4 lance service or emergency rescue service, the tax im-
5 posed by this article and paid by such organization shall
6 be refunded.

7 Such tax shall be refunded upon presentation to the
8 commissioner of an affidavit accompanied by the original
9 or top copy sales slips or invoices, or certified copies
10 thereof, from the distributor or producer or retail dealer,
11 showing such purchases, together with evidence of pay-
12 ment thereof, which affidavit shall set forth the total
13 amount of such gasoline or special fuel purchased and
14 consumed by such user, and the commissioner upon the
15 receipt of such affidavit and such paid sales slips or
16 invoices shall cause to be refunded such tax paid on
17 gasoline or special fuel purchased and consumed as
18 aforesaid.

19 The right to receive any refund under the provisions
20 of this section shall not be assignable and any assignment
21 thereof shall be void and of no effect, nor shall any pay-
22 ment be made to any person other than the original
23 person entitled thereto using gasoline or special fuel as
24 hereinbefore in this section set forth. The commissioner
25 shall cause a refund to be made under the authority of
26 this section only when the application for such refund is
27 filed with the commissioner, upon forms prescribed by
28 the commissioner, no later than the thirty-first day of
29 August for purchases of fuel made during the preceding
30 fiscal year ending the thirtieth day of June. Any claim
31 for a refund not timely filed shall not be construed to be
32 or constitute a moral obligation of the state of West
33 Virginia for payment. Such claim for refund shall also
34 be subject to the provisions of section fourteen, article
35 ten of this chapter.

§11-14-12. Partial refund of tax on tax-paid gallonage consumed 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
12 of urban and suburban bus lines, and the majority of
13 passengers use the bus for traveling a distance not ex-
14 ceeding 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 a claim for refund accompanied by
18 proof of such purchase and payment as required by
19 section eleven of this article. The right to a refund under
20 this section shall not be assignable, and any assignment
21 so made shall be void. Such claim for refund shall also
22 be subject to the provisions of section fourteen, article
23 ten of this chapter.

§11-14-19. Penalty for failure to file required return when no tax due.

1 In the case of any failure to make or file a return when
2 no tax is due, as required by this article, on the date
3 prescribed therefor, unless it be shown that such failure
4 is due to reasonable cause and not due to willful neglect,
5 there shall be collected a penalty of twenty-five dollars
6 for each month of such failure or fraction thereof.

§11-14-25. Receivorship or insolvency proceeding.

1 In the event that a business of a person subject to
2 the tax imposed by this article shall be operated in
3 connection with a receivorship or insolvency proceeding,
4 the court under whose direction such business is oper-
5 ated or was caused to be operated shall, by entry of a
6 proper order in the cause, make provisions for the reg-
7 ular payment of such taxes as the same becomes due.

§11-14-30. General procedure and administration.

1 Each and every provision of the "West Virginia Tax

2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the gasoline and spe-
4 cial fuel excise tax imposed by this article fourteen with
5 like effect as if said act were applicable only to such
6 gasoline and special fuel excise tax imposed by this
7 article fourteen and were set forth with respect thereto
8 in extenso in this article fourteen.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

1 Every taxpayer subject to the tax imposed by this
2 article shall on or before the last day of January, April,
3 July and October of every calendar year make to the
4 commissioner such reports of its operations during the
5 quarter ending the last day of the preceding month as
6 the commissioner may require and such other reports
7 from time to time as the commissioner may deem neces-
8 sary. For good cause shown, the commissioner may
9 extend the time for filing said reports for a period not
10 exceeding thirty days.

11 Two or more taxpayers regularly engaged in the trans-
12 portation of passengers on through buses on through
13 tickets in pool operation may, at their option and upon
14 proper notice to the commissioner, make joint reports
15 of their entire operations in this state. The taxes im-
16 posed shall be calculated on the basis of such joint re-
17 ports as though such taxpayers were a single taxpayer;
18 and the taxpayers making such reports shall be jointly
19 and severally liable for the taxes. Such joint reports
20 shall show the total number of highway miles traveled
21 in this state and the total number of gallons of gasoline
22 or special fuel purchased in this state by the reporting
23 taxpayers. Credits to which the taxpayers making a
24 joint return are entitled shall not be allowed as credits
25 to any other taxpayer; but taxpayers filing joint reports
26 shall permit all taxpayers engaged in this state in pool
27 operations with them to join in filing joint reports.

28 A taxpayer shall keep such records necessary to verify
29 the highway miles traveled within and without the
30 state of West Virginia, the number of gallons of gasoline

31 and special fuel used and purchased within and without
32 West Virginia and any other records the commissioner
33 by regulation may prescribe.

34 In addition to the tax commissioner's powers set forth
35 in section five, article ten of this chapter, the commis-
36 sioner may inspect or examine the records, books, papers,
37 storage tanks, meters and any equipment records or
38 records of highway miles traveled within and without
39 West Virginia and the records of any other person to
40 verify the truth and accuracy of any statement or report
41 to ascertain whether the tax imposed by this article has
42 been properly paid.

43 In addition to the tax commissioner's powers set forth
44 in section five, article ten of this chapter, and as a further
45 means of obtaining the records, books and papers of a
46 taxpayer or any other person and ascertaining the amount
47 of taxes and reports due under this article, the commis-
48 sioner shall have the power to examine witnesses under
49 oath; and if any witness shall fail or refuse at the request
50 of the commissioner to grant access to the books, records
51 and papers, the commissioner shall certify the facts and
52 names to the circuit court of the county having jurisdic-
53 tion of the party and such court shall thereupon issue a
54 subpoena duces tecum to such party to appear before the
55 commissioner, at a place designated within the juris-
56 diction of such court, on a day fixed.

**§11-14A-11. Refunds authorized; claim for refund and proce-
dure thereon; surety bonds.**

1 The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article
3 and article fourteen of this chapter, the amount of the
4 credit accrued for gallons of gasoline or special fuel
5 purchased in this state but consumed outside of this state,
6 if the taxpayer by duly filed claim requests the com-
7 missioner to issue a refund and if the commissioner is
8 satisfied that said taxpayer is entitled to said refund and
9 that said taxpayer has not applied for a refund of the
10 tax imposed by article fourteen of this chapter: *Provided*,
11 That the commissioner shall not approve a claim for
12 refund when such claim for such refund is filed after

13 thirteen months from the close of the quarter in which
14 the tax was paid or the credit, as provided for in section
15 nine of this article, was allowed: *Provided, however,*
16 That such refund shall not be made until after audit of
17 the claimant's records by the commissioner or until
18 after a surety bond has been furnished by the claimant,
19 as hereinafter provided, in an amount fixed by the com-
20 missioner, conditioned to pay all road taxes due here-
21 under: *Provided further,* That said credit or refund shall
22 in no case be allowed to reduce the amount of tax to be
23 paid by a taxpayer below the amount due as tax on
24 gasoline or special fuel used as fuel in this state as
25 provided by article fourteen of this chapter. The right
26 to receive any refund under the provisions of this article
27 shall not be assignable and any attempt at assignment
28 thereof shall be void and of no effect. Such claim for
29 refund or credit shall also be subject to the provisions of
30 section fourteen, article ten of this chapter.

31 A taxpayer may furnish a continuous surety bond in
32 an amount fixed by the commissioner, but such amount
33 shall not be less than the total refunds due or to be paid
34 within one year. Upon completion of the filing of such
35 surety bond an annual notice of renewal, only, shall be
36 required thereafter.

37 The surety must be authorized to engage in business
38 within this state. The bond shall be conditioned upon
39 faithful compliance with the provisions of this article,
40 including the filing of the returns and payment of all tax
41 prescribed by this article. Such bond shall be approved
42 by the commissioner as to sufficiency and by the at-
43 torney general as to form, and shall indemnify the state
44 against any loss arising from the failure of the taxpayer
45 to pay for any cause whatever the motor carrier road
46 tax imposed by this article.

47 So long as the bond remains in force the commissioner
48 may order refunds to the taxpayer in the amounts ap-
49 pearing to be due on claims duly filed by the taxpayer
50 under the provisions of this article without first auditing
51 the records of the carrier.

52 Any surety on a bond furnished hereunder shall be

53 relieved, released and discharged from all liability ac-
54 cruing on such bond after the expiration of sixty days
55 from the date the surety shall have lodged, by certified
56 mail, with the commissioner a written request to be
57 discharged. This shall not relieve, release or discharge
58 the surety from liability already accrued, or which shall
59 accrue before the expiration of the sixty-day period.
60 Whenever any surety shall seek discharge as herein pro-
61 vided, it shall be the duty of the principal of such bond
62 to supply the commissioner with another bond, or pledge
63 of property equal in value to the original bond, such
64 pledge to be in the form of a tax lien on the property
65 pledged and said lien shall be duly perfected in the
66 office of the clerk of the county commission of the county
67 wherein such property is situated and shall be submitted
68 to the commissioner along with a certified appraisal state-
69 ment as to the value of the property pledged prior to the
70 expiration of the original bond. Failure to provide such
71 bond or pledge may result in the commissioner canceling
72 any registration card and identification marker previ-
73 ously issued to said person.

**§11-14A-16. Penalty for failure to file required return when
no tax due.**

1 In the case of any failure to make or file a return when
2 no tax is due, as required by this article, on the date pre-
3 scribed therefor, unless it can be shown that such failure is
4 due to reasonable cause and not due to willful neglect,
5 there shall be collected a penalty of twenty-five dollars for
6 each month of such failure or fraction thereof.

§11-14A-27. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article ten
3 of this chapter shall apply to the motor carrier road tax
4 imposed by this article fourteen-a with like effect as if
5 said act were applicable only to such motor carrier road
6 tax imposed by this article fourteen-a and were set forth
7 with respect thereto in extenso in this article fourteen-a.

ARTICLE 15. CONSUMERS SALES TAX.**§11-15-4b. Liability of purchaser; assessment and collection.**

1 If any purchaser refuses to pay to the vendor the tax
2 imposed by section three of this article, or in the case of
3 a sale exempt from the application of the tax, a purchaser
4 refuses to sign and present to the vendor a proper certifi-
5 cate indicating the sale is not subject to this tax, or signs
6 or presents to the vendor a false certificate, or after sign-
7 ing and presenting a proper certificate uses the items
8 purchased in such manner that the sale would be subject
9 to the tax, he shall be personally liable for the amount of
10 tax applicable to the transaction or transactions.

11 In such cases the tax commissioner shall have authority
12 to make an assessment against such purchaser, based
13 upon any information within his possession or that may
14 come into his possession. This assessment, and notice,
15 thereof shall be made and given in accordance with sec-
16 tions seven and eight, article ten of this chapter.

17 This section shall not be construed as relieving the
18 vendor from liability for the tax.

§11-15-16. Tax return and payment.

1 The taxes levied by this article shall be due and pay-
2 able in monthly installments, on or before the fifteenth
3 day of the month next succeeding the month in which the
4 tax accrued. The taxpayer shall, on or before the fifteenth
5 day of each month, make out and mail to the tax commis-
6 sioner a return for the preceding month, in the form
7 prescribed by the tax commissioner, showing: (a) The
8 total gross proceeds of his business for that month; (b)
9 the gross proceeds of his business upon which the tax is
10 based; (c) the amount of the tax for which he is liable;
11 and (d) any further information necessary in the compu-
12 tation and collection of the tax which the tax commis-
13 sioner may require. A remittance for the amount of the
14 tax shall accompany the return. A monthly return shall
15 be signed by the taxpayer or his duly authorized agent.

§11-15-17. Liability of officers of corporation, etc.

1 If the taxpayer is an association or corporation, the
2 officers thereof shall be personally liable, jointly and

3 severally, for any default on the part of the association or
4 corporation, and payment of the tax and any additions to
5 tax, penalties and interest thereon imposed by article ten
6 of this chapter may be enforced against them as against
7 the association or corporation which they represent.

§11-15-23. Keeping and preserving of records.

1 Each taxpayer shall keep complete and accurate records
2 of taxable sales and of charges, together with a record of
3 the tax collected thereon, and shall keep all invoices, bills
4 of lading and such other pertinent documents in such
5 form as the tax commissioner may by regulation require.
6 Such records and other documents shall be preserved for
7 a period of time not less than three years, unless the tax
8 commissioner shall consent in writing to their destruction
9 within that period or by order require that they be kept
10 longer.

§11-15-32. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by
4 this article fifteen with like effect as if said act were
5 applicable only to the tax imposed by this article fifteen
6 and were set forth in extenso in this article fifteen.

ARTICLE 15A. USE TAX.

§11-15A-12. Bond to secure payment.

1 The tax commissioner may, when in his judgment it
2 is necessary and advisable to do so in order to secure
3 the collection of the tax levied under this article, au-
4 thorize any person subject to such tax and any retailer
5 required or authorized to collect such tax pursuant to
6 the provisions of sections six and seven of this article
7 to file with him a bond issued by a surety company
8 authorized to transact business in this state and ap-
9 proved by the insurance commissioner as to solvency
10 and responsibility, in such amount as the tax commis-
11 sioner may fix, to secure the payment of any tax, addi-
12 tions to tax, penalties, and interest due or which may
13 become due from such person. In lieu of such bond,

14 securities approved by the tax commissioner, in such
15 amount as he may prescribe, may be deposited with him,
16 which securities shall be kept in the custody of the state
17 treasurer and may be sold by him at public or private
18 sale, after notice to the depositor thereof, if it becomes
19 necessary to do so in order to recover any tax, additions
20 to tax, penalties and interest due. Upon any such sale,
21 the surplus, if any, above the amounts due under this
22 article and article ten of this chapter shall be returned
23 to the person who deposited the securities.

§11-15A-21. Books; examination.

1 Every retailer required or authorized to collect taxes
2 imposed by this article and every person using in this
3 state tangible personal property purchased on or after
4 the first day of July, one thousand nine hundred fifty-
5 one, shall keep such records, receipts, invoices, and other
6 pertinent papers as the tax commissioner shall require,
7 in such form as the tax commissioner shall require.

8 In addition to the tax commissioner's powers set forth
9 in section five, article ten of this chapter, the tax com-
10 missioner or any of his duly authorized agents is hereby
11 authorized to examine the books, papers, records, and
12 equipment of any person either selling tangible personal
13 property or liable for the tax imposed by this article,
14 and to investigate the character of the business of any
15 such person in order to verify the accuracy of any re-
16 turn made, or if no return was made by such person,
17 to ascertain and determine the amount due under the
18 provisions of this article. Any such books, papers, and
19 records shall be made available within this state for such
20 examination upon reasonable notice when the tax com-
21 missioner shall deem it advisable and shall so order.
22 However, where the taxpayer's records must be kept
23 out-of-state, the taxpayer may upon being notified by
24 the tax commissioner that an examination is to be made,
25 elect to do one of the following: (1) Forthwith transport
26 the required records to a convenient point in West Vir-
27 ginia and notify the tax commissioner that they are
28 available; or (2) pay the reasonable traveling expenses
29 of the tax commissioner's representatives from Charles-

30 ton, West Virginia, to the out-of-state place where the
31 records are kept, and return, and reasonable living ex-
32 penses of such representatives while engaged in their
33 examination.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer maintaining a place of business
2 in this state, or authorized to collect the tax herein im-
3 posed pursuant to section seven of this article, fails to
4 comply with any of the provisions of this article or
5 any orders, rules or regulations of the tax commissioner
6 prescribed and adopted for this article under article ten
7 of this chapter, the tax commissioner may, upon notice
8 and hearing hereinafter provided, by order cancel the
9 business franchise registration certificate, if any, issued
10 to such retailer under article twelve, chapter eleven
11 of the code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, or if such retailer is a corporation
13 authorized to do business in this state under section
14 seventy-nine, article one, chapter thirty-one of said code,
15 may certify to the secretary of state a copy of an order
16 finding that such retailer has failed to comply with
17 certain specified provisions, orders, rules or regulations.
18 The secretary of state shall, upon receipt of such certified
19 copy, revoke the permit authorizing said corporation to
20 do business in this state, and shall issue a new permit
21 only when such corporation shall have obtained from the
22 tax commissioner an order finding that such corporation
23 has complied with its obligations under this article. No
24 order authorized in this section shall be made until the
25 retailer is given an opportunity to be heard and to show
26 cause why such order should not be made, and he shall
27 be given twenty days' notice of the time, place, and pur-
28 pose of such hearing. The tax commissioner shall have
29 the power in his discretion to issue a new business
30 franchise registration certificate after such canceling.

§11-15A-28. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this

4 article fifteen-a with like effect as if said act were appli-
5 cable only to the tax imposed by this article fifteen-a and
6 were set forth in extenso in this article fifteen-a.

ARTICLE 17. CIGARETTE TAX ACT.

§11-17-10. Refunds.

1 The commissioner shall redeem any unused or muti-
2 lated, but identifiable, stamps that any wholesaler or
3 retail dealer may present for redemption, on written
4 verified requests made by the purchaser, his administra-
5 tors, executors, successors or assigns, and refund there-
6 for, ninety-five percent of the face value of said stamps,
7 less any discounts allowed on the purchase of said stamps.
8 The commissioner shall pay on a like basis for stamps
9 destroyed by fire or flood upon presentation of proof of
10 such loss satisfactory to him. Such payments shall for
11 the purposes hereof be deemed to be refunds of taxes
12 improperly collected and shall be allowed and paid from
13 funds collected. Stamps or meter impressions on ciga-
14 rettes returned to the manufacturers will be subject to
15 refund upon the filing of an affidavit in duplicate issued
16 by the manufacturer evidencing the destruction of stamps
17 or meter impressions. A claim for refund or credit shall
18 be subject to the provisions of section fourteen, article
19 ten of this chapter.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

1 On or before the fifteenth day of each month common
2 carriers, wholesalers, subjobbers, retail dealers and
3 agents, or vending machine operators, shall, when re-
4 quired by this article, or the tax commissioner, file a
5 report covering the business transacted in the previous
6 month covering such information as the commissioner
7 may deem necessary for the ascertainment or assessment
8 of the tax imposed by this article; and shall be signed
9 under penalty of perjury on such forms as the tax com-
10 missioner may prescribe and shall at this time remit any
11 taxes owed or due, if any.

12 The reports prescribed herein are required although a

13 tax might not be due, or no business transacted, for the
14 period covered by the report.

15 Each person required to file a report under this article
16 shall make and keep such records as shall be prescribed
17 by the tax commissioner that are necessary to substan-
18 tiate the returns required by this article including, but
19 not limited to, inventories, receipts, disbursements and
20 sales, for a period of time not less than three years.

21 Unless otherwise permitted, in writing, by authority of
22 the tax commissioner, each delivery ticket or invoice for
23 each purchase or sale of cigarettes must be recorded upon
24 a serially numbered invoice showing the name and ad-
25 dress of the seller and the purchasers, point of delivery,
26 the date, quantity, price of the product, and the tax must
27 be set out separately or the invoice must indicate whether
28 or not the West Virginia cigarette excise tax is included
29 in the total price and such other reasonable information
30 as the tax commissioner may require. However, these
31 invoicing requirements do not apply to cash sales, and a
32 person making such sales must maintain such records
33 as may be reasonably necessary to substantiate his re-
34 turn.

35 In addition to the tax commissioner's powers set forth
36 in section five, article ten of this chapter, the tax com-
37 missioner or his deputy or agent authorized by him shall
38 have authority to inspect or examine the stock of ciga-
39 rettes kept in and upon the premises of any person where
40 cigarettes are placed, stored or sold and shall inspect or
41 examine the records, books, papers, and any equipment
42 or records of manufacturers, cigarette stamping agents,
43 wholesalers, subjobbers, retail dealers, common carriers,
44 or any other person for the purpose of determining the
45 quantity of cigarettes acquired or disbursed to verify the
46 truth and accuracy of any statement or report and to
47 ascertain whether the tax imposed by this article has
48 been properly paid.

49 In addition to the tax commissoner's powers set forth
50 in section five, article ten of this chapter, and as a further
51 means of obtaining the records, books and papers of a
52 manufacturer, common carrier, wholesaler, subjobber or

53 retailer or any other person and ascertaining the amount
54 of taxes and reports due under this article the com-
55 missioner and his duly appointed agent shall have the
56 power to examine witnesses under oath; and if the
57 witness shall fail or refuse at the request of the tax
58 commissioner or his duly appointed agent to grant access
59 to the books, records or papers, the tax commissioner or
60 such agent shall certify the facts and names to the circuit
61 court of the county having jurisdiction of the party and
62 such court shall thereupon issue summons to such party
63 to appear before the tax commissioner or his agent, at a
64 place designated within the jurisdiction of such court, on
65 a day fixed, to be continued as the occasion may require
66 for good cause shown and give such evidence and lay
67 open for inspection such books and papers as may be
68 required for the purpose of ascertaining the amount of
69 tax and reports due, if any.

§11-17-17. Enforcement powers.

1 Any employee or agent of the tax commissioner, so
2 designated by the tax commissioner, shall have all the
3 lawful powers delegated to members of the department
4 of public safety to enforce the provisions of this article
5 in any county or municipality in this state.

6 Such employee shall execute a bond with security in
7 the sum of thirty-five hundred dollars, payable to the
8 state of West Virginia conditioned for the faithful per-
9 formance of his duties, as such, and such bond shall be
10 approved as to form by the attorney general, and the
11 same shall be filed with the secretary of state and pre-
12 served in his office.

13 The state department of public safety or any county
14 sheriff or his deputy is, upon request of the commissioner,
15 hereby authorized and required to assist in the enforce-
16 ment of the provisions of this article.

**§11-17-19. Penalty for failure to file return when no tax due;
crimes.**

1 (a) *Penalty for failure to file required return where*
2 *no tax due.*—In the case of any failure to make or file
3 a return when no tax is due, as required by this article

4 on the date prescribed therefor, unless it be shown that
5 such failure was due to reasonable cause and not due to
6 willful neglect, there shall be collected a penalty of
7 twenty-five dollars for each month of such failure or
8 fraction thereof.

9 (b) *If any person:*

10 (1) Makes any false entry upon an invoice, package
11 or container of cigarettes required to be made under
12 the provisions of this article, or with intent to evade the
13 tax imposed by this article, presents any such false entry
14 for the inspection of the commissioner, or

15 (2) Prevents or hinders the commissioner or his
16 deputy from making a full inspection of any place where
17 cigarettes subject to the tax imposed by this state are
18 sold or stored, or prevents or hinders the full inspection
19 of invoices, books, records or papers required to be kept
20 under the provisions of this article, or

21 (3) Sells cigarettes in this state without there having
22 been first affixed to each individual package thereof the
23 stamp or meter impression required to be affixed thereto
24 by this article, or

25 (4) Being a retail dealer or subjobber in this state, has
26 in his possession packages of cigarettes not bearing the
27 stamps or meter impression herein required to be affixed
28 thereto or, whoever fails to produce on demand by the
29 commissioner invoices of all cigarettes purchased or re-
30 ceived by him within two years prior to such demand,
31 unless upon satisfactory proof it is shown that such
32 nonproduction is due to providential or other causes
33 beyond his control, or

34 (5) If any wholesale dealer shall sell cigarettes to
35 any person in this state other than to another whole-
36 saler, subjobber or retail dealer and no person in this
37 state other than a wholesaler, or subjobber, shall sell
38 cigarettes to a retail dealer. It shall be unlawful and a
39 violation of this article for any retail cigarette dealer to
40 purchase or acquire cigarettes from any person other
41 than a wholesaler or subjobber. The original wholesaler
42 who purchases unstamped cigarettes from the manu-

43 facturer is liable for the excise tax and the affixing of
44 the required stamps, or meter impressions, or

45 (6) If any person, firm or corporation, who is not a
46 wholesaler of tobacco products, as provided by this arti-
47 cle, shall have in his possession within the state more
48 than twenty packages of cigarettes not bearing cigarette
49 tax paid indicia of this state, stamps or meter impres-
50 sions, such possession shall be presumed to be for the
51 purpose of evading the payment of the taxes imposed
52 or due thereon, or

53 (7) Whoever violates any of the provisions of this
54 subsection or any lawful rule or regulation promulgated
55 by the commissioner under authority of article ten of
56 this code shall be guilty of a misdemeanor, and, upon
57 conviction thereof, shall be fined not less than three
58 hundred dollars nor more than five thousand dollars,
59 or imprisoned in the county jail for not more than one
60 year, or both, in the discretion of the court.

61 (c) Whoever falsely or fraudulently makes, forges,
62 alters or counterfeits any stamps or meter impressions
63 prescribed, or defined, by the provisions of this article,
64 or its related rules and regulations, and any person who
65 knowingly and willfully makes, causes to be made, pur-
66 chases, receives or has in his possession, any device for
67 forging or counterfeiting any stamp or meter impression,
68 or has in his possession, any stamps not properly issued
69 by the commissioner or his agent or deputy or tampers
70 with or alters any stamping device authorized by the
71 commissioner, or uses more than once any stamp or meter
72 impression provided for and required by this article
73 for the purpose of evading the tax hereby imposed, shall
74 be guilty of a felony, and, upon conviction thereof, shall
75 be sentenced to pay a fine of not less than five thousand
76 dollars nor more than ten thousand dollars and impris-
77 oned in the penitentiary for a term of not less than one
78 year nor more than five years.

79 (d) Whenever the commissioner or any of his deputies
80 or employees authorized by him or any peace officer of
81 this state for the purpose shall discover any cigarettes
82 subject to tax as provided by this article and upon which

83 the tax has not been paid as herein required, such ciga-
84 rettes shall thereupon be deemed to be contraband, and
85 the commissioner, or such deputy or employee or any
86 peace officer of this state is hereby authorized and em-
87 powered forthwith to seize and take possession of such
88 cigarettes, without a warrant, and such cigarettes shall
89 be forfeited to the state, and the commissioner shall
90 within a reasonable time thereafter sell such forfeited
91 cigarettes: *Provided*, That such seizure and sale shall
92 not be deemed to relieve any person from fine or im-
93 prisonment as provided herein for violation of any pro-
94 visions of this article. Such sale may be made in any
95 county the tax commissioner deems most convenient and
96 economical. Notice of such sale shall be published as a
97 Class I legal advertisement in compliance with the pro-
98 visions of article three, chapter fifty-nine of this code,
99 and the publication area for such publication shall be
100 the county wherein such seizure was made and the county
101 wherein the sale is to take place. Notice shall be pub-
102 lished at least five days prior to the sale. All taxes and
103 penalties collected under the provisions of this section
104 shall be paid into the state treasury and treated as other
105 taxes collected under this article.

106 (e) Magistrates shall have concurrent jurisdiction
107 with any other courts having jurisdiction for the trial
108 of all misdemeanors arising under this article.

§11-17-22. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article seventeen with like effect as if said act were
5 applicable only to the tax imposed by this article seven-
6 teen and were set forth in extenso in this article seven-
7 teen.

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5b. Additional penalty for late filing or payment.

1 In addition to the additions to tax, penalties and in-
2 terest authorized in article ten of this chapter, if any
3 taxpayer fails to file a return or pay the proper amount

4 of tax within the time specified herein, the commissioner
5 shall refuse to authorize the purchase of tax stamps
6 or crowns by the delinquent taxpayer: *Provided*,
7 That if the failure to pay was due to reasonable
8 cause, the commissioner may waive this penalty. The
9 taxpayer may request a hearing within sixty days after
10 service of notice of the refusal of the commissioner to
11 authorize the purchase of the tax stamps or crowns. Upon
12 receipt of a written request for a hearing filed within the
13 time prescribed the provision for hearing and appeal,
14 sections nine and ten, article ten of this chapter shall
15 be applicable.

**§11-19-7a. Seizure and sale of soft drink syrups by commis-
sioner; forfeiture; collection of tax.**

1 Whenever the commissioner or any of his duly autho-
2 rized agents shall discover any soft drink syrups, subject
3 to tax as provided by this article and upon which the tax
4 has not been paid as herein required, the commissioner
5 or his duly authorized agent is hereby authorized and
6 empowered forthwith to seize and take possession of such
7 soft drink syrups, which shall thereupon be deemed to be
8 forfeited to the state and the commissioner shall within
9 a reasonable time thereafter sell such forfeited soft drink
10 syrups; and from the proceeds of such sale shall collect the
11 tax and interest due thereon, together with a penalty of
12 fifty percent of the tax due and the cost incurred in such
13 proceedings, and pay the balance, if any, to the person in
14 whose possession such soft drink syrups were found:
15 *Provided*, That such seizure and sale shall not be deemed
16 to relieve any person from fine or imprisonment provided
17 herein for violation of any provision of this article. Such
18 sale shall be made in the county where most convenient
19 and economical. Notice of such sale shall be published as
20 a Class I legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be
23 the county wherein such seizure was made and the county
24 wherein the sale is to take place. Notice shall be published
25 at least five days prior to the sale. All moneys collected
26 under the provisions of this section shall be paid into the

27 state treasury and treated as other taxes collected under
28 this article.

§11-19-10. Penalties; crimes.

1 Any person who violates any of the provisions of this
2 article or any lawful rule or regulation promulgated by
3 the tax commissioner for this article under the authority
4 of article ten of this chapter, for the violation of which
5 no other penalty is provided by law, shall be guilty of a
6 misdemeanor, and, upon conviction thereof, shall be
7 punished by a fine of not less than twenty-five dollars
8 nor more than one hundred dollars.

§11-19-12. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article nineteen with like effect as if said act were appli-
5 cable only to the tax imposed by this article nineteen
6 and were set forth in extenso in this article nineteen.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-75. Employer's liability for withheld taxes.

1 Every employer required to deduct and withhold tax
2 under this article is hereby made liable for such tax.
3 To the extent not inconsistent with the provisions of
4 this article, all of the provisions of article ten of this
5 chapter and section ninety-two of this article twenty-one,
6 relating to assessment and collection of taxes, and to
7 penalties, additions to tax, and interest in respect thereto,
8 shall apply to every employer required to withhold tax
9 under this article. For such purposes any amount re-
10 quired to be withheld and paid over to the tax commis-
11 sioner shall be considered the tax of the employer. Any
12 amount of tax actually deducted and withheld under this
13 article shall be held to be a special fund in trust for the
14 tax commissioner. No employee shall have any right of
15 action against his employer in respect to any moneys
16 deducted and withheld from his wages and paid over to
17 the tax commissioner in compliance or in intended com-
18 pliance with this article.

§11-21-95. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by
4 this article twenty-one with like effect as if said act
5 were applicable only to the tax imposed by this article
6 twenty-one and were set forth in extenso in this article
7 twenty-one.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-38. Crimes.**

1 (a) *Failure to file returns, submit information, or pay*
2 *tax.*—Any person required under this article or article
3 ten of this chapter, to pay any tax or estimated tax, or
4 required by law to make a return or declaration, keep
5 any records, or supply any information, for the purpose
6 of the computation, assessment, or collection of any tax
7 or estimated tax imposed by this article, who, at the time
8 or times required by law, willfully fails to pay such tax
9 or estimated tax, make such return or declaration, keep
10 such records or supply such information, or willfully
11 furnishes false and fraudulent information, shall, in addi-
12 tion to other penalties provided by law, be guilty of a
13 misdemeanor, and, upon conviction thereof, be fined not
14 more than one thousand dollars or imprisoned for not
15 more than one year, or both, together with the costs of
16 prosecution.

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

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

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

44 (e) *Certificate of tax commissioner as evidence.*—The
45 certificate of the tax commissioner to the effect that a
46 tax has not been paid, that a return has not been filed,
47 or that information has not been supplied as required by
48 or under the provisions of this article or article ten of
49 this chapter shall be evidence that such tax has not
50 been paid, that such return has not been filed, or that
51 such information has not been supplied.

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

§11-24-41. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article twenty-four with like effect as if said act were
5 applicable only to the tax imposed by this article twenty-
6 four and were set forth in extenso in this article twenty-
7 four.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.**§11-25-8. Denial of claim; violation of article; assessment; interest and penalties; crime.**

1 If it is determined that a claim for relief was filed by
2 a claimant who was the recipient of public funds for the
3 payment of his real property taxes or rent during the
4 period for which the claim for relief was filed, or that
5 such claimant received title to his homestead primarily
6 for the purpose of receiving relief under this article, or
7 that a claim for relief was filed with fraudulent intent,
8 such claim for relief shall be disallowed in full, and, if
9 any such claim for relief has been paid, the amount
10 paid may be recovered by assessment in the same manner
11 as taxes are assessed under article ten of this chapter
12 and the assessment shall bear interest from the date of
13 payment of the claim for relief, until refunded to the
14 state tax commissioner, at the rate of one percent per
15 month. Any claimant willfully and knowingly filing a
16 fraudulent claim for relief, and any person who assisted
17 in the preparation or filing of such fraudulent claim
18 for relief or supplied information upon which such fraud-
19 ulent claim for relief was prepared, with knowledge of
20 such fraudulent intent of the claimant, shall be guilty of a
21 misdemeanor, and, upon conviction thereof, shall be
22 fined not less than fifty nor more than one hundred
23 dollars, or imprisoned in the county jail not more than
24 six months, or both fined and imprisoned. If it is de-
25 termined that a claim for relief is excessive and was
26 through negligence incorrectly prepared, ten percent of
27 the corrected claim for relief shall be disallowed, and if
28 the claim for relief has been paid, the excessive portion
29 of any amount paid and the ten percent disallowed shall
30 be similarly recovered by assessment in the same manner
31 as taxes are assessed under article ten of this chapter
32 and the assessment shall bear interest from the date of
33 payment of the claim for relief until refunded to the
34 state tax commissioner at the rate of one percent per
35 month.

§11-25-9. Hearings and appeals.

1 Any claimant aggrieved by the denial in whole or in
2 part of his claim for relief, except when the denial is
3 based upon the late filing of a claim for relief, may de-
4 mand a hearing within thirty days after such denial by
5 filing with the state tax commissioner a verified petition
6 for hearing, which petition shall set forth with definite-
7 ness and particularity the reasons for objecting to such
8 denial. In every case where a petition is filed, the state
9 tax commissioner shall assign a time and place for a
10 hearing upon the same and shall proceed in accordance
11 with the provisions of article ten of this chapter and all
12 of the applicable provisions of said article ten shall be
13 applicable with like effect as if the petition were a peti-
14 tion for reassessment as provided in said article ten. In
15 connection with holding any such hearing, the state tax
16 commissioner shall have all of the relevant powers and
17 authority set forth in said article ten. An appeal from a
18 final decision of the state tax commissioner made after any
19 such hearing may be taken by the claimant in accordance
20 with the provisions of said article ten of this chapter,
21 and such appeal shall be processed and determined with
22 like effect as if said claimant were a "taxpayer" as that
23 term is used in said article ten.

**CHAPTER 55. ACTIONS, SUITS AND
ARBITRATION; JUDICIAL SALE.****ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.****§55-2-19a. Collection of taxes due state or any subdivision
thereof.**

1 Every action or process to collect any tax (other than
2 ad valorem tax on real or personal property and the taxes
3 administered under the provisions of article ten, chapter
4 eleven of this code), interest and penalty due the state or
5 any subdivision thereof shall be brought or issued within
6 five years next after the date on which the taxpayer is
7 required by the statute or ordinance imposing the tax,
8 interest and penalty to file a return and pay the tax due
9 thereunder, unless a different limitation is specifically
10 prescribed by such statute or ordinance. The limitation

11 provided by this section shall likewise apply to enforce-
12 ment of the lien, if any, securing the payment of such tax,
13 interest and penalty, but shall not apply in event of fraud
14 or in event the taxpayer wholly fails to file the return
15 required by the statute or ordinance imposing the tax.

16 The official of the state or any subdivision thereof who
17 is charged with the duty of collecting any tax, interest
18 and penalty the collection of which is affected by the
19 limitation hereinbefore provided may, before the run-
20 ning of the five-year period of such limitation has been
21 completed, enter into a written agreement with the tax-
22 payer consenting to an extension of such period for an
23 additional period of not to exceed two years, and any
24 action or process may be brought or issued to collect such
25 tax, interest and penalty at any time prior to the expira-
26 tion of the period so agreed upon. The period so agreed
27 upon may be extended for additional periods not in ex-
28 cess of two years each by subsequent agreements in
29 writing made before the expiration of the period pre-
30 viously agreed upon.

31 The provisions of this section as hereby amended shall
32 apply to tax periods ending on or after the first day of
33 July, one thousand nine hundred seventy-eight, and the
34 provisions of this section as in effect prior to the enact-
35 ment hereof shall apply to tax periods ending before said
36 date.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1978.

J. C. Dillon, Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

W. T. Bratherton, Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Raley
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 23 3 59 PM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978
Time 4:05 p.m.

OFFICE
SECY. OF STATE

78 MAR 30 P 9: 28

RECEIVED