WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
SENATE BILL NO. 371

(By Mr. Brotherhood, Mr. President, Mr. Hamilton)

PASSED March 11, 1978

In Effect January 1, 1979

Passage
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, 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 eighty; 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 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-
suit 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 certifi­
cate, injunction against collection of tax prohibited; pro­
viding 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, enforce­
ment, and making the provisions of the “West Virginia
tax procedure and administration act” applicable, all of
the business franchise registration certificate tax; re­
lying 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,
receiviorship or insolvency proceedings, agents for col­
clection of delinquent taxes, and making the “West Vir­
gina procedure and administration act” applicable, all
of the business and occupation tax; relating to due date
of reports, required reports, keeping of records, examina­
tion of records, subpoena powers, examination of wit­
tnesses, 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 depart­
ments, 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 pro­
cedures and content of claim for refund, penalty for
failure to file required return where no tax due, receivior­
ship 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 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-two, twenty-three, twenty-four and twenty-five, article fourteen; sections fourteen, fifteen, seventeen, eighteen, nineteen, twenty, 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 nine-
teen 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 sec-
tion ninety-five; that section thirty-eight; 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.

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

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

This article may be cited as the “West Virginia Tax
Procedure and Administration Act.” No inference, im-
plication or presumption of legislative construction shall
be drawn or made by reason of the location or grouping
of any particular section or provision or portion of this
article, and no legal effect shall be given to any descript-
ive matter or headings relating to any part, section,
subsection or paragraph of this article.

§11-10-3. Application of this article.
1 The provisions of this article shall apply to the inheri-
tance and transfer taxes and interstate compromise and
arbitration of inheritance and death taxes, the business
franchise registration certificate tax, the annual tax on
incomes of certain carriers, the business and occupation
tax, the consumers sales and service tax, the use tax,
the cigarette tax, the soft drinks tax, the personal in-
come tax, the corporation net income tax, the gasoline
and special fuel excise tax, the motor carrier road tax,
and the tax relief for elderly homeowners and renters
administered by the state tax commissioner. This article
shall not apply to ad valorem taxes on real and personal
property, the corporate license tax, or any other tax
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
individual, firm, partnership, limited partnership, co-
partnership, joint adventure, association, corporation,
municipal corporation, organization, receiver, estate,
trust, guardian, executor, administrator, and also any
officer, employee, or member, of any of the foregoing
who, as such officer, employee, or member, is under a
duty to perform or is responsible for the performance
of an act prescribed by the provisions of this article
and the provisions of any of the other articles of this
chapter which impose taxes administered by the tax
commissioner, unless the intention to give a more limited
or broader meaning is disclosed by the context of this
article or any of the other articles of this chapter which
impose taxes administered by the tax commissioner.
(b) “State” means any state of the United States or
the District of Columbia.
(c) “Tax” or “taxes” includes within the meaning
thereof taxes specified in section three of this article,
tention to give the same a more limited meaning is dis-
closed by the context.
(d) "Tax commissioner" or "commissioner" means
the tax commissioner of the state of West Virginia or
his delegate.
(e) "Taxpayer" means any person required to file a
return for any tax administered under this article, or
any person liable for the payment of any tax admin-
istered under this article.
(f) "Tax administered under this article" means any
tax to which this article applies as set forth in section
three of this article.
(g) "This code" means the code of West Virginia,
one thousand nine hundred thirty-one, as amended.
(h) "This state" means the state of West Virginia.

§11-10-5. General provisions; regulations and forms; inv·esti-
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.

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

(b) Investigations.—For the purpose of ascertaining
the correctness of any tax return or assessment and
for the purpose of making an estimate of any taxpayer's
liability for any tax administered under this article,
and for the further purpose of conducting the hearings provided for in section nine of this article, the tax commissioner shall have the power to examine or cause to be examined, by any agent or representative designated by the tax commissioner, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

(c) Subpoena and subpoena duces tecum.—For the efficient administration of the powers vested in the tax commissioner by subsection (b), the tax commissioner shall have the power to issue subpoenas and subpoenas duces tecum, in the name of his agency, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof by personal service made by any person over eighteen years of age. Service of subpoenas and subpoenas duces tecum shall be the responsibility of the tax commissioner or his delegate. Any person, except a person in the employ of the state tax department, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Upon motion made promptly and in any event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under
the "West Virginia Rules of Civil Procedure for Trial
Courts of Record," could grant, and for any of the same
reasons, with respect to any such subpoena or sub-
poena duces tecum issued from any such circuit court.
In case of disobedience or neglect of any subpoena or
subpoena duces tecum served on any person, or the
refusal of any witness to testify to any matter regarding
which he may be lawfully interrogated, the circuit court
of Kanawha County or of the county in which such
person resides, has his or its principal place of business
or is employed, or the judge thereof in vacation, upon
application by the tax commissioner, shall compel obedi-
ence by attachment proceedings for contempt as in
the case of disobedience of the requirements of a sub-
poena or subpoena duces tecum issued from such circuit
court or a refusal to testify therein. Witnesses sub-
poenaed under this subsection shall testify under oath
or affirmation.

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

e) Secrecy of returns.—Except when required in an
official investigation into the amount of tax due under
any article administered under this article or in any
proceeding before a court of competent jurisdiction to
collect or ascertain the amount of such tax and except
as provided in subsections (f), (g) and (h), it shall be
unlawful for any officer or employee of this state to
divulge or make known in any manner the tax return,
or any part thereof of any individual, firm, or corpora-
tion, or disclose information concerning the personal
affairs of any individual or the business of any single
firm or corporation, or disclose the amount of income,
or any particulars set forth or disclosed in any report,
declaration or return required to be filed with the tax
commissioner by any article of this chapter imposing
any tax administered under this article or by any
rule or regulation of the tax commissioner issued
thereunder.
Any officer or employee of this state who violates this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

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

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

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

(g) Inspection of business and occupation tax returns by municipalities.—The tax commissioner shall, upon the written request of the mayor of any West Virginia municipality having a business and occupation tax or privilege tax, allow the duly authorized agent of such municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of such municipality, for the purpose of securing information for municipal tax purposes provided such municipality allows the tax commissioner the right to inspect or make copies of the municipal business and occupation tax returns of such municipality.
(h) Release of administrative decisions.—The tax commissioner may, in his discretion, release his administrative decisions, or a summary thereof, to the public: Provided, That, unless waived in writing by the taxpayer, any identifying characteristics or facts about the taxpayer shall be omitted or modified to such an extent so as to not disclose the name or identity of the taxpayer.

(i) Service of notice.—Notices of assessments and administrative decisions shall be served upon the taxpayer either by personal service or by certified mail.

(j) Timely filing and paying.

(1) Delivery in person.—If any return, claim, statement, or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, it shall be timely filed.

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

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

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

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

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

(5) Last date for filing or payment.—The last date for timely filing or timely making payment shall include any extension of time authorized by law or regulation and any extension of time granted in writing by the tax commissioner.

(k) Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.—When the last day prescribed under authority of any article of this chapter imposing any tax administered under this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this subsection, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term “legal holiday” means a legal holiday in this state.

(l) Enforcement.—The enforcement of any of the provisions of this article or the provisions of any article of this chapter administered under this article, in any of the courts of this state shall be under the exclusive jurisdiction of the tax commissioner, who shall require the assistance of and act through the prosecuting attorney
of any county where suit is brought. Such prosecuting
attorney shall receive no fees or compensation in addi-
tion to the salary paid by the county to such offices,
for services rendered in enforcing this article or any of
the other articles of this chapter administered under
this article.

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

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

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

§11-10-7. Assessment.

(a) General.—If the tax commissioner believes that
any tax administered under this article has been in-
sufficiently returned by a taxpayer, either because the
taxpayer has failed to properly remit the tax, or has
failed to make a return, or has made a return which is
incomplete, deficient or otherwise erroneous, he may
proceed to investigate and determine or estimate the tax/liability and make an assessment therefor.

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

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

§11-10-8. **Notice of assessment; petition for reassessment.**
The tax commissioner shall give the taxpayer written
notice of any assessment or amended assessment made
pursuant to this article. Unless the taxpayer to whom a
notice of assessment, or amended assessment, is given
shall, within sixty days after service thereof (except in
the case of jeopardy assessments, as to which the time
for filing a petition is specified in section seven), either
personally or by certified mail, file with the tax com-
missioner a petition in writing, verified under oath by
the taxpayer or his duly authorized agent, having knowl-
edge of the facts, setting forth with particularity the
items of the assessment objected to, together with the
reasons for the objections, the assessment or amended
assessment shall become final and not subject to either
administrative or judicial review under the provisions
of sections nine and ten of this article. The amount of
an assessment or amended assessment shall be due and
payable on the day following the date upon which the
assessment or amended assessment becomes final.


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

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

After any hearing as above provided for, the tax
commissioner shall, within a reasonable time, give notice
in writing of his decision. Unless an appeal from the
decision of the tax commissioner rendered in any such
hearing is taken, pursuant to the provisions of section
ten of this article, within sixty days after service of such
notice, the tax commissioner's decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the state under such decision shall be due and payable on the day following the date upon which such decision becomes final. The amount, if any, due the taxpayer under such decision shall be promptly refunded, or the same may be credited pursuant to section fourteen of this article.

§11-10-10. Appeals.

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

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

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

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

(d) Appeal bond.—Before the appeal is heard, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this
bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the tax commissioner. Notwithstanding the foregoing and in lieu of such bond, the tax commissioner may, upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by section twelve of this article, or other indemnification, are adequate to secure performance of the orders of the court.

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

§11-10-11. **Collection.**

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

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

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter, shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six percent of the
contract price, as will in such person's opinion be sufficient to cover such taxes, until the receipt of a certificate from the tax commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

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

(c) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.—The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the tax commissioner to the effect that every tax administered under this article imposed against any such corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) Prerequisite to final settlement of contract with this state or political subdivision; penalty.—All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any such contract, until the receipt of a certificate from the tax commissioner to the effect that the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the contractor have been paid or provided for. If the transaction embodied in such contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then such payment shall also be withheld until receipt of a release from such county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section shall be subject to a civil penalty of one thousand dollars, re-
coverable as a debt in a civil action brought by the tax commissioner.

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

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

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

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

(g) Injunction.—If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in
this state until the taxpayer fully complies with the provisions of this article or any of such other articles.

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

§11-10-12. Liens.

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

(b) Duration of lien.—The lien created by this section shall continue until the liability for the tax, additions to tax, penalties and interest is satisfied or becomes unenforceable by reason of lapse of time.

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

(d) Release.—The tax commissioner, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien.


1 If any tax administered under this article is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is
made by the tax commissioner and notice thereof is
given as required by this article and such assessment
has become final and is not subject to administrative
or judicial review, the tax commissioner may issue a
warrant directed to the sheriff of any county of this
state commanding him to levy upon and sell the real
and personal property, including intangibles represented
by negotiable evidences of indebtedness, of the tax-
payer owning the same found within his county for
the payment of the amount of all taxes, additions to
tax, penalties and interest accrued and unpaid under
any of the articles of this chapter to which this article
is applicable. A sheriff so collecting taxes due here-
under shall be entitled to compensation in the amount
of all additions to tax collected over and above the prin-
cipal amount of tax, penalties and interest due, but in
no case shall such compensation exceed one hundred
dollars. The sheriff shall return such warrant to the
tax commissioner and pay to him the money collected
by virtue thereof by the time specified in the warrant,
but not later than sixty days from the date of such
warrant. In the discretion of the tax commissioner, a
warrant of like terms, force and effect may be issued
and directed to any officer or employee of the state
tax department and in the execution thereof such officer
or employee shall have all powers conferred by law
upon sheriffs, but shall be entitled to no fee or compen-
sation in excess of all reasonable and necessary ex-
penses actually paid in the performance of such duty.
If a warrant is returned not satisfied in full, the tax
commissioner may proceed to enforce the claim for taxes
by civil action.

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

(a) Refunds or credits of overpayments.—In the case
of overpayment of any tax, additions to tax, penalties
or interest imposed by this article or any of the other
articles of this chapter to which this article is applicable,
the tax commissioner shall, subject to the provisions
of this article, refund to the taxpayer the amount of the
overpayment or, if the taxpayer so elects, apply the
(b) Refunds or credit of gasoline and special fuel excise tax or motor carrier road tax.—Any person who seeks a refund or credit of gasoline and special fuel excise tax under the provisions of sections ten, eleven or twelve of article fourteen or the provisions of sections nine or eleven of article fourteen-a of this chapter shall file his claim for refund or credit in accordance with the provisions of such sections. The ninety-day time period for determination of these claims provided in subsection (d) shall not apply to such claims for refund or credit.

(c) Claims for refund or credit.—No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the tax commissioner. A person against whom an assessment or an administrative decision has become final shall not be entitled to file a claim for refund or credit with the tax commissioner as prescribed herein. The tax commissioner shall determine the taxpayer’s claim and notify the taxpayer in writing of his determination.

(d) Petition for refund or credit; hearing.—If the taxpayer is not satisfied with the tax commissioner’s determination of his claim for refund or credit, or if the tax commissioner has not determined the taxpayer’s claim within ninety days after such claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by articles twenty-one and twenty-four of this chapter, after the filing thereof, the taxpayer may file with the tax commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of his claim. The petition for refund or credit shall be in writing, verified under oath by the said taxpayer or his duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to,
together with the reasons for the objections. When a
petition for refund or credit is properly filed, the pro-
cedures for hearing and for decision prescribed in sec-
tion nine shall be followed.

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

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

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

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

(i) Remedy exclusive.—The procedure provided by
this section shall constitute the sole method of obtaining
any refund or any credit, it being the intent hereof
that the procedure set forth in this article shall be in
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
extending the time period in which an assessment of a
tax can be made, then the time period for filing a claim
for refund or credit for an overpayment of the same
tax made during the periods subject to assessment under
the extension agreement shall also be extended for the
period of the extension agreement plus ninety days.

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

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

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

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

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

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

§11-10-15. Limitations on assessment.

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

(b) Extension by agreement.—The tax commissioner and the taxpayer may enter into written agreements to extend the period within which the tax commissioner may make an assessment against the taxpayer 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.

(c) Deficiency in federal tax.—Notwithstanding subsection (a), in the event of a final determination by the United States internal revenue service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation upon assessment of a deficiency reflecting such final determination in the net income tax imposed by article twelve-a and the taxes imposed by articles twenty-one and twenty-four of this chapter shall not expire until ninety days
after the tax commissioner is advised of the determination by the taxpayer as provided in section six-a of said article twelve-a, section fifty-nine of said article twenty-one and section twenty of said article twenty-four, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later.

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

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

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

§11-10-16. Limitations on collection.

(a) Where assessment is issued.—Every proceeding instituted by the tax commissioner for the collection of the amount found to be due under an assessment which has become final of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalty or interest, shall be brought or commenced within five
years after the date on which such assessment has become final.

(b) Where assessment is not issued.—Every proceeding instituted by the tax commissioner for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within five years after the date on which the taxpayer filed the annual return required to be filed by any of the articles of this chapter and, if no annual return is required, such five-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.

(c) Exception as to false or fraudulent return or no return.—In the case of the filing of a false or fraudulent return, or in case no return is filed, the limitations specified in this section shall not apply.

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

(e) Extension of time for institutions of collection proceedings by agreement.—The tax commissioner and the taxpayer may enter into written agreement to extend the period within which the tax commissioner may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable. Such 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.
§11-10-17. Interest.

(a) Underpayments.—If any amount of a tax administered under this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate of eight percent per annum shall be paid for the period from such last date to the date paid. For purposes of this subsection, the last date prescribed for payment shall be the due date of the return and shall be determined without regard to any extension of time for payment.

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

(c) Erroneous refund or credit.—If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the rate of eight percent per annum shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.

(d) Overpayments.—Interest shall be allowed and paid at the rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of each tax administered under this article except the taxes imposed by articles twelve, fourteen and fourteen-a of this chapter. Such interest shall be allowed and paid for the period commencing with the date of the filing by taxpayer of a claim for refund or credit with the tax commissioner and ending with the date of final administrative or judicial determination of overpayment. The tax commissioner shall, within thirty days after such final determination of entitlement to refund, issue his
requisition or establish a credit as requested by the taxpayer. Whenever the tax commissioner fails or refuses to issue any such requisition or establish such credit within said thirty-day period, the interest provided herein shall commence to accrue anew until performance by the tax commissioner. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(e) Applicable rules.—

1. No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed.—In the event of any overpayment of any tax administered under this article, except the taxes imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

2. No interest payable where personal income tax and corporation net income tax refunded or credited within six months after claim for refund or credit is filed.—In the event of any overpayment of the taxes imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his requisition or establishes a credit as requested by the taxpayer within six months after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

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

4. No interest on interest.—No interest under this section shall be imposed on the interest provided by this section.

5. Interest on penalties or additions to tax.—Interest shall be imposed under subsection (a) on any assessable penalty or additions to tax only if such penalty or additions to tax is not paid within fifteen days from the date of notice and demand therefor, and in such case interest
(6) Payments made within fifteen days after notice and demand.—If notice and demand is made for payment of any amount, and if such amount is paid within fifteen days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

§11-10-18. Additions to tax.

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

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

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

(b) Limitation and special rule.—In computing additions to tax under this section, only one of the paragraphs of subsection (a) shall be applicable to any one taxable period. If the correct amount of tax due is less
than the amount shown on the return, paragraphs (1)
and (2) of subsection (a) shall apply only to the lower
amount.
(c) Negligence or intentional disregard of rules and
regulations.—In the case of underpayment of any tax
administered under this article which is due to negli-
gence or intentional disregard of rules and regulations
(but without intent to defraud), there shall be added to
the amount of tax due five percent of the amount of
such tax if the underpayment due to negligence or in-
tentional disregard of rules and regulations is for more
than one month, with an additional five percent for each
additional month or fraction thereof during which such
underpayment continues, not exceeding twenty-five per-
cent in the aggregate: Provided, That this additions to
tax shall be imposed only on the net amount of tax due
and shall be in lieu of the additions to tax provided for
in subsection (a).
(d) False or fraudulent return.—In the case of the
filing of any false or fraudulent return with intent to
evade any such tax, or in the case of willful failure to
file a return with intent to evade tax, there shall be
added to the tax due an amount equal to fifty percent
thereof which shall be in lieu of the additions to tax
provided for in subsections (a) and (c). The burden of
proving fraud, willfulness, or intent to evade tax shall
be upon the tax commissioner.
(e) Additions to tax treated as tax.—Additions to tax
prescribed under this section on any tax shall be assessed,
collected and paid in the same manner as taxes.

(a) Failure to collect, account for, and pay over tax,
or attempt to defeat or evade tax.—Any person required
to collect, account for and pay over any tax administered
under this article, who willfully fails truthfully to account
for and pay over such tax, and any person who willfully
attempts in any manner to evade or defeat any such tax
or the payment thereof, shall, in addition to other penal-
ties provided by law, be liable for a money penalty equal
to the total amount evaded, or not collected, or not ac-
counted for and paid over. No additions to tax shall be imposed under section eighteen for any offense to which this subsection is applicable.

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

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

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

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

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

(b) The provisions of sections one through fourteen shall apply on and after the effective date of this article irrespective of when the tax liability arose: Provided, That when the assessment has been made prior to the effective date of this article, the rights and duties of the taxpayer and the state of West Virginia shall be determined with regard to the assessment, hearing and appeals therefrom by the laws of the state of West Virginia as they existed prior to the effective date hereof, which laws shall be preserved and continued with respect to such assessment, hearing and appeals as fully and completely as if set forth in extenso herein.
(c) The provisions of sections fifteen through nineteen shall apply only with respect to taxes imposed for periods ending on or after the effective date of this article. Tax liabilities, if any, arising prior to the effective date of this article shall, with respect to additions to tax, penalties and interest, be determined, administered and assessed as if this act and the sections and articles it amends and reenacts or repeals had not been amended and reenacted or repealed, and the rights and duties of the taxpayers and the state of West Virginia shall be fully and completely preserved.

(d) Notwithstanding subsection (c) above, the provisions of sections sixteen, seventeen, eighteen and nineteen of this article may apply to tax liabilities arising during any period prior to the effective date of this article if (1) the tax commissioner has not issued an assessment with respect to such prior period, or (2) the tax commissioner has issued such assessment which is or may be the subject of a petition for reassessment and his decision thereon has not been issued as of the effective date of this article, and the taxpayer elects to have all of the provisions of sections sixteen, seventeen, eighteen and nineteen of this article apply as fully as if the same had been in effect at the time the tax liability arose. Such election shall be made within sixty days after assessment or within sixty days after the effective date of this article whichever last occurs. No election under this subsection shall serve to shorten the statute of limitations upon assessments otherwise applying to tax liabilities arising prior to the effective date of this article.

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

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

1 Notwithstanding the limitations found in article ten
of this chapter, all taxes imposed by this article upon
any transfer, and the additions to tax, penalties and
interest that may accrue thereon, shall, until paid, be
and remain a charge and lien upon the property trans-
ferred, superior to any lien created after such transfer,
and no title shall vest or be transferred as to any such
property, except subject to the lien for such taxes, addi-
tions to tax, penalties and interest, and no such property
shall be transferred or delivered, in whole or in part,
until the payment into the treasury of the state of the
amount of such tax: Provided, That this restriction shall
not apply to the transfer or delivery of twenty-five hun-
dred dollars or less from the balance of a joint bank
account of which the decedent was a co-owner when such
transfer or delivery is to the surviving co-owner or co-
owners and such a co-owner or co-owners are within
the class designated in section two (a) of this article.
The person to whom the property is transferred, if he
shall receive the same before the tax thereon is paid,
and the executors, administrators and trustees having
charge of every estate so transferred, shall be personally
liable for such tax, additions to tax, penalties and inter-
est until its payment: Provided, however, That such
liens and the tax, additions to tax, penalties and interest
represented thereby shall not be enforceable or col-
lectible either against the property or from any person
whatsoever after the expiration of ten years from and
after the death of the decedent whose property is sub-
ject to tax under the provisions of this article, whether
there has been a qualification or not upon the estate of
the decedent. The limitation aforesaid shall apply re-
gardless of whether or not a personal representative
has been appointed or qualified upon the estate of the
decedent: Provided further, That the limitation of ten
years prescribed by this section shall not be construed
to apply to any suit or proceeding now pending and
undetermined, commenced prior to the tenth day of June,
one thousand nine hundred forty-nine, for the enforce-
ment of any such lien otherwise legally enforceable but
for said limitation.
§11-11-10. Extension of time pending settlement of estate.
1 Whenever it shall be necessary in the settlement of any estate to retain property or funds for the purpose of paying any liability, the amount or validity of which is not determined, the time for payment of the whole or a proportionate part of such tax may be extended to await disposition of such claim.

1 All taxes imposed by this article shall be due and payable at the death of the transferor and if paid within ten months after the death of the transferor, a discount of three percent shall be allowed and deducted. If not paid within eleven months after the death of the transferor, taxes due under this article shall be subject to the provisions of article ten of this chapter regarding additions to tax, penalties and interest, to be computed from the expiration of eleven months from the date of the death of the transferor until paid. The tax commissioner may upon written application extend the time for payment of such taxes on such terms and conditions as he may require.

The provisions of this section as amended to take effect on the first day of July, one thousand nine hundred seventy-six, shall apply to estates of all decedents dying on or after the first day of July, one thousand nine hundred seventy-six and the provisions of this section eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in effect prior to the first day of said July shall apply to the estates of all decedents dying before said date.

1 The county commissions of all counties of the state, or the clerks thereof, shall make reports in all decedent estates and in all cases where a transfer otherwise occurs when required by the tax commissioner. Such clerks may ascertain when a transfer has occurred by reference to the filing of a will, the appointment of a fiduciary, or the admission to record of a deed or other writing
intended to take effect in possession or enjoyment, at or after the death of the maker thereof, or appearing to be in contemplation of his death, or be based on any information otherwise derived, and shall report the same to the tax commissioner. Such a report shall be made quarterly as soon as possible after the first day of January, April, July and October in each year, and shall relate to all such matters as were not covered by any previous report. A special report may be made by the clerk at any time. If there be no reason to believe that any such transfer has been made since the date of the last preceding report, that fact shall be stated in such quarterly report, but if there be reason to believe that such a transfer has been made, such quarterly or special report shall show the nature thereof; the name of the decedent, devisor, grantor, vendor, bargainor or donor; the name or other description, and the address of the person or corporation to or for whose use or benefit any property may be transferred, and the relationship, if any, between such person and the person from whom the property is transferred, as far as the commission or clerk may have any information respecting such matters; the nature of the property transferred, with such general description and approximate valuation as the commission or clerk may be able to give. Any other person, whether interested in such property or not, may make a like report to the tax commissioner. Every such report, whether by the clerk or by any other person, shall be filed by the tax commissioner, and retained in his office until the tax, additions to tax, penalties and interest be paid on the transfers therein mentioned, or until it shall be ascertained that they are not subject to tax, and shall then be destroyed; and at all times such report shall be confidential and privileged, and its contents shall not be inspected or made known by anyone, except by the tax commissioner as to any report made by a clerk, when there shall be a question whether such clerk has complied with the provisions of this article.
§11-11-14a. Transfer of bonds or stocks standing in the name of deceased; reports by corporations.

1 No corporation incorporated under the law of this state, and no registration or transfer agent thereof, shall register or transfer any bonds or stock of the corporation standing in the name of a deceased or joint names of a deceased and one or more persons or in trust for a deceased until ten days' notice to the tax commissioner of the time of the transfer and until the tax commissioner shall consent thereto in writing. A corporation or agent registering bonds or making a transfer without the consent of the tax commissioner under this section shall be liable for any tax thereafter assessed on account of the transfer of such securities together with accrued additions to tax, penalties and interest as provided for in article ten of this chapter, plus an additional penalty of one thousand dollars. This liability may be enforced in the manner provided in section eleven, article ten of this chapter.

2 If a corporation not incorporated in this state and owning property in the state, or the registration or transfer agent thereof, shall register or transfer on its books, bonds or stock of the corporation standing in the name of a resident deceased before taxes accruing under this article with respect to the transfer of such bonds or stock on the death of the deceased have been paid, such corporation or agent shall become liable for the payment of such taxes, additions to tax, penalties and interest. Property held by such a corporation or agent in this state shall be subject to execution to satisfy any liability of the corporation or agent under this section.

3 A receipt or certificate of authority signed by the tax commissioner shall be full protection to either a domestic or foreign corporation or agent thereof in the transfer of any such bonds or stock.

4 The tax commissioner shall have authority to require that any reports necessary to a proper enforcement of this article be made by any corporation subject to the 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, order or society authorized to transact annuity contracts, investment contracts, or similar types or forms of policy or contract business within this state which shall pay to any named beneficiary, estate or trustee upon the death of a resident of this state, the proceeds of any such contract or policy shall, on the date of such payment, give notice thereof, in writing, to the tax commissioner of West Virginia, stating (a) the amount of such payment, (b) the name and address of each beneficiary, and (c) the time and manner of payment: Provided, that such notice shall not be required (1) when the policy or contract involved or the payment to be made is fifteen hundred dollars or less and is payable to the class designated in section two (a) of this article, and (2) when the amount of the policy or payment to be made is one thousand dollars or less.

2. Any such company so authorized to do business in this state, failing or refusing to comply with the provisions of this section, shall thereby become liable to the state for any amount of tax, additions to tax, penalties and interest which may be due on the amount of payment concerning which such company failed or refused to file the notice prescribed by this section.


1. The tax commissioner shall as soon as may be, from the statements and reports made by the clerk and the personal representative or trustees or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this article, and if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this article, he shall make his assessment to that effect.
Notwithstanding the provisions of article ten of this chapter, the notice of assessment shall set out: (a) The amount of such property liable to such tax; (b) the rate of tax thereon; (c) the names of the beneficiaries thereof; (d) their degree of relationship to the decedent; and (e) the amount of tax; and it shall be the duty of the county clerk and personal representative of every such estate, and if there be no personal representative the beneficiaries thereof, to show in their report to the tax commissioner the information upon which to base such assessment. The tax commissioner shall make duplicate notices of his assessment, one of which he shall forward to such personal representative, trustee, grantee, vendee or bargainee. If the tax is not paid within sixty days after service of the notice of assessment, the tax commissioner may forward the other notice of assessment to the clerk of the county commission of the county wherein the property, or the greater part thereof in value is located, which notice of assessment shall be recorded by the clerk in the trust deed book in his office and the notice shall be indexed in the judgment lien docket.

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

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

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

Notwithstanding the provisions of article ten of this chapter or that any such notice of assessment may have been made and recorded, if it afterward appear to the tax commissioner that the transfer of the property mentioned in such notice of assessment, or any part thereof,
is subject to any tax in addition to that mentioned in such notice of assessment, or that it is taxable in a case where such notice of assessment showed that it was not liable to such tax, he shall assess the proper tax thereon in addition to any tax which may have been theretofore assessed, and shall forthwith prepare a notice of amended assessment in duplicate, and forward one of such notices to each of the persons to whom his original notice of assessment was required to be forwarded. The notice of amended assessment, so forwarded to the clerk of the county commission, shall by him be forthwith recorded in the same book in which trust deeds and mortgages are recorded and he shall index the notice in the judgment or tax lien docket, and from the time of its admission to the record, shall constitute a lien on the property on which tax is assessed, for the amount of such taxes, additions to tax, penalties and any interest accruing thereon, until the same are paid, except as against purchasers for value, before such admission to record, and without notice of such additional liability, and except as against those who may claim under such purchaser, having purchased for valuable consideration without notice of such 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 amounts of any such tax when there is a controversy as to the relationship between the former owner of the 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, shall be liable to the state for any taxes, additions to tax, penalties and interest payable to the state on the estate of his decedent, to the amount of the moneys and the value of the property which come into his hands as such fiduciary, and for the proceeds of all sales of real estate received by him under the provisions hereof; and if any such fiduciary fail to perform any of the duties imposed on him by this article, he and his sureties shall be liable upon his bond for any damages resulting from
such failure, the county commission under whose order he qualified may revoke his authority, and he and his sureties shall be liable to the same proceedings as if his authority had been revoked for any other cause.

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

In addition to the tax commissioner’s powers set forth in section five, article ten of this chapter, every person having in his possession or control any book or paper containing any information respecting property transferred, as aforesaid, shall, at the request of the tax commissioner, exhibit the same to him or to the prosecuting attorney of the county, and any person in interest shall make written answer under oath to any questions which the tax commissioner may put in writing concerning such property. Any person failing to comply with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than ten nor more than five hundred dollars.

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

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article eleven with like effect as if said act were applicable only to the tax imposed by this article eleven and were set forth in extenso in this article eleven: Provided, That where it is expressly and specifically provided in this article eleven that a particular provision of this article eleven shall govern and control notwithstanding any provision contained in said article ten, such particular provision of this article eleven shall govern and control.

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


When the state tax commissioner claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the state tax commissioner may make a written agreement of compromise with the other taxing authorities and the execu-
tor or administrator that a certain sum shall be accepted
in full satisfaction of any and all inheritance taxes im-
posed by this state, including any additions to tax interest
or penalties to the date of filing the agreement. The
agreement shall also fix the amount to be accepted by
the other states in full satisfaction of death taxes. The
executor or administrator is hereby authorized to make
such agreement. Either the state tax commissioner or
the executor or administrator shall file the agreement, or
a duplicate, with the authority that would be empowered
to assess inheritance taxes for this state if there had
been no agreement; and thereupon the tax shall be
deemed conclusively fixed as therein provided. Unless
the tax is paid within thirty days after filing the agree-
ment, additions to tax, interest and penalties shall there-
after accrue upon the amount fixed in the agreement but
the time between the decedent's death and the filing shall
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,
penalties, or interest, or any part thereof, required by chapter eleven of the code of West Virginia of one thousand nine hundred thirty-one, as amended, the tax commissioner may cancel his certificate. Before canceling any such certificate, the tax commissioner shall set a hearing as prescribed in this article and notify the person by certified mail not less than twenty days prior to the hearing date to appear and show cause why such registration certificate should not be canceled.

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

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

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

If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of any such business certificate, the circuit court or the judge thereof in vacation, of the county in which such violation occurred, shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting such person from continuing such business, activity or trade until he has fully complied with the provisions of this article. The remedy provided in this section shall be
in addition to all other penalties and remedies provided by law.

The tax commissioner shall make available, when requested, information as to whether a person is registered to do business in the state of West Virginia.

§11-12-9. Penalties.

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

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

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

Whenever any person ceases to engage in business within this state by reason of the discontinuance, sale or transfer or by any other means of disposition of the business, it shall be his duty to notify the tax commissioner in writing of the discontinuance, sale or transfer or other disposition of the business, the date thereof and the name and address of the seller or transferor and purchaser or transferee thereof.
Unless the notice shall have been given to the tax commissioner as above provided, such seller or transferor and purchaser or transferee shall be jointly liable to the state of West Virginia for the amount of all taxes, additions to tax, penalties and interest due and unpaid under the provisions of this article or article ten of this chapter.

§11-12-14. Hearing; appeal.

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

§11-12-15. Enforcement.

1 Any employee of the state tax department so designated by the tax commissioner shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality of this state, and such employee shall, before entering upon the discharge of his duties, execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

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

1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the business franchise registration tax imposed by this article twelve, sections one through seventeen with like effect as if said act were applicable only to such business franchise regis-
ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

1 If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such changes or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the tax commissioner may require. The tax commissioner may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

§11-12A-23. General procedure and administration.
1 Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article twelve-a with like effect as if said act were applicable only to the tax imposed by this article twelve-a and were set forth in extenso in this article twelve-a.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

1 The assessment of taxes made under the provisions of article ten of this chapter and the returns required therefor shall be for the year ending on the thirty-first day of December. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the tax commissioner, make his annual
returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

§11-13-13. Receiver or insolvency proceedings.
1 In the event a business subject to the tax imposed by this article shall be operated in connection with a receiver or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.

1 The tax commissioner may, with the approval of the governor, appoint not more than twelve agents for the entire state for the collection of delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest. All delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest so collected shall be, by the tax commissioner, paid into the state treasury to the credit of the state general fund. The salary of every such agent appointed shall be determined by the state tax commissioner by and with the approval of the governor.

1 Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article thirteen with like effect as if said act were applicable only to the tax imposed by this article thirteen and 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 article shall make, on or before the last day of each month, to the commissioner a report of its operations during the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. The reports prescribed
herein are required although a tax might not be due, or no business transacted, for the period covered by the report. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

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

A taxpayer shall keep such records necessary to verify the reports and returns required by this article, including inventories, receipts, disbursements, and any other records which the commissioner by regulation may prescribe, for a period of time not less than three years. Unless otherwise permitted, in writing, by the commissioner, each delivery ticket or invoice for each purchase or sale of gasoline or special fuel shall be recorded upon a serially numbered invoice showing the name and address of the seller and the purchaser, point of delivery, the date, number of gallons, kind of fuel and price of said fuel. The amount of tax shall be indicated separately or the invoice shall indicate whether or not the tax imposed by this article is included in the total price and such other information as the commissioner may require: Provided, That these invoicing requirements shall not apply to cash sales, and a person making such sales shall maintain such records as may be necessary to verify his return.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records of a taxpayer or any other person to verify the truth and accuracy of any report or return to ascertain whether the tax imposed by this article has been properly paid. In addition to the tax commissioner's powers set forth
in section five, article ten of this chapter, as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and the reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and papers the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

§11-14-10. 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 the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously or illegally collected from any person.

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

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

20 Every distributor or producer, retail dealer or importer shall be entitled to a refund from this state of the amount resulting from a change of rate decreasing the tax under the provisions of this article on gasoline and special fuel on hand and in inventory on the effective
date of such rate change, which gasoline and special fuel
shall have been included in any previous computations
by which the tax imposed by this article has been paid
by him.
No refund shall be made under this section unless a
written claim for refund is filed setting forth the cir-
cumstances upon which such refund is claimed. A claim
for refund shall be subject to the provisions of section
fourteen, article ten of this chapter. It shall be in such
form and supported with such records as the commis-
sioner may prescribe and shall be made under the pen-
alty of perjury. Claims for refund shall be filed with
the commissioner within three years from the end of
the month in which the tax was erroneously or illegally
paid or the gallons were exported or lost by casualty or
from change of rate, as provided in this section. Such
claim for refund shall also be subject to the provisions
of section fourteen, article ten of this chapter.

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

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

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

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

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

(4) Gasoline consumed in the business of manufac-
turing or producing natural resources or in mining or
drilling therefor, or in the transportation of natural re-
sources solely by means of unlicensed vehicles or ve-
hicles licensed under the motor vehicle laws of this
state, either as a motor fuel or for any other purpose and
which gasoline is not in any part used upon the highways
of this state, or
(5) Gasoline consumed in motorboats or other water-
craft operated upon the navigable waters of this state.
Such tax shall be refunded upon presentation to the
commissioner of an affidavit accompanied by the original
or top copy sales slips or invoices, or certified copies
thereof, from the distributor or producer or retail dealer,
showing such purchases, together with evidence of pay-
ment thereof, which affidavit shall set forth the total
amount of such gasoline or special fuel purchased and
consumed by such user, other than upon any highways
of this state, and how used; and the commissioner upon
the receipt of such affidavit and such paid sales slips
or invoices shall cause to be refunded such tax paid
on gasoline or special fuel purchased and consumed as
aforesaid.
The right to receive any refund under the provisions
of this section shall not be assignable and any assignment
thereof shall be void and of no effect, nor shall any pay-
ment be made to any person other than the original
person entitled thereto using gasoline or special fuel
as hereinbefore in this section set forth. The commis-
sioner shall cause a refund to be made under the au-
thority of this section only when the claim for such
refund is filed with the commissioner, upon forms pre-
scribed by the commissioner, within four months from
the month of purchase or delivery of the gasoline or
special fuel except that any application for refund made
under authority of subdivision (2) above shall be filed
within twelve months from the month of purchase or
delivery of such gasoline or special fuel. Any claim for
a refund not timely filed shall not be construed to be or
constitute a moral obligation of the state of West Vir-
ginia for payment. Such claim for refund shall also be
subject to the provisions of section fourteen, article ten
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 state tax commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by such organization shall be refunded.

7 Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and consumed by such user, and the commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

19 The right to receive any refund under the provisions thereof shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the application for such refund is filed with the commissioner, upon forms prescribed by the commissioner, no later than the thirty-first day of August for purchases of fuel made during the preceding fiscal year ending the thirtieth day of June. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment. Such claim for refund shall also be subject to the provisions of section fourteen, article 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
a contract carrier permit for transportation of persons, when such person purchases tax-paid gasoline or tax-paid special fuel, as required by this article, in an amount of twenty-five gallons or more, and complies with all the requirements of section eleven, with the exception of off-highway use, may be refunded an amount equal to four and one-half cents per gallon under authority of this section: Provided, That said gallons of gasoline or special fuel shall have been consumed in the operation of urban and suburban bus lines, and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools. There shall be presented to the commissioner a claim for refund accompanied by proof of such purchase and payment as required by section eleven of this article. The right to a refund under this section shall not be assignable, and any assignment so made shall be void. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

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

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

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

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

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

Each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article ten of this chapter shall apply to the gasoline and special fuel excise tax imposed by this article fourteen with like effect as if said act were applicable only to such gasoline and special fuel excise tax imposed by this article fourteen and were set forth with respect thereto 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.

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

Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state. The taxes imposed shall be calculated on the basis of such joint reports as though such taxpayers were a single taxpayer; and the taxpayers making such reports shall be jointly and severally liable for the taxes. Such joint reports shall show the total number of highway miles traveled in this state and the total number of gallons of gasoline or special fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled shall not be allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

A taxpayer shall keep such records necessary to verify the highway miles traveled within and without the state of West Virginia, the number of gallons of gasoline
and special fuel used and purchased within and without
West Virginia and any other records the commissioner
by regulation may prescribe.
In addition to the tax commissioner's powers set forth
in section five, article ten of this chapter, the commis-
sioner may inspect or examine the records, books, papers,
storage tanks, meters and any equipment records or
records of highway miles traveled within and without
West Virginia and the records of any other person to
verify the truth and accuracy of any statement or report
to ascertain whether the tax imposed by this article has
been properly paid.
In addition to the tax commissioner's powers set forth
in section five, article ten of this chapter, and as a further
means of obtaining the records, books and papers of a
taxpayer or any other person and ascertaining the amount
taxes and reports due under this article, the commis-
sioner shall have the power to examine witnesses under
oath; and if any witness shall fail or refuse at the request
of the commissioner to grant access to the books, records
and papers, the commissioner shall certify the facts and
names to the circuit court of the county having jurisdict-
ion of the party and such court shall thereupon issue a
subpoena duces tecum to such party to appear before the
commissioner, at a place designated within the juris-
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
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
thirteen months from the close of the quarter in which
the tax was paid or the credit, as provided for in section
nine of this article, was allowed: *Provided, however,*
That such refund shall not be made until after audit of
the claimant’s records by the commissioner or until
after a surety bond has been furnished by the claimant,
as hereinafter provided, in an amount fixed by the com-
missioner, conditioned to pay all road taxes due here-
under: *Provided further,* That said credit or refund shall
in no case be allowed to reduce the amount of tax to be
paid by a taxpayer below the amount due as tax on
gasoline or special fuel used as fuel in this state as
provided by article fourteen of this chapter. The right
to receive any refund under the provisions of this article
shall not be assignable and any attempt at assignment
thereof shall be void and of no effect. Such claim for
refund or credit shall also be subject to the provisions of
section fourteen, article ten of this chapter.

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

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

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

Any surety on a bond furnished hereunder shall be
relieved, released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek discharge as herein provided, it shall be the duty of the principal of such bond to supply the commissioner with another bond, or pledge of property equal in value to the original bond, such pledge to be in the form of a tax lien on the property pledged and said lien shall be duly perfected in the office of the clerk of the county commission of the county wherein such property is situated and shall be submitted to the commissioner along with a certified appraisal statement as to the value of the property pledged prior to the expiration of the original bond. Failure to provide such bond or pledge may result in the commissioner canceling any registration card and identification marker previously 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 no tax is due, as required by this article, on the date prescribed therefor, unless it can be shown that such failure is due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for 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 Procedure and Administration Act” set forth in article ten of this chapter shall apply to the motor carrier road tax imposed by this article fourteen-a with like effect as if said act were applicable only to such motor carrier road tax imposed by this article fourteen-a and were set forth 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 imposed by section three of this article, or in the case of a sale exempt from the application of the tax, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions.

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

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

1 The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return. A monthly return shall 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 officers thereof shall be personally liable, jointly and
severally, for any default on the part of the association or
corporation, and payment of the tax and any additions to
tax, penalties and interest thereon imposed by article ten
of this chapter may be enforced against them as against
the association or corporation which they represent.

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.

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.

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

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

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


1 Each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten of this chapter shall apply to the tax imposed by this
article fifteen-a with like effect as if said act were applicable only to the tax imposed by this article fifteen-a and 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 mutilated, but identifiable, stamps that any wholesaler or retail dealer may present for redemption, on written verified requests made by the purchaser, his administrators, executors, successors or assigns, and refund therefor, ninety-five percent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. The commissioner shall pay on a like basis for stamps destroyed by fire or flood upon presentation of proof of such loss satisfactory to him. Such payments shall for the purposes hereof be deemed to be refunds of taxes improperly collected and shall be allowed and paid from funds collected. Stamps or meter impressions on cigarettes returned to the manufacturers will be subject to refund upon the filing of an affidavit in duplicate issued by the manufacturer evidencing the destruction of stamps or meter impressions. A claim for refund or credit shall be subject to the provisions of section fourteen, article ten of this chapter.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summonses, etc.
1 On or before the fifteenth day of each month common carriers, wholesalers, subjobbers, retail dealers and agents, or vending machine operators, shall, when required by this article, or the tax commissioner, file a report covering the business transacted in the previous month covering such information as the commissioner may deem necessary for the ascertainment or assessment of the tax imposed by this article; and shall be signed under penalty of perjury on such forms as the tax commissioner may prescribe and shall at this time remit any taxes owed or due, if any.
12 The reports prescribed herein are required although a
Each person required to file a report under this article shall make and keep such records as shall be prescribed by the tax commissioner that are necessary to substantiate the returns required by this article including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date, quantity, price of the product, and the tax must be set out separately or the invoice must indicate whether or not the West Virginia cigarette excise tax is included in the total price and such other reasonable information as the tax commissioner may require. However, these invoicing requirements do not apply to cash sales, and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

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

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a manufacturer, common carrier, wholesaler, subjobber or
retailer or any other person and ascertaining the amount
of taxes and reports due under this article the com-
missioner and his duly appointed agent shall have the
power to examine witnesses under oath; and if the
witness shall fail or refuse at the request of the tax
commissioner or his duly appointed agent to grant access
to the books, records or papers, the tax commissioner or
such agent shall certify the facts and names to the circuit
court of the county having jurisdiction of the party and
such court shall thereupon issue summons to such party
to appear before the tax commissioner or his agent, at a
place designated within the jurisdiction of such court, on
a day fixed, to be continued as the occasion may require
for good cause shown and give such evidence and lay
open for inspection such books and papers as may be
required for the purpose of ascertaining the amount of
tax and reports due, if any.

§11-17-17. Enforcement powers.

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

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

The state department of public safety or any county
sheriff or his deputy is, upon request of the commissioner,
hereby authorized and required to assist in the enforce-
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
no tax due.—In the case of any failure to make or file
a return when no tax is due, as required by this article
on the date prescribed therefor, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of such failure or fraction thereof.

(b) If any person:

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

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

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

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

(5) If any wholesale dealer shall sell cigarettes to any person in this state other than to another wholesaler, subjobber or retail dealer and no person in this state other than a wholesaler, or subjobber, shall sell cigarettes to a retail dealer. It shall be unlawful and a violation of this article for any retail cigarette dealer to purchase or acquire cigarettes from any person other than a wholesaler or subjobber. The original wholesaler who purchases unstamped cigarettes from the manu-
facturer is liable for the excise tax and the affixing of the required stamps, or meter impressions, or

(6) If any person, firm or corporation, who is not a wholesaler of tobacco products, as provided by this article, shall have in his possession within the state more than twenty packages of cigarettes not bearing cigarette tax paid indicia of this state, stamps or meter impressions, such possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due thereon, or

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

(c) Whoever falsely or fraudulently makes, forges, alters or counterfeits any stamps or meter impressions prescribed, or defined, by the provisions of this article, or its related rules and regulations, and any person who knowingly and willfully makes, causes to be made, purchases, receives or has in his possession, any device for forging or counterfeiting any stamp or meter impression, or has in his possession, any stamps not properly issued by the commissioner or his agent or deputy or tampers with or alters any stamping device authorized by the commissioner, or uses more than once any stamp or meter impression provided for and required by this article for the purpose of evading the tax hereby imposed, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary for a term of not less than one year nor more than five years.

(d) Whenever the commissioner or any of his deputies or employees authorized by him or any peace officer of this state for the purpose shall discover any cigarettes subject to tax as provided by this article and upon which
the tax has not been paid as herein required, such cigarettes shall thereupon be deemed to be contraband, and the commissioner, or such deputy or employee or any peace officer of this state is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, without a warrant, and such cigarettes shall be forfeited to the state, and the commissioner shall within a reasonable time thereafter sell such forfeited cigarettes: Provided, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment as provided herein for violation of any provisions of this article. Such sale may be made in any county the tax commissioner deems most convenient and economical. Notice of such sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

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

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

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article seventeen with like effect as if said act were applicable only to the tax imposed by this article seventeen and were set forth in extenso in this article seventeen.

ARTICLE 19. SOFT DRINKS TAX.

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

In addition to the additions to tax, penalties and interest authorized in article ten of this chapter, if any taxpayer fails to file a return or pay the proper amount
of tax within the time specified herein, the commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer: Provided, that if the failure to pay was due to reasonable cause, the commissioner may waive this penalty. The taxpayer may request a hearing within sixty days after service of notice of the refusal of the commissioner to authorize the purchase of the tax stamps or crowns. Upon receipt of a written request for a hearing filed within the time prescribed the provision for hearing and appeal, sections nine and ten, article ten of this chapter shall be applicable.

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

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

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


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

ARTICLE 21. PERSONAL INCOME TAX.

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

Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. To the extent not inconsistent with the provisions of this article, all of the provisions of article ten of this chapter and section ninety-two of this article twenty-one, relating to assessment and collection of taxes, and to penalties, additions to tax, and interest in respect thereto, shall apply to every employer required to withhold tax under this article. For such purposes any amount required to be withheld and paid over to the tax commissioner shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this article shall be held to be a special fund in trust for the tax commissioner. No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the tax commissioner in compliance or in intended compliance with this article.
§11-21-95. General procedure and administration.

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

ARTICLE 24. CORPORATION NET INCOME TAX.


(a) Failure to file returns, submit information, or pay tax.—Any person required under this article or article ten of this chapter, to pay any tax or estimated tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of any tax or estimated tax imposed by this article, who, at the time or times required by law, willfully fails to pay such tax or estimated tax, make such return or declaration, keep such records or supply such information, or willfully furnishes false and fraudulent information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Failure to collect and pay over tax, or attempt to defeat or evade tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.
(c) **False returns or certification.**—Any person who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, or who willfully makes a certification (as defined in subsection (b) of section fifteen) that is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

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

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

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

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

1 Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article twenty-four with like effect as if said act were applicable only to the tax imposed by this article twenty-four and were set forth in extenso in this article twenty-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 a claimant who was the recipient of public funds for the payment of his real property taxes or rent during the period for which the claim for relief was filed, or that such claimant received title to his homestead primarily for the purpose of receiving relief under this article, or that a claim for relief was filed with fraudulent intent, such claim for relief shall be disallowed in full, and, if any such claim for relief has been paid, the amount paid may be recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief, until refunded to the state tax commissioner, at the rate of one percent per month. Any claimant willfully and knowingly filing a fraudulent claim for relief, and any person who assisted in the preparation or filing of such fraudulent claim for relief or supplied information upon which such fraudulent claim for relief was prepared, with knowledge of such fraudulent intent of the claimant, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. If it is determined that a claim for relief is excessive and was through negligence incorrectly prepared, ten percent of the corrected claim for relief shall be disallowed, and if the claim for relief has been paid, the excessive portion of any amount paid and the ten percent disallowed shall be similarly recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief until refunded to the state tax commissioner at the rate of one percent per month.
1 Any claimant aggrieved by the denial in whole or in part of his claim for relief, except when the denial is based upon the late filing of a claim for relief, may demand a hearing within thirty days after such denial by filing with the state tax commissioner a verified petition for hearing, which petition shall set forth with definiteness and particularity the reasons for objecting to such denial. In every case where a petition is filed, the state tax commissioner shall assign a time and place for a hearing upon the same and shall proceed in accordance with the provisions of article ten of this chapter and all of the applicable provisions of said article ten shall be applicable with like effect as if the petition were a petition for reassessment as provided in said article ten. In connection with holding any such hearing, the state tax commissioner shall have all of the relevant powers and authority set forth in said article ten. An appeal from a final decision of the state tax commissioner made after any such hearing may be taken by the claimant in accordance with the provisions of said article ten of this chapter, and such appeal shall be processed and determined with like effect as if said claimant were a “taxpayer” as that 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 ad valorem tax on real or personal property and the taxes administered under the provisions of article ten, chapter eleven of this code), interest and penalty due the state or any subdivision thereof shall be brought or issued within five years next after the date on which the taxpayer is required by the statute or ordinance imposing the tax, interest and penalty to file a return and pay the tax due thereunder, unless a different limitation is specifically prescribed by such statute or ordinance. The limitation
provided by this section shall likewise apply to enforce-
ment of the lien, if any, securing the payment of such tax,
interest and penalty, but shall not apply in event of fraud
or in event the taxpayer wholly fails to file the return
required by the statute or ordinance imposing the tax.
The official of the state or any subdivision thereof who
is charged with the duty of collecting any tax, interest
and penalty the collection of which is affected by the
limitation hereinafter provided may, before the run-
ing of the five-year period of such limitation has been
completed, enter into a written agreement with the tax-
payer consenting to an extension of such period for an
additional period of not to exceed two years, and any
action or process may be brought or issued to collect such
tax, interest and penalty at any time prior to the expira-
tion of the period so agreed upon. The period so agreed
upon may be extended for additional periods not in ex-
cess of two years each by subsequent agreements in
writing made before the expiration of the period pre-
viously agreed upon.
The provisions of this section as hereby amended shall
apply to tax periods ending on or after the first day of
July, one thousand nine hundred seventy-eight, and the
provisions of this section as in effect prior to the enact-
ment hereof shall apply to tax periods ending before said
date.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence E. Hendricks
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1978.

J. Dickens Jr.
Clerk of the Senate

W.L. Blankenship
Clerk of the House of Delegates

W.F. Bostic Jr.
President of the Senate

Donald F. Hoopp
Speaker House of Delegates

The within ______ approved ______ this the ______ day of ______ 1978.

John F. Bellamy
Governor