WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 542

Categorizing in the Committee on Finance

(BY SENATOR

PASSED April 21, 1993

In Effect from Passage
ENROLLED

Senate Bill No. 542

(Originating in the Committee on Finance.)

[Passed April 21, 1993; in effect from passage.]

AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections fourteen, twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eight, article twenty-one of said chapter; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto two new sections, designated sections nine and ten; to amend and reenact sections one and four, article four-b of said chapter; to amend and reenact sections one, two and seven, article four-c of said chapter; to amend article five of said chapter by adding thereto a new section, designated section seventeen; to amend and reenact sections one, two, three, four, nine, twenty-five and twenty-eight, article thirteen, chapter eleven of said code; to further amend said article by adding thereto four new sections, designated sections two-a, four-a, twenty-seven-a and thirty-two; to amend and reenact sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, nineteen, twenty and twenty-one, article thirteen-a of said chapter; to further amend said article by adding thereto
four new sections, designated sections three-a, three-b, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven, all relating to medicaid tax revenue; conforming health care provider tax to requirements of applicable federal law; taxation of ambulance authorities; requiring secretary to initiate independent case management system and other reforms; requiring nonprofit agency or facility in receipt of medicaid moneys to provide annual accounting of gross receipts and disbursements, including salaries; collection of copayments by health care providers; penalties; deleting tax imposed solely on medicaid reimbursements; deleting hold-harmless provisions; deleting abrogation provisions; definitions; changing composition of general medicaid board; requiring that medicaid reimbursement schedules be developed within limits of available funding; creation of general medicaid board to recommend fee schedules of health care providers to single state agency; creation of physician provider board to recommend fee schedules of physicians to single state agency; providing for quarterly review and reporting of fee schedules to the Legislature; establishing a business and occupation privilege tax imposed on certain gross proceeds of certain health care providers; limitations on municipalities to tax health care providers; establishing a severance and business privilege tax imposed on certain gross proceeds of certain health care providers; establishing a broad based health care provider tax imposed on certain gross receipts of certain health care providers; and transition rules.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.


1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its
3 purposes is in all respects for the benefit of the people
4 of this state in general and of the participating
5 governments in particular and is a public purpose; and
6 that the authority will be performing an essential
7 governmental function in the exercise of the powers
8 conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, properties, operations and activities shall be exempt from the payment of any taxes or fees to the state or any of its political subdivisions: Provided, That this exemption shall not apply to the tax imposed by section three, article thirteen-a, chapter eleven of this code on gross receipts derived from transporting patients. Interest on obligations and all evidences of indebtedness of any such authority shall be exempt from taxation, except inheritance and transfer taxes: Provided, however, That this exemption shall not apply to the tax imposed by section three, article thirteen-a, chapter eleven of this code on gross receipts derived from transporting patients.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9. Secretary to develop medicaid monitoring and case management.

1 On or before the first day of September, one thousand nine hundred ninety-three, the secretary of the department of health and human resources shall develop a managed care system to monitor the services provided by the medicaid program to individual clients, develop an independent referral service including the review of individual cases for abuses of the program and develop a schedule for implementation of the managed care system. The managed care system shall focus on, but not be limited to, the behavioral health and mental health services. In addition thereto, in accordance with applicable federal medicaid laws, the secretary shall prepare recommendations, to be submitted to the joint committee on government and finance on or before the first day of September, one thousand nine hundred ninety-three, concerning the following:

18 (i) A policy of prior authorization for certain identi-
fied health care procedures;
(ii) A policy for identifying excessive use of certain health care procedures by individuals and providers;
(iii) A policy of utilization caps for certain health care procedures;
(iv) A policy concerning disallowance of reimbursement rates for cosmetic procedures;
(v) A policy concerning higher reimbursement rates for basic primary health care services; and
(vi) The secretary is to utilize in-state health care facilities for inpatient treatment when such facilities are available. Prior authorization, consistent with applicable federal law, will be required for out-of-state inpatient treatment when such in-state inpatient health care facilities are not available.

§9-2-10. Collection of copayments by health care providers; penalties.

(a) The secretary is hereby directed to institute procedures to enforce the collection of copayments as required by Chapter 42, Section 447.53 of the Code of Federal Regulations. Any individual or entity receiving reimbursement from the state under the medical assistance program of the Social Security Act is required to collect such copayments and report the collection thereof to the single state agency: Provided, That pursuant to Chapter 42, Section 447.15 of the Code of Federal Regulations, no such individual or entity shall refuse care or services to any medicaid-eligible individual because of the individual’s inability to pay such copayment. In the event the copayment is not collected, the failure to collect the copayment and reasons therefor shall likewise be reported.

(b) Any person, firm, corporation or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, fails to collect the copayment as mandated by Chapter 42, Section 447.53
of the Code of Federal Regulations, shall be liable to
the department of health and human resources in the
amount of five hundred dollars for each occurrence of
failure to collect said copayment and shall be liable for
payment of reasonable attorney fees and all other fees
and costs of litigation.

(c) A civil action under this section may be prosecut-
ed and maintained on behalf of the department of
health and human resources by the office of the
attorney general or by any attorney employed by the
department of health and human resources to provide
such representation.

ARTICLE 4B. PHYSICIAN PROVIDER MEDICAID ACT.

§9-4B-1. Definitions.

The following words when used in this article have
meanings ascribed to them in this section, except in
those instances where the context clearly indicates a
different meaning:

(a) "Board" means the physician provider medicaid
board created to develop, review and recommend the
physician provider fee schedule.

(b) "Fund" means the physician provider medicaid
fund established to receive moneys collected from
physician providers, individuals and corporations
which will be matched with federal medicaid funds
pursuant to Title XIX of the United States Social
Security Act and expended in accordance with the
provisions of this article.

(c) "Physician provider" means a person engaged in
delivering services within the scope of practice of
medicine or osteopathy by or under the personal
supervision of a person licensed to practice as an
allopathic or osteopathic physician, regardless of
location, rendering services within or without this
state and receiving reimbursement, directly as an
individual provider or indirectly as an employee or
agent of a medical clinic, partnership or other business
entity.
(d) "Single state agency" means the single state agency for medicaid in this state.


(a) The board shall:

(1) Develop and recommend a reasonable physician provider fee schedule so that the schedule conforms within the limits of funds available, to usual and customary charges in accordance with federal medicaid laws. In developing the fee schedule, the board shall refer to a nationally published fee schedule selected by the secretary of the department of health and human resources. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal medicaid laws, and may recommend higher reimbursement rates for basic primary and preventive health care services than for other services. In identifying basic primary and preventive health care services and in accordance with applicable federal medicaid laws, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year one thousand nine hundred ninety-two; and minimum benefits and coverages for policies of insurance as set forth in section fifteen, article fifteen and section four, article sixteen-c, chapter thirty-three of this code and rules of the insurance commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the physician provider fee schedule;

(2) Review the fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves the board's adjustments, it shall immediately implement the adjustments and shall report the same to the joint committee on government and finance on a quarterly basis;

(3) Meet and confer with representatives from each medical specialty area so that equity in reimburse-
ment increases may be achieved to the greatest extent possible;
(4) Assist and enhance communications between participating physician providers and the department of health and human resources; and
(5) Review reimbursements in relation to those physician providers who provide early and periodic screening diagnosis and treatment.
(b) The board may carry out any other powers and duties as prescribed for it by the secretary.
(c) Nothing in this section gives the board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, in accordance with applicable medicaid laws, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's medicaid plan are met and shall report the same to the joint committee on government and finance on a quarterly basis. The purpose of the board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the medicaid provider community and the agency.
(d) On a quarterly basis, the single state agency shall report to the joint committee on government and finance the status of the fund, adjustments to the fee schedule and the fee schedule for each health care provider group identified in section one of this article.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ACT.

§9-4C-1. Definitions.

The following words when used in this article have the meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:
(a) "Ambulance service provider" means a person, regardless of location, rendering ambulance services within or without this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(b) "Dentist provider" means a dentist, regardless of location, rendering services within or without this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "General health care provider" means an advanced nurse practitioner, an audiologist, a chiropractor, a nurse-midwife, an occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a psychologist, a speech therapist, a behavioral health center, a community care provider, regardless of location, rendering services within or without this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(d) "Inpatient hospital service provider" means a hospital, regardless of location, maintained primarily for the care and treatment of patients with disorders other than mental diseases, providing services for the care and treatment of inpatients. As used in this definition, "services" may include inpatient psychiatric services.

(e) "Outpatient hospital service provider" means a hospital, regardless of location, providing preventative, diagnostic, therapeutic, rehabilitative or palliative services that are furnished to outpatients.

(f) "Secretary" means the secretary of the department of health and human resources.

(g) "Single state agency" means the single state agency for medicaid in this state.
§9-4C-2. General medicaid board.

There is hereby created the general medicaid board to consist of fifteen members who shall be appointed by the governor, including two lay persons and one representative from each of the following thirteen groups: Advanced nurse practitioner, an audiologist, a chiropractor, a nurse-midwife, an occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a psychologist, a speech therapist, a behavioral health center, a community care provider. In addition to the fifteen members appointed by the governor, the secretary, or his or her designee, shall serve as an ex officio, nonvoting member of the board. The governor shall make all appointments within twenty days from the effective date of this article. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, shall be made in the same manner as the initial appointment, and the terms of all members shall expire on the first day of July, one thousand nine hundred ninety-four.

§9-4C-7. Powers and duties.

(a) Each board created pursuant to this article shall:

(1) Develop and recommend a reasonable provider fee schedule, in relation to its respective provider group, so that the schedule conforms, within the limits of available funding, to usual and customary charges in accordance with federal medicaid laws. In developing the fee schedule the board shall refer to a nationally published fee schedule, if available, as selected by the secretary in accordance with section eight of this article. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal medicaid laws, and may recommend higher reimbursement rates for basic primary and preventive health care services than for other services. In identifying basic primary and preventive health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force.
of the health care planning commission in its report
issued in December of the year one thousand nine
hundred ninety-two; and minimum benefits and
coverages for policies of insurance as set forth in
section fifteen, article fifteen and section four, article
sixteen-c, chapter thirty-three of this code and rules of
the insurance commissioner promulgated thereunder.
If the single state agency approves the adjustments to
the fee schedule, it shall implement the provider fee
schedule;

(2) Review its respective provider fee schedule on a
quarterly basis and recommend to the single state
agency any adjustments it considers necessary. If the
single state agency approves a board's adjustment, it
shall immediately implement the adjustments and
shall report the same to the joint committee on
government and finance on a quarterly basis;

(3) Assist and enhance communications between
participating providers and the department of health
and human resources;

(4) Meet and confer with representatives from each
specialty area within its respective provider group so
that equity in reimbursement increases may be
achieved to the greatest extent possible and when
appropriate to meet and confer with other provider
boards; and

(5) Appoint a chairperson to preside over all official
transactions of the board.

(b) Each board may carry out any other powers and
duties as prescribed to it by the secretary.

(c) Nothing in this section gives any board the
authority to interfere with the discretion and judgment
given to the single state agency that administers
the state's medicaid program. If the single state agency
disapproves the recommendations or adjustments to
the fee schedule, it is expressly authorized to make
any modifications to fee schedules as are necessary to
ensure that total financial requirements of the agency
for the current fiscal year with respect to the state's
medicaid plan are met and shall report to the joint
commitee on government and finance on a quarterly
basis. The purpose of each board is to assist and
enhance the role of the single state agency in carrying
out its mandate by acting as a means of communica-
tion between the health care provider community and
the agency.

(d) In addition to the duties specified in subsection
(a) of this section, the ambulance service provider
medicaid board shall work with the health care cost
review authority to develop a method for regulating
rates charged by ambulance services. The health care
cost review authority shall report its findings to the
Legislature by the first day of January, one thousand
nine hundred ninety-four. The cost of the report shall
be paid by the health care cost review authority. In
this capacity only, the chairperson of the health care
cost review authority shall serve as an ex officio,
nonvoting member of the board.

(e) On a quarterly basis, the single state agency shall
report the status of the fund, adjustments to the fee
schedule and the fee schedule to the joint committee
on government and finance for each health care
provider identified in section two of this article.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-17. Nonprofit agency or facility, in receipt of medicaid
moneys, shall provide annual accounting of
gross receipts and disbursements including
salaries.

1 Any nonprofit health care agency or facility which
receives medicaid moneys shall as a condition of the
receipt of same, provide an annual accounting of that
facility's or provider's receipts and disbursements,
including the total salaries of all employees and
administrators, with one copy of same to be submitted
to the joint committee on government and finance and
one copy submitted to health care cost review author-
ity on or before the fifteenth day of the first month of
the year, for the preceding year.
CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

(a) General. — When used in this article, or in the administration of this article, the terms defined in subsections (b) and (c) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) Terms defined. —

(1) “Person” or the term “company”, herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) “Sale”, “sales” or “selling” includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) “Taxpayer” means any person liable for any tax hereunder.

(4) “Gross income” means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the
36 cost of property sold, the cost of materials used, labor
37 costs, taxes, royalties paid in cash or in kind or
38 otherwise, interest or discount paid or any other
39 expenses whatsoever.
40 (5) “Gross proceeds of sales” means the value,
41 whether in money or other property, actually proceeding
42 from the sale of tangible property without any
43 deduction on account of the cost of property sold or
44 expenses of any kind.
45 (6) “Business” shall include all activities engaged in
46 or caused to be engaged in with the object of gain or
47 economic benefit, either direct or indirect. “Business”
48 shall include the rendering of gas storage service by
49 any person for the gain or economic benefit of any
50 person, including, but not limited to, the storage
51 operator. “Business” also includes activities, whether
52 engaged in for profit, or not for profit, or by a
53 governmental entity: Provided, That “business” does
54 not include services rendered by an employee within
55 the scope of his or her contract of employment.
56 Employee services, services by a partner on behalf of
57 his or her partnership, and services by a member of
58 any other business entity on behalf of that entity, are
59 the business of the employer, or partnership, or other
60 business entity, as the case may be, and reportable as
61 such for purposes of the taxes imposed by this article.
62 (7) “Gas” means either natural gas unmixed, or any
63 mixture of natural and artificial gas or any other gas.
64 (8) “Storage reservoir” means that portion of any
65 subterranean sand or rock stratum or strata into
66 which gas has been injected for the purpose of storage
67 prior to the first day of March, one thousand nine
68 hundred eighty-nine.
69 (9) “Gas storage service” means the injection of gas
70 into a storage reservoir, the storage of gas for any
71 period of time in a storage reservoir, or the withdraw-
72 al of gas from a storage reservoir. Such gas may be
73 owned by the storage operator or any other person.
74 (10) “Net number of dekatherms of gas injected”
means the sum of the daily injection of dekatherms of gas in excess of the sum of the daily withdrawals of dekatherms of gas during a tax month.

(11) “Net number of dekatherms of gas withdrawn” means the sum of the daily withdrawal of dekatherms of gas in excess of the sum of the daily injection of dekatherms of gas during a tax month.

(12) “Partner” includes a member of such a syndicate, group, pool, joint venture or other organization which is a “partnership”, as defined in this section.

(13) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised, and which is not within the meaning of this article a trust or estate or corporation. “Partnership” includes a limited liability company which is treated as a partnership for federal income tax purposes.

(14) “Gas storage operator” means any person who operates a storage reservoir or provides a storage service as defined herein, either as owner or lessee.

(15) “Month” or “tax month” means the calendar month.

(16) “Dekatherm” means the thermal energy unit equal to one million British thermal units (BTU’s) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU’s per cubic foot.

(17) “Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(c) Specific definitions for persons providing health care items or services.
(1) "Advanced nurse practitioners" means certified pediatric nurse practitioners and certified family nurse practitioners as defined in article seven, chapter thirty of this code and duly licensed by the board of examiners for registered professional nurses.

(2) "Audiologist" means a person licensed to practice audiology in this state.

(3) "Chiropractor" means a person licensed to practice chiropractic in this state.

(4) "Dentist" means a person licensed to practice dentistry or dental surgery in this state.

(5) "Nurse-midwife" means a person licensed to practice nurse-midwifery in this state.

(6) "Occupational therapist" means a person licensed to practice occupational therapy in this state.

(7) "Optician" means a maker or dealer in optical items or instruments; or a person who grinds and dispenses prescription spectacle lenses.

(8) "Optometrist" means a person licensed to practice optometry in this state.

(9) "Physical therapist" means a person licensed to practice physical therapy in this state.

(10) "Podiatrist" means a person licensed to practice podiatry in this state.

(11) "Psychologist" means a person licensed to practice psychology in this state.

(12) "Speech therapist" means speech-language pathologists and audiologists as defined in section two, article thirty-two, chapter thirty of this code.

§11-13-2. Imposition of privilege tax.

(a) Imposition of tax. — For the privilege of engaging in certain business activities in this state, there is hereby levied and shall be collected from every person engaging in one or more of such activities during the taxable year an annual privilege tax. The amount of tax due shall be determined by the application of rates
against the measure of tax as set forth in sections two-
a, two-d, two-e, two-m and two-n of this article, as
appropriate, to the activity or activities of such person
during the taxable year.

(b) Apportionment of gross income. — When a
business or other activity taxable under this article is
engaged in partially in this state and partially in
another state, the measure of tax under this article
shall be determined under the rules set forth in this
subsection.

(1) When a service is rendered partially in this state
and partially in another state the gross income attrib-
utable to such service shall be allocated or apportioned
in accordance with uniform rules promulgated by the
tax commissioner.

(2) If any person liable for any tax under section
two-m shall ship or transport his products or any part
thereof out of the state without making sale of such
products, the value of the products in the condition or
form in which they exist immediately before transpor-
tation out of the state shall be the basis for the
assessment of the tax imposed in such section, except
in those instances in which another measure of the tax
is expressly provided. The tax commissioner shall
prescribe equitable and uniform rules for ascertaining
such value.

(3) In determining value, however, as regards sales
from one to another of affiliated companies or persons,
or under other circumstances where the relation
between the buyer and seller is such that the gross
proceeds from the sale are not indicative of the true
value of the subject matter of the sale, the tax
commissioner shall prescribe uniform and equitable
rules for determining the value upon which such
privilege tax shall be levied, corresponding as nearly
as possible to the gross proceeds from the sale of
similar products of like quality or character where no
common interest exists between the buyer and seller
but the circumstances and conditions are otherwise
similar.
(c) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall take effect on the first day of May, one thousand nine hundred ninety-three, and apply to taxable years, or portions thereof, ending after the thirtieth day of April, one thousand nine hundred ninety-three. With regard to taxable years or portions thereof ending before the said first day of May, the language of this section as then in effect for such years or portions thereof is fully and completely preserved.


(a) Upon every person engaging or continuing within this state in certain professional service business activities, the amount of tax imposed by section two of this article shall be equal to one and three-fourths percent of the gross income of such persons derived from the conduct of such professional service business activity in this state: Provided, That dentists shall be taxed at a rate equal to one and one-fourths percent of the gross income of such professional service business activity in this state.

(b) The measure of tax under this section shall be determined using the cash method of accounting, whether or not taxpayer uses that method of accounting for federal income tax purposes.

(c) "Certain professional services" defined. — For purposes of this section, the term "certain professional services" means, and is limited to, the health care related activities of advanced nurse practitioners, audiologists, chiropractors, dentists, nurse-midwives, occupational therapists, opticians, optometrists, physical therapists, podiatrists, psychologists and speech therapists.

(d) Effective date. — The tax imposed by section two of this article, the amount of which is determined under this section, applies to gross income received after the thirtieth day of April, one thousand nine hundred ninety-three, regardless of when the transaction or activity generating the gross income occurred.
§11-13-3. Annual exemption and periods thereof.
1 There shall be an exemption in every case of forty-one dollars and sixty-seven cents per month in amount of tax computed under the provisions of this article.
2 Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

§11-13-3c. Tax credit for business investment and jobs expansion.
1 (a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-c of this chapter, relating to tax credit for business investment and jobs expansion.
2 (b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-c of this chapter.
3 (c) Notwithstanding any provision of this code to the contrary, no credit allowed under article thirteen-c of this chapter may be taken against the taxes imposed by this article for qualified investment property purchased or placed into service or use after the thirtieth day of April, one thousand nine hundred ninety-three.

§11-13-4. Payment of estimated tax in periodic installment payments.
1 (a) General rule. — Every person subject to a tax imposed by this article must make estimated tax payments for a taxable year in which such person’s tax liability can reasonably be expected to exceed fifty dollars per month.
2 (b) Small businesses. — If a person’s tax liability is reasonably expected to be more than fifty dollars per month but not more than one thousand dollars per month, three fourths of such person’s estimated tax liability must be remitted in installment payments during the tax year. Installment payments are due on the last day of the fourth, seventh and tenth months.
of the tax year, for gross receipts received during the preceding quarter of the tax year: Provided, That any installment payment due on the thirtieth day of June each year shall be remitted by the fifteenth day of June. The balance of tax due must be paid by the last day of the first month following the close of the taxpayer's tax year.

(c) All other taxpayers. — If a person's tax liability can reasonably be expected to be more than one thousand dollars per month of the tax year, eleven twelfths of such person's estimated tax liability must be remitted in monthly installment payments during that tax year. Installment payments are due on the last day of the second through the twelfth months of the tax year, for gross receipts received during the preceding month: Provided, That any installment payment due on the thirtieth day of June each year shall be remitted to the tax commissioner by the fifteenth day of June. The balance of tax due must be paid by the last day of the first month following the close of taxpayer's tax year.

(d) Remittance form. — Each installment payment taxpayer shall file a remittance form executed as provided in section five of this article. This form shall be prescribed by the tax commissioner and require such information as the commissioner deems necessary for the efficient administration of this article.

(e) Exception. — The above provisions of this section notwithstanding, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed above.

§11-13-4a. Additions to tax for underpayment of estimated tax.

(a) General rule. — A taxpayer must remit estimated tax based on actual gross income received during the period to which the installment payment relates unless taxpayer elects to use the method set forth in subsection (b) of this section.
(1) If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during the tax year equal to seventy-five percent or more of such person’s actual liability for that tax year, no additions to tax will be imposed under this section for failure to timely pay estimated tax. Estimated tax is timely paid if at least one fourth of the tax due for the year is paid by the due date of each installment for that year.

(2) If a person required to make monthly installment payments of estimated tax timely pays estimated tax during the tax year equal to eleven twelfths or more of such person’s actual tax liability for the tax year, no additions to tax will be imposed under this section for failure to timely pay estimated tax. Estimated tax is timely paid if at least one eleventh of the tax due for the year is paid by the due date of each installment for that year.

(b) Estimated tax payments based on last year’s gross receipts. — A taxpayer may elect to remit estimated tax for the current tax year using the amount of gross receipts taxpayer received during the preceding tax year, if that year was a taxable year of twelve months and if gross receipts were received in each of those twelve months. If this election is made, then:

(1) If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during the tax year equal to seventy-five percent, or more, of the tax determined using last year’s measure of tax and this year’s rate of tax, no additions to tax will be imposed under this section for failure to timely pay estimated tax. Estimated tax is timely paid if at least one fourth is paid by the due date of each installment for the tax year to which the installment relates.

(2) If a person required to make monthly installment payments of estimated tax timely pays estimated tax during the tax year equal eleven twelfths, or more, of the tax determined using last year’s measure of tax
and this year's rate of tax, no additions to tax will be
imposed for failure to timely pay estimated tax.

Estimated tax is timely paid if at least one twelfth is
paid by the due date of each installment for the tax
year to which the installment relates.

(c) Additions to tax for underpayment of estimated
tax. — If there is an underpayment of estimated tax,
there shall be added to the tax due under this article
for the tax year, an amount determined by applying
the rate established under section seventeen or seven­
ten-a, article ten of this chapter, as appropriate for
the tax year (and if two or more such rates apply, the
weighted average thereof), to the amount of underpay­
ment of estimated tax for the period of underpayment.

(d) Period of underpayment. — The period of under­
payment of an installment shall run from the date the
installment was required to be paid (due date) to
whichever of the following dates is the earlier:

(1) The due date of the annual return following the
close of the tax year for which the installment was due
(determined without regard to any extension of time
for filing such annual return); or

(2) With respect to any portion of the underpayment,
the date on which such portion is paid. For purposes
of this subsection, a payment of estimated tax shall be
credited against unpaid required installments in the
order in which such installments are required to be
paid.

(e) Waiver in certain cases. — No addition to tax
shall be imposed under this section with respect to any
underpayment of estimated tax if and to the extent
the tax commissioner determines that by reason of
casualty, disaster or other unusual circumstances the
imposition of such addition would be against equity
and good conscience.

(f) Short tax years. — This section shall apply to
short tax years under rules promulgated by the tax
commissioner.

(g) Section eighteen-a, article ten of this chapter

(a) Taxable year. — For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. — If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization from the Internal Revenue Service for such change with taxpayer's annual return for the taxable year filed under this article.

(c) Method of accounting. —
(1) Same as federal. — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes, except as provided in subdivision (2) of this subsection. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(2) Exception. — A person taxed under this article who provides health care items or services shall, with respect to gross income derived from such business activity, determine such person's tax liability using the cash method of accounting, whether or not that method is used by such person for federal income tax purposes, unless the tax commissioner, in writing, consents to use another method.

(d) Adjustments. — In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined,
§11-13-25. Cities, towns or villages restricted from imposing additional tax.

Notwithstanding the provisions of section five, article thirteen, chapter eight of this code, no city, town or village shall impose a business and occupation tax:

(a) Upon occupations or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j of this article, in excess of rates in effect under this article on the first day of January, one thousand nine hundred fifty-nine;

(b) Upon occupations or privileges taxed under section two-k of this article, in excess of one percent of gross income;

(c) Under section two-l of this article; or

(d) Upon occupations or privileges taxed under section two-m of this article, in excess of the tax rate applicable to such occupations or privileges under section two-b of this article on the first day of January, one thousand nine hundred fifty-nine.

Enactment of section two-a of this article in the year one thousand nine hundred ninety-three, shall not increase or decrease the authority of municipalities to impose their tax on persons exercising such privilege under their service classification.


Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the taxes imposed by this article with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.


This act of the Legislature shall take effect the first
§11-13-32. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the state treasurer's office and known as the medicaid tax revenue fund. Said fund shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code.

(b) The amount of taxes collected under this article from all other persons, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the general revenue fund.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the “Severance and Business Privilege Tax Act of 1993”. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection, subdivision or paragraph of this article.


(a) General rule. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used, or by specific definition.

(b) General terms defined. — Definitions in this
subsection apply to all persons subject to the taxes imposed by this article.

(1) "Business" includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: Provided, That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership, and services by a member of any other business entity on behalf of that entity, are the business of the employer, or partnership, or other business entity, as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

(3) "Delegate" in the phrase "or his delegate", when used in reference to the tax commissioner, means any officer or employee of the state tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(4) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased, or expenses of any kind.

(6) "Includes" and "including" when used in a
definition contained in this article shall not be deemed
to exclude other things otherwise within the meaning
of the term being defined.

(7) "Partner" includes a member of such a syndicate,
group, pool, joint venture or other organization
which is a "partnership", as defined in this section.

(8) "Partnership" includes a syndicate, group, pool,
joint venture or other unincorporated organization
through or by means of which any privilege taxable
under this article is exercised, and which is not within
the meaning of this article a trust or estate, or
corporation. "Partnership" includes a limited liability
company which is treated as a partnership for federal
income tax purposes.

(9) "Person" means any individual, partnership,
association, company, corporation or other entity
engaged in activity taxable under this article.

(10) "Sale" includes any transfer of the ownership or
title to property, whether for money or in exchange
for other property or services, or any combination
thereof. "Sale" includes a lease of property, whether
the transaction be characterized as a rental, lease,
hire, bailment or license to use. "Sale" also includes
rendering services for a consideration, whether direct
or indirect.

(11) "Service" includes all activities engaged in by a
person for a consideration, which involve the render-
ing of a service as distinguished from the sale of
tangible personal property: Provided, That "service"
does not include: (A) Services rendered by an employ-
ee to his or her employer under a contract of employ-
ment; (B) contracting; or (C) severing or processing
natural resources.

(12) "Tax" means any tax imposed by this article
and, for purposes of administration and collection of
such tax, it includes any interest, additions to tax or
penalties imposed with respect thereto under article
ten of this chapter.

(13) "Tax commissioner" or "commissioner" means
(14) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the tax imposed by this article is computed. In the case of a return made under this article, or regulations of the tax commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

(15) "Taxpayer" means any person subject to any tax imposed by this article.

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

(17) "This state" means the state of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article, or under regulations promulgated by the tax commissioner.

(c) Specific definitions for producers of natural resources. —

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by Section 611 [26 U.S.C. 611] of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(3) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining.

(4) "Gross value" in the case of natural resources means the market value of the natural resource.
product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount of gross proceeds received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource.

(E) If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by or for the producer for the purpose of processing and sale, the gross value is the amount of gross proceeds received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(F) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the
taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(G) In all instances, the gross value shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(H) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(I) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(5) “Mining” includes not merely the extraction of ores or minerals from the ground but also those treatment processes necessary or incidental thereto.

(6) “Natural resources” means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(7) “Processed” or “processing” as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(8) “Related parties” means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the
owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(9) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(10) "Stock" includes shares in an association, joint-stock company or corporation.

(11) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) Specific definitions for persons providing health care items or services.

(1) "Behavioral health center" means behavioral health center as defined in section one, article two-a,
chapter twenty-seven of this code or section one, article nine, of said chapter.

(2) "Community care provider" means a provider of home and community care services furnished pursuant to an individual plan of care which also includes senior citizens groups which provide said services but does not include home health agencies.

(3) "Ambulance or ambulance services" means ambulance or ambulance services as defined in section three, article four-c, chapter sixteen of this code.

§11-13A-3. Privilege of severing certain natural resources and furnishing certain health care items or services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone, sandstone, natural gas or oil, or in the business of furnishing certain health care services and not taxed under articles thirteen and twenty-seven of this chapter, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) "Certain health care services" defined. — For purposes of this section, the term "certain health care services" means, and is limited to, health care transportation, behavioral health centers and community
(d) **Tax in addition to other taxes.** — The tax imposed by this section, shall apply to all persons severing or processing (or both severing and processing) in this state natural resources enumerated in subsection (a) of this section, and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section, except as provided in subsection (a) of this section, and shall be in addition to all other taxes imposed by law.

(e) **Effective date.** — This section as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds received after the thirtieth day of April of such year. The language of section three of this article, as in effect on the first day of January of such year, shall apply to gross proceeds received prior to the first day of May of such year and, with respect to such gross proceeds shall be fully and completely preserved.

§11-13A-3a. Privilege of severing timber.

(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be three and twenty-two hundredth percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) **Tax in addition to other taxes.** — The tax imposed by this section shall apply to all persons severing timber in this state, and shall be in addition to all other taxes imposed by law.

(d) **Effective date.** — This section as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds received after the thirtieth day
of April of such year. The language of section three of
this article, as in effect on the first day of January of
such year, shall apply to gross proceeds received prior
to the first day of May of such year and, with respect
to such gross proceeds shall be fully and completely
preserved.

§11-13A-3b. Privilege of severing other natural resources.

(a) Imposition of tax. — For the privilege of engag-
ing or continuing within this state in the business of
severing, extracting, reducing to possession and pro-
ducing for sale, profit or commercial use any other
natural resource product or product not taxed under
section three or four of this article, there is hereby
levied and shall be collected from every person
exercising this privilege and annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be four percent of
the gross value of the natural resource produced, as
shown by the gross proceeds derived from the sale
thereof by producer, except as otherwise provided in
this article: Provided, That beginning the first day of
July, one thousand nine hundred ninety-three, the tax
imposed by this section shall be levied and collected at
the rate of four and one-half percent, and beginning
the first day of July, one thousand nine hundred
ninety-four, the tax imposed by this section shall be
levied and collected at the rate of five percent.

(c) Tax in addition to other taxes. — The tax
imposed by this section shall apply to all persons
severing timber in this state, and shall be in addition
to all other taxes imposed by law.

(d) Effective date. — This section as amended in the
year one thousand nine hundred ninety-three, shall
apply to gross proceeds received after the thirtieth day
of April of such year. The language of this section as
in effect on the first day of January of such year, shall
apply to gross proceeds received prior to the first day
of May of such year and, with respect to such gross
proceeds shall be fully and completely preserved.

1 (a) General rule. — For purposes of the taxes imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. — If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization from the Internal Revenue Service for such change with taxpayer's annual return for the taxable year filed under this article.

(c) Methods of accounting. —

(1) Same as federal. — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes, except as provided in subdivision (2) of this subsection. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used, except as provided in said subdivision, unless the tax commissioner, in writing, consents to use of another method.

(2) Exception. — A person taxable under this article who provides health care items or services shall, with respect to gross proceeds derived from such business activity, determine such person's tax liability using the cash method of accounting, whether or not that method is used by such person for federal income tax purposes, unless the tax commissioner, in writing, consents to use of another method.

(3) Change of accounting methods. — If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this article shall similarly be changed, except as provided in subdivision (2) of this subsection. The taxpayer shall provide a copy of the authorization
for such change from the Internal Revenue Service with its annual return for the taxable year filed under this article.

§11-13A-8. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the end of the taxable year, every taxpayer subject to a tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year. Returns made on the basis of a calendar year shall be filed on or before the thirty-first day of January following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the last day of the first month following the close of the fiscal year.


1 (a) General rule. — Every person subject to a tax imposed by this article must make estimated tax payments for a taxable year in which such person’s tax liability can reasonably be expected to exceed fifty dollars per month.

6 (b) Small businesses. — If a person’s tax liability is reasonably expected to be more than fifty dollars per month but not more than one thousand dollars per month, three fourths of such person’s estimated tax liability must be remitted in installment payments during the tax year. Installment payments are due on the last day of the fourth, seventh and tenth months of the tax year, for gross receipts received during the preceding quarter of the tax year: Provided, That any installment payment due on the thirtieth day of June each year shall be remitted by the fifteenth day of June. The balance of tax due must be paid by the last day of the first month following the close of the taxpayer’s tax year.

20 (c) All other taxpayers. — If a person’s tax liability
can reasonably be expected to be more than one thousand dollars per month of the tax year, eleven twelfths of such person's estimated tax liability must be remitted in monthly installment payments during that tax year. Installment payments are due on the last day of the second through the twelfth months of the tax year for gross receipts received during the preceding month: Provided, That any installment payment due on the thirtieth day of June each year shall be remitted to the tax commissioner by the fifteenth day of June. The balance of tax due must be paid by the last day of the first month following the close of taxpayer's tax year.

(d) Remittance form. — Each installment payment taxpayer shall file a remittance form as shall be prescribed by the tax commissioner and require such information as the commissioner deems necessary for the efficient administration of this article.

(e) Exception. — Notwithstanding the provisions of subsections (a) and (b) of this section, the tax commissioner, if the commissioner deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those required in subsection (a), (b) or (c) of this section.

§11-13A-10. Time for paying tax; annual tax credit.

(a) General rule. — A person required to make an annual return under this article shall pay to the tax commissioner any tax shown to be due by such return, without assessment, notice or demand to the tax commissioner on or before the date fixed for filing the annual return (determined without regard to any extension of time for filing the return).

(b) Credit. — Every taxpayer subject to any tax imposed by this article shall be allowed one annual credit of five hundred dollars against the taxes due under this article, to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state exercising a privilege taxable under this article.
Persons providing health care items or services who become subject to a tax imposed by this article beginning on the first day of May, one thousand nine hundred ninety-three, shall be allowed a proportional credit under this subsection for months in their tax year that begin on or after the first day of May, one thousand nine hundred ninety-three.


The tax commissioner may, upon written request received on or prior to the due date of the annual return or other document, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as the commissioner may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer. No such extension shall be for more than six months.


(a) Amount determined on return. — The tax commissioner may extend the time for payment of the amount of tax shown, or required to be shown, on any return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed by statute for the payment thereof.

(b) Amount determined as deficiency. — Under regulations prescribed by the tax commissioner, the commissioner may extend the time for payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the due date of the deficiency. In exceptional cases, a further period of time, not to exceed twelve months may be granted. An extension under this subsection may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for payment thereof will result in undue hardship to the taxpayer.
(c) No extension for certain deficiencies. — No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13A-13. Place for filing returns and other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery in person, or by mail postage prepaid, to the tax commissioner's office in Charleston, West Virginia: Provided, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements or other documents, or copies thereof.


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 taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.


Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the taxes imposed by this article with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the state treasurer's office and known as the medicaid tax revenue
9 fund. Said fund shall have separate accounting for
10 those health care providers as set forth in articles
11 four-b and four-c, chapter nine of this code.
12 (b) The amount of taxes collected under this article
13 from all other persons, including any interest, addi-
14 tions to tax and penalties collected under article ten of
15 this chapter, less the amount of allowable refunds and
16 any interest payable with respect to such refunds,
17 shall be deposited into the general revenue fund.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to
6 the provision thereof directly involved in the contro-
7 versy in which such judgment shall have been ren-
8 dered, and the applicability of such provision to other
9 persons or circumstance shall not be affected thereby.

§11-13A-25. Effective date.
1 This act of the Legislature shall take effect the first
2 day of May, one thousand nine hundred ninety-three.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-20. Transition rules; effective date.
1 (a) The tax imposed by this article shall not apply to
2 medicaid reimbursement payments received by health
3 care providers after the thirtieth day of April, one
4 thousand nine hundred ninety-three, as amended.

5 (b) All persons subject to the tax imposed by this
6 article prior to the first day of May, one thousand nine
7 hundred ninety-three, shall make and file a final
8 return with the tax commissioner on or before the last
9 day of May, one thousand nine hundred ninety-three, reporting such information as the tax commissioner
10 may require. With this return, shall be remitted the
11 balance of any tax due under this article with respect
12 to medicaid reimbursement payments received before
13 the said first day of May.
(c) When a health care provider bills the department of health and human resources before the first day of June, one thousand nine hundred ninety-three, for medicaid services rendered before the first day of May, one thousand nine hundred ninety-three, the secretary is directed to reimburse the health care provider using the appropriate fee schedule in effect at the time the medicaid service was rendered. If a health care provider bills the department of health and human resources after the thirty-first day of May, one thousand nine hundred ninety-three, for services rendered before the first day of May, one thousand nine hundred ninety-three, the amount of the reimbursement payment shall be determined based upon fee schedules in effect on the thirty-first day of December, one thousand nine hundred ninety-one, or, funds permitting and in the discretion of the secretary, under fee schedules in effect when the department receives the bill for medicaid services.

(d) Any medicaid tax owed to the tax commissioner which is not remitted by the first day of June, one thousand nine hundred ninety-three, becomes delinquent as of the second day of June, one thousand nine hundred ninety-three, notwithstanding any provision of this article or article ten of this chapter to the contrary. Any delinquent medicaid taxes shall be remitted to the tax commissioner by the fifteenth day of June, one thousand nine hundred ninety-three.

(e) Any person required to pay medicaid tax under this article who fails to pay the amount due by the fifteenth day of June, one thousand nine hundred ninety-three, shall be subject to a civil penalty equal to two hundred percent of the delinquent medicaid tax owed by such person.

(f) The provisions of this section shall take effect on the first day of May, one thousand nine hundred ninety-three.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-1. Legislative findings.

The Legislature finds and declares that:
2 (a) Medicaid provides access to basic medical care for our citizens who are not physically, mentally or economically able to provide for their own care.

5 (b) Inadequate compensation of health care providers rendering medicaid services is a barrier to indigent persons obtaining access to health care services.

8 (c) Without adequate compensation for the provision of medicaid services, this state cannot attract or retain a sufficient number of health care providers necessary to serve our indigent population.

12 (d) While participation by a state in the medicaid program created by Title XIX of the Social Security Act is voluntary, the reality is that states, and particularly this state, have no choice but to participate. The alternative is to deprive indigent citizens and particularly the children of indigent families of basic medical services.

19 (e) The federal government sets the criteria for eligibility to obtain medicaid services. The federal government also requires that certain services be provided as part of a state’s medicaid program.

23 (f) Enactment by the United States Congress in 1991 of Public Law 102-234, amending Section 1903 of the Social Security Act, places limitations and restrictions on the flexibility states have to raise state share for its medical assistance program.

28 (g) The tax enacted in this article is intended to conform with the requirements of Public Law 105-234.

§11-27-2. Short title; arrangement and classification.

1 This article may be cited as the “West Virginia Health Care Provider Tax Act of 1993”. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article. No legal effect shall be given to any descriptive matter or heading relating to any part, section, subdivision or paragraph of this article.


1 (a) General. — When used in this article, words
defined in subsection (b) of this section have the
meaning ascribed to them in this section, except in
those instances where a different meaning is distinctly
expressed or the context in which the word is used
clearly indicates that a different meaning is intended.

(b) Definitions. —

1. "Business" includes all health care activities
engaged in, or caused to be engaged in, with the object
of gain or economic benefit, direct or indirect, and
whether engaged in for profit, or not for profit, or by
a governmental entity: Provided, That "business" does
not include services rendered by an employee within
the scope of his or her contract of employment.
Employee services, services by a partner on behalf of
his or her partnership, and services by a member of
any other business entity on behalf of that entity, are
the business of the employer, or partnership, or other
business entity, as the case may be, and reportable as
such for purposes of the taxes imposed by this article.

2. "Broad-based health care related tax" means a
broad-based health care related tax as defined in
Section 1903 of the Social Security Act.

3. "Contractual allowances" means gross patient
revenues less the actual amount received from third
party payors.

4. "Corporation" includes associations, joint-stock
companies and insurance companies. It also includes
governmental entities when and to the extent such
governmental entities engaged in activities taxable
under this article.

5. "Gross patient revenues" means the value, at the
provider's full established rate, or services rendered
and goods sold to patients during a given time period.

6. "Gross receipts" means and includes the gross
receipts of a taxpayer received as compensation, in
whole or in part, from taxpayer's exercise of the
privilege taxable under this article, whether such
compensation is received in money or any other form
of consideration, without deduction for any expenses
or other costs incurred in exercising the taxable
privilege.

(7) "Includes" and "including" when used in a
definition contained in this article shall not be deemed
to exclude other things otherwise within the meaning
of the term being defined.

(8) "Inpatient hospital services" means those servi-
ces that are inpatient hospital services for purposes of
Section 1903(w) of the Social Security Act.

(9) "Intermediate care facility services for the
mentally retarded" means those services that are
intermediate care facility services for purposes of
Section 1903(w) of the Social Security Act.

(10) "Nursing facility services" means those services
that are nursing facility services for purposes of
Section 1903(w) of the Social Security Act.

(11) "Outpatient hospital services" means those
services that are outpatient hospital services for
purposes of Section 1903(w) of the Social Security Act.

(12) "Partner" includes a member in a "partner-
ship", as defined in this section.

(13) "Partnership" includes a syndicate, group, pool,
joint venture or other unincorporated organization
through or by means of which any privilege taxable
under this article is exercised, and which is not within
the meaning of this article a trust or estate or
corporation.

(14) "Person" means any individual, partnership,
association, company, corporation or other entity
providing services.

(15) "Physicians' services" means those services of a
physician that are physicians' services for purposes of
Section 1903(w) of the Social Security Act.

(16) "Social Security Act" means the Social Security
Act of the United States, as amended by Public Law
102-234, and codified in Title 42, Section 1396b of the
United States Code.
(17) "Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(18) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the tax imposed by this article is computed. In the case of a return made under this article, or regulations of the tax commissioner, for a fractional part of a year, the term taxable year means the period for which such return is made.

(19) "Taxpayer" means any person subject to any tax imposed by this article.

(20) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(21) "State" means the state of West Virginia.

(22) "Withholding agent" means any person required to deduct and withhold the tax imposed by this article under regulations promulgated by the tax commissioner.

§11-27-4. Imposition of tax on providers of inpatient hospital services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing inpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts, excluding medicare revenues, received by the taxpayer during the taxable year from rendering inpatient hospital services. This measure of tax shall be determined using the cash method of accounting.

(c) Effective date. — The tax imposed by this section shall apply to gross receipts received after the thirtieth
day of April, one thousand nine hundred ninety-three, regardless of when the transaction or activity generating the gross receipts occurred.

§11-27-5. Imposition of tax on providers of outpatient hospital services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing outpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts, excluding medicare revenues, received by the taxpayer during the taxable year from rendering outpatient hospital services. This measure of tax shall be determined using the cash method of accounting.

(c) Effective date. — The tax imposed by this section shall apply to gross receipts received after the thirtieth day of April, one thousand nine hundred ninety-three, regardless of when the transaction or activity generating the gross receipts occurred.

§11-27-6. Imposition of tax on providers of nursing facility services other than services of intermediate care facilities for the mentally retarded.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing nursing facility services (other than services of intermediate care facilities for the mentally retarded), there is hereby levied and shall be collected, from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross patient revenues, excluding medicare revenues, prior to contractual allowances, derived by the taxpayer during the taxable year from providing nursing facility services, other than services
§11-27-7. Imposition of tax on providers of intermediate care facility services for the mentally retarded.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing intermediate care facility services for the mentally retarded, there is hereby levied and shall be collected, from every person rendering such service, an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer during the taxable year from providing intermediate care facility services for the mentally retarded. This measure of tax shall be determined using the cash method of accounting.

(c) Effective date. — The tax imposed by this section shall apply to gross patient revenues received after the thirtieth day of April, one thousand nine hundred ninety-three, regardless of when the transaction or activity generating the gross receipts occurred.

§11-27-8. Imposition of tax on providers of physicians' services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing physicians' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two percent of
the gross receipts, excluding medicare revenues, derived by the taxpayer during the taxable year from rendering physicians' services. This measure of tax shall be determined using the cash method of accounting.

(c) Effective date. — The tax imposed by this section shall apply to gross receipts received after the thirtieth day of April, one thousand nine hundred ninety-three, regardless of when the transaction or activity giving rise to the gross receipts occurred.


When a service is rendered partially in this state and partially in another state, gross receipts attributable to such service shall be allocated or apportioned in accordance with uniform rules promulgated by the tax commissioner.


(a) General rule. — For purposes of the tax imposed by this article, a taxpayer’s taxable year shall be the same as taxpayer’s taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer’s taxable year under this article.

(b) Change of taxable year. — If a taxpayer’s taxable year is changed for federal income tax purposes, taxpayer’s taxable year for purposes of this article shall be similarly changed. The taxpayer shall be provided a copy of the authorization from the Internal Revenue Service for such change with taxpayer’s annual return for the taxable year filed under this article.

(c) Cash method of accounting required. — A taxpayer’s method of accounting under this article shall be the cash method of accounting, whether or not taxpayer uses that method of accounting for federal income tax purposes.


(a) Annual return. — Every person subject to a tax
imposed by this article shall file an annual return with
the tax commissioner. Returns made on the basis of a
calendar year shall be filed on or before the thirty-
first day of January following the close of the calendar
year. Returns made on the basis of a fiscal year shall
be filed on or before the last day of the first month
following the close of the fiscal year.

(b) Extension of time for filing return. — The tax
commissioner may, upon written request received on
or before the due date of the annual return or other
document, grant a reasonable extension of time for
filing any return, declaration or statement, or other
document required to be filed by this article or by
regulations, upon such terms as the commissioner may
by rule prescribe, or by contract require, if good cause
satisfactory to the tax commissioner is provided by the
taxpayer. No such extension shall be for more than six
months.

§11-27-12. Payment of estimated tax; withholding.

(a) General rule. — Every person subject to a tax
imposed by this article must make estimated tax
payments for a taxable year in which such person's
tax liability can reasonably be expected to exceed fifty
dollars per month.

(b) Small businesses. — If a person's tax liability is
reasonably expected to be more than fifty dollars per
month but not more than one thousand dollars per
month, three fourths of such person's estimated tax
liability must be remitted in installment payments
during the tax year. Installment payments are due on
the fifteenth day of the fourth, seventh and tenth
months of the tax year, for gross receipts received
during the preceding quarter of the tax year. The
balance of tax due must be paid by the last day of the
first month following the close of the taxpayer's tax
year.

(c) All other taxpayers. — If a person's tax liability
can reasonably be expected to be more than one
thousand dollars per month of the tax year, eleven
twelfths of such person's estimated tax liability must
be remitted in monthly installment payments during that tax year. Installment payments are due on the fifteenth day of the second through the twelfth months of the tax year for gross receipts received during the preceding month. The balance of tax due must be paid by the last day of the first month following the close of taxpayer's tax year.

(d) **Withholding.** — The tax commissioner may establish, by procedural rule, a program for the withholding of any tax imposed by this article from medicaid reimbursement payments made to such health care providers by the department of health and human resources, or by any other state agency. The percentage of tax withheld shall be uniform as to all persons who pay any tax imposed by this article, but the percentage may vary from tax to tax as long as all persons who pay a particular tax are treated alike for purposes of that tax. In no case shall the percentage of withholding for a tax imposed by this article exceed that percentage of medicaid reimbursement payments generally paid to that class of health care provider which represents the state revenue portion of such reimbursement payments.


(a) **General rule.** — A taxpayer must remit estimated tax based on actual gross income received during the period to which the installment payment relates unless taxpayer elects to use the method set forth in subsection (b) of this section.

(1) If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during tax year equal to seventy-five percent or more of such person's actual liability for that tax year, no additions to tax will be imposed under this section for failure to pay estimated tax. Estimated tax is timely paid if at least one fourth of the tax due for the year is paid by the due date of each installment for that year.

(2) If a person required to make monthly installment
payments of estimated tax timely pays estimated tax
during the tax year equal to eleven twelfths or more
of such person's actual tax liability for the taxable
year, no additions to tax will be imposed under this
section for failure to timely pay estimated tax. Esti-
mated tax is timely paid if at least one eleventh of the
tax due for the year is paid by the due date of each
installment for that year.

(b) Estimated tax payments based on last year's
gross receipts. — A taxpayer may elect to remit
estimated tax for the current tax year using the
amount of gross receipts taxpayer received during the
preceding tax year, if that year was a taxable year of
twelve months and if gross receipts were received in
each of those twelve months. If this election is made,
then:

(1) If a person required to make quarterly install-
ment payments of estimated tax timely pays estimated
tax during the tax year equal to seventy-five percent,
or more, of the tax determined using last year's gross
receipts and this year's rate of tax, no additions to tax
will be imposed under this section for failure to timely
pay estimated tax. Estimated tax is timely paid if at
least one fourth is paid by the due date of each
installment for the tax year to which the installment
relates.

(2) If a person required to make monthly installment
payments of estimated tax timely pays estimated tax
during the tax year equal eleven twelfths, or more, of
the tax determined using last year's gross receipts and
this year's rate of tax, no additions to tax will be
imposed for failure to timely pay estimated tax.
Estimated tax is timely paid if at least one twelfth is
paid by the due date of each installment for the tax
year to which the installment relates.

(c) Addition to tax for underpayment of estimated
tax. — If there is an underpayment of estimated tax,
there shall be added to the tax due under this article
for the tax year, an amount determined by applying
the rate established under section seventeen or seven-
(d) **Period of underpayment.** — The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

1. The due date of the annual return following the close of the tax year for which the installment was due (determined without regard to any extension of time for filing such annual return); or
2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(e) **Application when tax is withheld.** — For purposes of applying this section, the amount of any tax imposed by this article that is withheld from taxpayer pursuant to section twelve of this article, shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed a payment of estimated tax on each installment payment due date, unless taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) **Waiver in certain cases.** — No addition to tax shall be imposed under this section with respect to any underpayment of estimated tax if and to the extent the tax commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition would be against equity and good conscience.

(g) **Short tax years.** — This section shall apply to short tax years under rules promulgated by the tax

(a) General rule. — The person required to make an annual return under this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the annual return, determined without regard to any extension of time for filing such return.

(b) Extension of time for paying tax. — The tax commissioner may extend the time for payment of the amount of tax shown, or required to be shown, on any annual return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed by statute for the payment thereof.

(c) Amount determined as deficiency. — Under rules prescribed by the tax commissioner, the commissioner may extend the time for payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the due date of the deficiency. In exceptional cases, a further period of time, not to exceed twelve months may be granted. The tax commissioner may grant an extension of time under this subsection only where it is shown to the tax commissioner's satisfaction that payment of a deficiency upon the date fixed for payment thereof will result in undue hardship to the taxpayer.

(d) No extension in certain circumstances. — The tax commissioner may not grant an extension of time under this section if the failure to timely pay tax, or if the deficiency in payment of tax, is due to negligence, to intentional disregard of rules or regulations, or to fraud.


Tax returns, statements or other documents, or
copies thereof, required by this article or by rules shall be filed with the tax commissioner by delivery, in person or by mail, postage prepaid, to the tax commissioner's office in Charleston, West Virginia: Provided, That the tax commissioner may, by rule, prescribe the place for filing such returns, statements or other documents, or copies thereof, at one or more other locations.


(a) General. — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns. — The president, vice president, treasurer, assistant treasurer, chief accounting officer or any other duly authorized officer shall sign the return of a corporation. In the case of a return made for a corporation by a fiduciary, the fiduciary shall sign the return. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. — Any one of the partners shall sign the return of a partnership. The fact that a partner's name is signed on the return is prima facie evidence that that partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic. — The fact that an individual's name is signed to a return, statement or other document is prima facie evidence for all purposes that the return, statement or other document was actually signed by him or her.

(e) Verification of returns. — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.
1. (a) Every person liable for reporting or paying any tax under this article shall keep such records, receipts, invoices and other pertinent papers in such forms as the tax commissioner may require.
2. (b) Every person liable for reporting or paying any tax under this article shall keep such records for not less than three years after the annual return required under this article is filed, unless the tax commissioner, in writing, authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

1. Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

1. Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter applies to the taxes imposed by this article with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

1. The amount of taxes collected under this article including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the state treasurer's office and known as the medicaid tax revenue fund. Said fund shall have separate accounting for

This tax abrogates and is of no further force and effect, without any further action by the Legislature, upon the earliest of the following dates:

(a) The date upon which an act of Congress becomes effective which prohibits the inclusion of revenue from these broad-based health care related taxes in state share when obtaining matching federal dollars: Provided, That: (A) If such act specifies a later date on which such prohibition takes effect, that later effective date controls; and (B) if such act prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(b) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from these broad-based health care related taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That: (A) If such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls; and (B) if such judgment or order prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(c) The date upon which any federal administrative rule or regulation promulgated in conformity with federal law becomes effective which negates the effect or purposes of this article: Provided, That: (A) If such rule or regulation specifies a later date on which the
prohibition takes effect, that later effective date
controls; and (B) if such rule or regulation prohibits
the inclusion of revenue from some but not all of the
broad-based health care related taxes imposed by this
article when determining the amount of state expend-
ditures that are claimable as medical assistance of
purposes of obtaining federal matching dollars, then
only those sections of this article imposing taxes which
cannot be used to obtain federal matching dollars shall
abrogate on such date, and the remaining tax or taxes
shall remain in effect.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to
6 the provision thereof directly involved in the contro-
7 versy in which such judgment shall have been ren-
8 dered, and the applicability of such provision to other
9 persons or circumstances shall not be affected thereby.

§11-27-23. Effective date.
1 This act of the Legislature shall take effect upon its
2 passage in the year one thousand nine hundred
3 ninety-three: Provided, That the taxes imposed by this
4 article shall not be levied on gross receipts received
5 before the first day of May, one thousand nine hun-
6 dred ninety-three, and shall be levied on gross receipts
7 received on or after that date.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill is disapproved, this the 23rd day of April, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/23/93
Time 4:30 PM