

# RULES AND REGULATIONS

## Concerning the Business-Profession Tax

### Required of Persons, Firms and Corporations, for the Privilege of Engaging in Business and Practicing a Profession in the State of West Virginia

STATE OF WEST VIRGINIA  
OFFICE OF STATE TAX COMMISSIONER  
CHARLESTON, AUG. 17, 1921

#### DEFINITIONS

1-A. The term "person," as used in these rules, includes co-partnerships, associations and corporations, as well as individuals, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

1-B. The terms "commissioner" and "tax commissioner," as used in these rules, mean the State Tax Commissioner of the State of West Virginia.

1-C. The terms "tax year" or "taxable year," as used in these rules, mean either the calendar year or the fiscal year, in accordance with the method of accounting regularly employed, as shown by the books of the tax-payer.

1-D. The terms "sale" or "sales," as used in these rules, include the exchange of properties as well as the sale thereof for money—every closed transaction constituting a sale; but said terms do not include gifts for religious, charitable or educational purposes, or conveyances or transfers from parent to child, or from husband to wife, or wife to husband, without consideration, or for a nominal consideration.

1-E. The word "tax-payer," as used in these rules, means any "person" liable for any tax hereunder.

1-F. The term "purchase price" as used in these rules, means the invoice price of goods purchased, less all trade discounts received or taken thereon, but with no additions whatever thereto for freight, drayage or other charges.

1-G. The words "gross income," as used in these rules, when used with reference to public service and other corporations mentioned in and taxable under clause (c) of section 2 of the act, include all income from discounts, interest, exchange and sales of services of every character, rentals, dividends, and all other receipts derived from the operation of the business of the company, without any deductions for losses or operating or other expenses.

1-H. The words "gross income," as used in these rules, when used with reference to individuals and corporations taxable under clause (d) of section 2 of the act, include all of the income and receipts derived from the business or profession of the tax-payer without any deductions for losses or for the expenses of carrying on or conducting the business or practicing the profession.

#### GENERAL PROVISIONS

2-A. **Verification:** No return of any "person" will be accepted until verified by the oath of the individual making the same, unless it shall show upon the face conclusively the reasons why it was not practicable for the "person" to make the oath required, as well as the authority of the individual to make the oath who verifies for the tax-payer.

2-B. **Errors Corrected:** Any errors made by the tax-payer in computing the tax will be corrected by the tax commissioner and the tax re-assessed.

2-C. **Supplemental Returns:** The tax commissioner will in any case deemed advisable require supplemental returns and such additional information not disclosed by the return filed as he shall deem necessary for the proper and correct assessment of the tax.

2-D. **Special Findings:** In order to administer the law fairly and equitably the tax commissioner will in any particular case in which an undue hardship may be imposed upon the tax-payer under the general regulations, make such case the subject of a special finding upon the application of the tax-payer, accompanied by a recital of the facts pertaining to the assessment under consideration.

2-E. **Amending and Rescinding Rules:** Each rule herein promulgated shall stand as a ruling of the tax commissioner and shall govern the tax-payer in all things required of him in complying with the act until the same shall be modified, amended or rescinded. The commissioner may at any time supersede, modify, rescind or amend any rule herein promulgated, or promulgate and establish additional rules and regulations.

2-F. **System of Bookkeeping:** No particular system of bookkeeping or accounting will be required by the tax commissioner in connection with returns concerning the privilege tax on businesses and professions. However, the business transacted must be so recorded that each and every item set forth in the tax-payer's return may be readily verified by an examination of his books of account.

#### WHO SHALL MAKE RETURNS

3-A. Each "person" as defined in the foregoing rules and in section 1 of the act (except those specifically exempted under section 4) who, during any tax year, mines and produces for sale or for profit, coal, oil, natural gas, limestone, sand or other mineral product, either or all of them combined of the value of more than ten thousand dollars (\$10,000.00), or who manufactures, compounds or prepares for sale article or articles, substance or substances, commodity or commodities, either or all of them combined of the value of more than ten thousand dollars (\$10,000.00), or who shall sell any tangible property whatsoever, real or personal (except a wholesaler or jobber selling at wholesale), of the value of more than ten thousand dollars (\$10,000.00), and each wholesaler or jobber, as defined by section 1, whose gross income for the tax year shall exceed the sum of ten thousand dollars (\$10,000.00), and each bank (except national banks) banking institution, trust company, railroad, street railroad, telephone, telegraph, oil pipe line, water, navigation and express company, whose gross income for the tax year shall exceed the sum of ten thousand dollars (\$10,000.00), and each individual engaged in any gainful business or profession, not embraced in paragraphs (a), (b) and (c) of section 2 of the act, whose gross income shall exceed the sum of ten thousand dollars (\$10,000.00) is required under the law to make the returns provided for in section 6 of the act, and is subject to the penalty and forfeiture described by the act for the failure to make such returns; **provided, however,** that no tax-payer the value of whose products or the amount of whose sales of tangible property, or the amount of whose gross income, in cases in which the tax is based upon the gross income, does not exceed the sum of sixty thousand dollars (\$60,000.00) a year shall be required to make the quarterly returns provided in said section. In all such cases an annual return is all that is required of the tax-payer.

3-B. **Partnerships and Associations:** Partnerships or associations engaged in any of the activities taxed under paragraphs (a), (b) or (c), section two of the act, must make a partnership or association return, and will be taxed as a partnership or an association. Partnerships or associations engaged in any activity or business taxable under paragraph (d), section 2 of the act, need not make a partnership or association return, but each individual belonging to or interested in the partnership or association must include in his individual returns his respective part or share of the income of the partnership or association. If the gross income of any such partnership or association engaged in any activity or business taxable under paragraph (d) is to be reported in each member's individual returns, such partnership or association shall furnish the tax commissioner with a statement setting out in full (1) the gross income or gross receipts of the partnership or association, (2) the names and addresses of the members thereof, (3) each member's interest or share therein, and (4) the kind of business carried on or the profession practiced.

#### FORM OF RETURN

4-A. **Single Blank for Annual Returns:** A single form has been prepared on which any or all annual returns required by section 6 of the act can be made. This course was taken to avoid mistakes and confusion in furnishing to tax-payers forms on which to make the returns required of them. Annual return blanks are printed on white paper.

4-B. **Single Blank for Quarterly Returns:** A single form has been pre-

pared on which any or all quarterly returns required by section 6 of the act can be made. Quarterly return blanks are printed on colored paper.

4-C. **What Included in One Annual Return:** There shall be embraced in one annual return by any tax-payer, whether he be engaged in West Virginia in the business of producing, manufacturing, selling, banking, operating a public utility, or engaged in West Virginia in any profession or any other business the privilege to engage in which is taxable under the privilege tax act, and whether he be engaged in one or more of such activities, his gross proceeds from sales or his gross income, as the case may be, as per the schedules and in the detail required by Form 101 and the Supplementary Statement on the back thereof, issued by the tax commissioner for annual returns.

4-D. **What Included in One Quarterly Return:** There shall be embraced in one quarterly return, or return covering a fractional part of a year for the periods required by Rule 12-A to be covered, by any tax-payer, whether he be engaged in West Virginia in the business of producing, manufacturing, selling, banking, operating a public utility, or engaged in West Virginia in any profession or any other business the privilege to engage in which is taxable under the privilege tax act, and whether he be engaged in one or more of such activities, the estimated aggregate gross proceeds from his sales or the estimated aggregate gross income for the period to be covered as required by Form 102 issued by the tax commissioner for quarterly returns.

4-E. The forms are so arranged that if one's business or professional activities require the payment of, say, three of the privilege taxes imposed by the act (there are six such,—two under section 2-a, two under section 2-b, one under section 2-c and one under section 2-d) the gross proceeds or gross income to be used as a measure for each tax will be reported therein, but kept separate as though three separate and distinct returns were made. Such a case might be that of a person manufacturing in West Virginia who also sells at retail and who also, as a wholesaler, known to the trade as such, sells at wholesale.

#### PERSONS EXEMPT

5-A. **Exemption of \$10,000.00:** Every "person" (as defined in the act) who does not produce within the "tax year" coal, oil, natural gas, limestone, sand, or other mineral product, or who does not manufacture, compound or prepare for sale any article, commodity or substance, or who does not sell (other than at wholesale) any tangible property, real, personal or mixed, of the value of ten thousand dollars (\$10,000.00), or who does not derive from any business or profession a gross income of ten thousand dollars (\$10,000.00) is exempted from the payment of any tax under the act, and no return is required of him.

5-B. **National Banks:** National banks are the creatures of Federal law and are taxed under the existing laws to the full extent permitted by Federal statutes. The state is not permitted to levy the tax imposed by this act upon national banks, and no return is required of a national bank.

5-C. **Exempted by Name:** All companies, associations, societies, orders, leagues, etc., enumerated in section 4 of the act, are exempt; but such companies, etc., shall, by affidavit, or otherwise, at the request of the state tax commissioner, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, and that none of the net income inures to the benefit of any private stockholder or individual. In the absence of such a showing, such companies may, at any time, be required to make returns or disclose their books of account for examination in order that their status may be determined.

5-D. **Compensation:** Compensation for death, injuries or damages paid by the State Compensation Commissioner, or by any insurance or other company, to any person, and all wages for labor, salaries, fees and compensation paid by the United States government, or any department thereof, or by any state, county, municipality, or other sub-division thereof, or by any other employer, are exempt from the taxes imposed by this act.

#### SUBJECTS AND MEASURES OF PRIVILEGE TAX

6-A. **Production:** The privilege tax upon every person engaging or continuing within West Virginia, in the business of mining and producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, is an amount equal to two-fifths of one per centum of the value of the articles produced as shown by the gross proceeds (gross sales) derived from the sale thereof by the producer (except as provided below, under the head of "Manner of Preparation of Return," under the conditions recited), **regardless of whether sold within or without West Virginia or whether sold at wholesale or retail;** an exemption of \$10,000.00 to be deducted from such gross proceeds before computing the tax.

6-B. **Manufacture:** The privilege tax upon every person engaging or continuing within West Virginia in the business of manufacturing, compounding or preparing for sale any article or articles, substance or substances, commodity or commodities, is an amount equal to one-fifth of one per centum of the value of the articles manufactured, compounded or prepared for sale, as shown by the gross proceeds (gross sales) derived from the sale thereof by the manufacturer or person compounding or preparing the same (except as provided below, under the head of "Manner of Preparation of Return," under the conditions recited), **regardless of whether such articles were sold within or without West Virginia or whether sold at wholesale or retail;** an exemption of \$10,000.00 to be deducted from such gross proceeds before computing the tax.

6-C. **Sales, other than Sales at Wholesale by Wholesalers and Jobbers:** The privilege tax upon every person selling any tangible property whatsoever, real or personal (except a wholesaler or jobber selling at wholesale), is an amount equal to one-fifth of one per centum of the gross proceeds of his sales (gross sales), such gross proceeds, before computation of tax, being subject to a specific exemption of \$10,000.00, and other exemptions as follows:

The proceeds of any sales of articles, substances, or commodities, by the person, firm or corporation manufacturing, compounding or preparing the same for sale, **when such proceeds are included in determining the amount of the tax imposed in paragraph (a) of the act** (under the head of manufacture).

Gross proceeds of sales of articles, substances or commodities for continuous transportation and delivery outside West Virginia, in commerce between West Virginia and other states of the United States, or between West Virginia and foreign countries.

Gross proceeds of sales of articles, substances or commodities by the importer thereof from any foreign country or from any other state of the United States, when sold in the original package before being commingled with the mass of property in West Virginia.

Freight charges, estimated or actual, **if such charges have been added to the price from the point of shipment to the point of delivery and such charges have been included in invoice to the buyer.**

Trade discounts which are regularly allowed under similar conditions of sale, **if such discounts are allowed and deducted upon the face of the invoice by the seller.**

Cash discounts, **if allowed, and deducted on the face of the invoices by the seller.**

6-D. **Sales at Wholesale by Wholesalers and Jobbers:** The privilege tax upon a wholesaler or jobber who is known to the trade as such and who sells at wholesale prices in wholesale trade is an amount equal to one-third of one per centum of the excess of the gross proceeds from the sales over and above the purchase price paid by such wholesaler or jobber, such excess of gross proceeds, before computation of tax, being subject to a specific exemption of \$10,000, and other exemptions as follows:

The proceeds of any sales of articles, substances, or commodities, by the person, firm, or corporation manufacturing, compounding or preparing

the same for sale, when such proceeds are included in determining the amount of tax imposed in paragraph (a) of the act (under the head of manufacture).

Gross proceeds of sales of articles, substances or commodities for continuous transportation and delivery outside West Virginia, in commerce between West Virginia and other states of the United States, or between West Virginia and foreign countries.

Gross proceeds of sales of articles, substances or commodities by the importer thereof from any foreign country or from any other state of the United States, when sold in the original package before being commingled with the mass of property in the state.

Freight charges, estimated or actual, if such charges have been added to the price from the point of shipment to the point of delivery and such charges have been included in the invoice to the buyer.

Trade discounts which are regularly allowed under similar conditions of sale, if such discounts are allowed and deducted upon the face of the invoice by the seller.

Cash discounts, if allowed and deducted on the face of the invoices by the seller.

**6-E. Banks and Public Utilities:** The privilege tax for engaging in their respective businesses, by banks, banking institutions, trust companies, railroad, street railroad, telephone, telegraph, oil pipe line, water, navigation and express companies is an amount equal to one-fifth of one per centum upon their gross income, such gross income, before computation of tax, being subject to a specific exemption of \$10,000.00, and the gross income derived from business conducted in commerce between West Virginia and other states of the United States, or between West Virginia and foreign countries.

**6-F. Other Businesses, and Professions:** The privilege tax for engaging or continuing therein in any profession, or any gainful business not included under previous headings, by any person, is an amount equal to one-fifth of one per centum upon the gross income derived from such profession or business; such gross income, before computation of tax, being subject to a specific exemption of \$10,000.00.

#### LICENSES

**7-A.** The tax commissioner's receipt showing payment of the privilege tax due shall answer in all respects as a license to engage in the particular business or profession for which the privilege tax paid was imposed. The privilege tax is imposed in addition to all other licenses and taxes levied by law.

#### MANNER OF PREPARATION OF RETURN

##### Relating to Producers and Manufacturers

**8-A.** Taxes levied under section 2, paragraph (a), are based upon the value of the articles produced, manufactured, compounded or prepared for sale, and in all cases where actual sales are made, except wherein the buyer and seller are so related as to probably render the price a matter of arbitrary agreement regardless of actual value, the selling price is conclusively deemed to be the value. To cover instances in which no actual sales are made, or in which sales are made wherein the buyer and seller are so affiliated as to bring into question the fairness of the price, the act provides:

"If any person liable for any tax under paragraph (a) shall ship or transport his products, or any part thereof out of the state, and before making sale of such products, shall further manufacture, transform, or consume the same, the value of the products or articles in the condition or form in which they existed when transported out of the state, shall be the basis for the assessment of the tax imposed in said paragraph; and the tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, in cases of sales from one to another of affiliated corporations, 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 quantity by the other tax-payers where no common interest exists between buyer and seller, but otherwise under similar circumstances and conditions."

In all cases covered by the foregoing provision the tax-payer, as to articles having an established market value during the license year, transported out of the state and not sold, shall make return showing the quantity of the articles transported each month and the average market value for that month. In all cases in which the articles have no known market value, but articles of a similar kind are sold on contract during the tax-year, the average contract price during each month of the year at which similar articles are sold, shall be taken as the basis of value.

**8-C.** Any tax-payer who sells to any affiliated person or corporation, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, shall pay the privilege tax based as nearly as possible upon the gross proceeds from sales of similar products of like quantities by other tax-payers where no common interest exists between buyer and seller, but otherwise under similar circumstances and conditions.

**8-D.** If a manufacturer partially completes an article in the state of West Virginia, ships the unfinished article into another state for further and additional treatment, and then re-ships the unfinished product into West Virginia for completion and sale, all manufacturing done by the same person, the privilege tax upon such manufacturer will be based upon a portion of the gross proceeds derived from the sale, which portion shall be represented by a fraction, the numerator of which represents the cost of the raw material and the cost of manufacturing in West Virginia; and the denominator, the cost of the raw material and of manufacturing in all states. To illustrate: The raw material in an article costs \$50.00; it is partly manufactured in West Virginia at a cost of \$50.00; the manufacturing work done in other states is at a cost of \$50.00; the manufacturing work done in West Virginia to complete the article is at a cost of \$50.00; the finished article sells for \$400.00. The tax will be levied upon 150/200 of the selling price of \$400.00, or upon \$300.00.

Partially manufactured articles or goods brought into West Virginia for completing the process of manufacturing, shall, in all cases not included in the above, be treated as raw material, and the privilege tax shall be based upon the selling price of the article.

**8-E.** The tax is levied for the privilege of producing coal, oil and other mineral products, and for the privilege of manufacturing, compounding or preparing for sale, any articles or commodities, during the tax year. The basis for the tax for the privilege of production or manufacture, as above set forth, is the gross proceeds from the sale of such mineral products produced or such articles or commodities manufactured, compounded or prepared for sale after June 30, 1921. Stocks of coal, oil and other mineral products and stocks of manufactured articles or commodities, on hand June 30, 1921, are not subject to the privilege tax, but, when sales are made of such stocks after June 30, 1921, the proceeds of such sales are subject to the tax for the privilege of selling tangible property (section 2-b of the act). However, where the segregating of such sales would prove impracticable or involve undue labor on the part of the tax-payer, permission is given to include the proceeds from sales of stock on hand June 30, 1921, in report of gross proceeds from the sale of minerals produced or articles manufactured under section 2-a of the act.

**8-G.** To all values determined under Rule 8-E shall be added the value of articles or commodities fixed in accordance with Rules 8-A, 8-B and 8-C.

**8-H.** Companies generating electricity in the state of West Virginia are classified as coming under section 2-a of the act, as manufacturers, and are required to pay a privilege tax based on the value of electricity manufactured, as shown by the gross proceeds from the sale thereof, regardless of whether sold within or without West Virginia, or whether sold at wholesale or retail.

**8-I.** Any person or corporation not manufacturing electricity, but engaged in the business of buying and selling same, comes under section 2-b of the law.

##### Relating to Sales

**9-A.** Certain exemptions from gross proceeds of sales or gross income, are allowed by the act, among them being:

(1) The proceeds of sales of articles, substances or commodities by the person manufacturing, compounding or preparing the same for sale, when such proceeds are included in determining the amount of the tax imposed in paragraph (a) of the act.

(2) The proceeds of sales of articles, substances or commodities for continuous transportation and delivery outside West Virginia, in commerce between West Virginia and other states, or between West Virginia and foreign countries.

(3) The proceeds of sales of articles, substances or commodities by the importer thereof, from any foreign country or from any other state of the

United States when sold in the original package before being commingled with the mass of property in West Virginia.

(4) Gross income derived from interstate commerce.

Any tax-payer claiming the benefit of any exemption under either of the four headings above set forth shall file as an exhibit with his return a detailed statement showing all of the facts, conditions and circumstances on which he bases his claim to such exemption.

If the exemption claimed is under heading (2), such statement shall show the details of every transaction out of which the exemption claimed arises, including the name and address of the person to whom sale and delivery was made outside of the state of West Virginia, the date of the sale, and the value of the article sold; and if claimed under heading (3), in the case of the sale of an article in the original package, the return must show the name of the importer, the place from whence imported, the time imported, when the article reached the state of West Virginia, how long it remained in the state before sale, in what manner the article was stored or cared for in the state of West Virginia prior to re-sale, the name of the purchaser, and the price at which the article was sold.

**9-B. Sales in Original Packages:** The exemption of the proceeds of sales of property sold by the importer in the original package before the same is commingled with the mass of property in the state will probably be relatively unimportant. While it is impossible to give a hard and fast rule of just what constitutes such a sale, a general principle may be stated which will afford a comparatively safe guide for the tax-payer. The act does not discriminate against property imported; but taxes the proceeds of sales of all property alike which is subject to taxation, without regard to the place of its origin. The doctrine as established by the cases of *Woodruff v. Parham*, 8 Wall. 123; *Brown v. Houston*, 114 U. S. 257; *American Steel & Wire Company v. Speed*, 192 U. S. 500; *Diamond Match Company v. Ontonagon*, 188 U. S. 82, is concisely stated by the author of the digest of the decisions of the United States Supreme Court of Appeals as follows:

"When goods imported from one state into another reach their final destination or come to rest in the latter state, and are held there for sale and are enjoying the protection of the state laws, such state may tax them as property even while remaining in the original packages, provided it taxes them without discrimination and like other property situated within the state. Such a tax does not amount to a regulation in the sense of the constitution, although its levy may remotely and indirectly affect interstate commerce. The tax was sustained on the ground that after the property had arrived at its destination and had been put up for sale, it became a part of the general mass of property of the state."

The author copied largely the language used by Chief Justice White in the opinion in the case of the *Wire Company v. Speed* above mentioned. It would appear that very few sales of property will be made in the state under conditions which will exempt the proceeds of sale from taxation or from being used as a basis of taxation under the provisions of the act, on the ground that such sales are of articles in the original package made by the importer thereof.

**9-C.** Owing to the fact that sales are made under a multitude of varying circumstances, it is not deemed practicable, either from the standpoint of the administrator of the law or the tax-payers making returns, to attempt to pass on each sale that is not clearly classifiable either as a "sale at wholesale" or as a "sale other than a sale at wholesale." For the purpose of the tax, a line distinguishing sales at wholesale from other sales has been drawn as follows: In order for a sale to be treated as a sale at wholesale, first, the tax-payer must be a wholesaler or jobber and must be known to the trade as such; and second, the merchandise must be sold at wholesale prices in wholesale trade.

**9-D. Inventory by Wholesalers and Jobbers:** In most cases, in order for wholesalers and jobbers to arrive at their excess of gross proceeds of sales over purchase price paid, it will be necessary that an inventory, or its equivalent, of merchandise on hand June 30, 1921, for sale, be made.

A physical inventory is at all time preferred, but where a physical inventory is impracticable on account of suspension of business and involving an extraordinary expenditure of time and money by the tax-payer, and an equivalent inventory is equally accurate, the latter will be acceptable.

An equivalent inventory is an inventory of merchandise on hand as set forth on the books of the tax-payer.

**9-E. Inventory by Retailers:** As inventories are in no way necessary for the determination of gross sales (both cash and credit) of retailers, such persons need not take inventories annually for the purpose of this tax.

**9-F. In Determining the Aggregate Purchase Price of Merchandise Sold:** The wholesaler or jobber who sells entirely in West Virginia will experience no difficulty in determining such aggregate purchase price. The wholesaler or jobber who sells both within and without West Virginia, will determine the aggregate purchase price of goods sold in West Virginia by using the following method: To the amount of inventory (at the purchase price) at the beginning of the year add the aggregate purchase price of all merchandise purchased during the year, and from the sum thereof deduct the amount of inventory (at the purchase price) at the close of the year. The resulting figures will be the aggregate purchase price of all merchandise sold within the year, both within and without West Virginia. The aggregate purchase price of merchandise sold at wholesale in West Virginia will be determined by multiplying the total sales in all states by a fraction, the numerator of which represents the amount of the total gross sales at wholesale in West Virginia, and the denominator the amount of total gross sales of every character (including sales at retail) in all states. To illustrate:

Total gross sales of every character, in all states.....	\$1,200,000
Of which amount there was sold at wholesale in West Virginia.....	900,000
And at retail in West Virginia.....	100,000
And for continuous transportation and delivery outside of West Virginia.....	200,000
The inventory at the beginning of the year was.....	200,000
The aggregate purchase price of purchases during the year was.....	1,000,000
The inventory at the close of the year was.....	300,000
Leaving the aggregate purchase price of goods sold in all states.....	900,000

The proportion of sales at wholesale in West Virginia to total gross sales in all states, therefore, was 900,000-1,200,000 or 75%. Total gross sales of merchandise sold at wholesale in West Virginia \$900,000, multiplied by 75% equals \$675,000 as the aggregate purchase price of merchandise sold in West Virginia, leaving \$225,000 (less specific exemption of \$10,000), on which the tax at the rate of 1-3 of 1% will be based. In this case, the tax-payer would also pay 1-5 of 1% on \$100,000 (less the specific exemption of \$10,000), on account of sales made at retail.

**9-G.** A person selling tangible property on the deferred payment plan is privileged under the act (section 5) to either (1) make return and pay the tax based upon the entire consideration in the year in which the sale is made, or, (2) he may treat the amount of the consideration paid in each year as the proceeds of a sale made in that particular year. If such tax-payer's return is prepared in a manner other than as showing the entire consideration, he is required to attach a statement to his return showing in detail (1) the aggregate amount of the gross consideration, (2) the payments actually made thereon during the tax year, (3) total payments made thereon during all years to date covered by return, and (4) balances remaining unpaid.

#### TIME FOR FILING RETURNS AND PAYMENT OF TAX

**12-A.** The act authorizes the preparation and filing of annual returns as of a fiscal year ending either June 30 or December 31, and provides, if a tax-payer's annual accounting period closes on a date other than June 30 or December 31, he may, with the assent of the tax commissioner, make his annual return and pay the tax for the year covering his accounting period as shown by the his books of account.

To avoid delay, confusion and unnecessary correspondence, the tax-payer is required to prepare and file his returns, based on his regular accounting period, which accounting period must end on the last day of some month of the year. The day which marks the close of his year—when his books are closed—will also mark the close of his year so far as returns to the tax commissioner's office in connection with the privilege tax are concerned. The tax-payer shall designate in his first return filed (whether such first return be an annual return, a quarterly estimated return or an estimated return covering a fractional part of the year) the day which marks the close of his year, and all annual returns will be made as of a year ending that day, unless, after designating his year as herein provided, he desires to change his year to accord with a contemplated change in his accounting period, in which case he must receive permission therefor from the commissioner. The tax-payer establishes his own year when he designates in his return the day which closes his accounting period. Do not write the commissioner for permission to make returns as of a year ending on a day other than June 30 or December 31. It is unnecessary, as this ruling gives such permission.

All returns are required to be filed within thirty days from the end of the period to be covered in the returns.

Estimated returns are to be accompanied by remittances covering the amounts of estimated taxes due the state.

Annual returns are to be accompanied by remittances covering the balances due the state, if any, over and above the amounts remitted with quarterly or fractional returns.

In case the annual return shows the tax-payer to have overpaid at the time of filing his quarterly or fractional returns the annual tax due the state, such overpayment will be promptly refunded through the tax commissioner's office from the blanket appropriation provided for the refunding of moneys erroneously paid into the state treasury.

The tax-payer, the value of whose products or the amount of whose sales of tangible property, or the amount of whose gross income (in cases in which the tax is based on the gross income) does not exceed the sum of \$60,000 a year, is required to file but one return annually,—and that on or before thirty days from the end of his regular accounting period.

If such value, gross sales or gross income, exceeds \$60,000 a year, the tax-payer is required to file

**Quarterly Returns or Returns Covering Fractional Parts of a Year, as follows:**

**If the tax-payer's year ends June 30th,** returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1, 1921 to September 30, 1921; (2) quarterly estimated return covering October 1, 1921 to December 31, 1921; (3) quarterly estimated return covering January 1, 1922 to March 31, 1922; (4) quarterly estimated return covering April 1, 1922 to June 30, 1922; and (5) annual return showing actual figures covering the full year from July 1, 1921 to June 30, 1922. Thereafter, returns are to be filed quarterly covering the quarters ending September 30, December 31, March 31 and June 30, and, annually, covering period from July 1 to June 30.

**If the tax-payer's year ends July 31st,** returns are to be filed, in order, as follows: (1) Annual return showing actual figures covering the period from July 1, 1921 to July 31, 1921; (2) quarterly estimated return covering August 1, 1921 to October 31, 1921; (3) quarterly estimated return covering November 1, 1921 to January 31, 1922; (4) quarterly estimated return covering February 1, 1922 to April 30, 1922; (5) quarterly estimated return covering May 1, 1922 to July 31, 1922; and (6) annual return showing actual figures covering the full year from August 1 to July 31. Thereafter, returns are to be filed quarterly covering the quarters ending October 31, January 31, April 30 and July 31, and, annually, covering the period from August 1 to July 31.

**If the tax-payer's year ends August 31st,** returns are to be filed, in order, as follows: Annual return showing actual figures covering the period from July 1, 1921 to August 31, 1921; and, thereafter, returns are to be filed quarterly covering the quarters ending November 30, February 28, May 31, and August 31, and, annually, covering the period from September 1 to August 31.

**If the tax-payer's year ends September 30th,** returns are to be filed, in order, as follows: Annual return showing actual figures covering the period from July 1, 1921 to September 30, 1921; thereafter, returns are to be filed quarterly covering the quarters ending December 31, March 31, June 30 and September 30, and, annually, covering the period from October 1 to September 30.

**If the tax-payer's year ends October 31st,** returns are to be filed, in order, as follows: Annual return showing actual figures covering the period from July 1, 1921 to October 31, 1921; and, thereafter, returns are to be filed quarterly covering the quarters ending January 31, April 30, July 31 and October 31, and, annually, covering the period from November 1 to October 31.

**If the tax-payer's year ends November 30th,** returns are to be filed, in order, as follows: Annual return showing actual figures covering the period from July 1, 1921 to November 30, 1921, and, thereafter, returns are to be filed quarterly covering the quarters ending February 28, May 31, August 31 and November 30, and, annually, covering the period from December 1 to November 30.

**If the tax-payer's year ends December 31st,** returns are to be filed, in order, as follows: (1) Quarterly estimated return covering the period from July 1, 1921 to September 30, 1921; (2) quarterly estimated return covering the period from October 1, 1921 to December 31, 1921; (3) annual return showing actual figures covering period from July 1, 1921 to December 31, 1921; and thereafter returns are to be filed quarterly covering the quarters ending March 31, June 30, September 30 and December 31, and, annually, covering the period from January 1 to December 31.

**If the tax-payer's year ends January 31st,** returns are to be filed in order, as follows: (1) Fractional estimated return covering period from July 1, 1921 to July 31, 1921; (2) quarterly estimated return covering the period from August 1, 1921 to October 31, 1921; (3) quarterly estimated return covering November 1, 1921 to January 31, 1922, and (4) annual return showing actual figures covering the period from July 1, 1921 to January 31, 1922. Thereafter, returns are to be filed quarterly covering the quarters ending April 30, July 31, October 31 and January 31, and, annually, covering the period from February 1 to January 31.

**If the tax-payer's year ends February 28th,** returns are to be filed, in order, as follows: (1) Fractional estimated return covering the period from July 1, 1921 to August 31, 1921; (2) quarterly estimated return covering the period from September 1, 1921 to November 30, 1921; (3) quarterly estimated return covering December 1, 1921 to February 28, 1922, and (4) annual return showing actual figures covering period from July 1, 1921 to February 28, 1922. Thereafter, returns are to be filed quarterly covering the quarters ending May 31, August 31, November 30 and February 28, and, annually, covering the period from March 1 to February 28.

**If the tax-payer's year ends March 31st,** returns are to be filed, in order, as follows: (1) Quarterly estimated return covering July 1, 1921 to September 30, 1921; (2) quarterly estimated return covering October 1, 1921 to December 31, 1921; (3) quarterly estimated return covering January 1, 1922 to March 31, 1922, and (4) an annual return showing actual figures covering the period from July 1, 1921 to March 31, 1922. Thereafter, returns are to be filed quarterly covering the quarters ending June 30, September 30, December 31 and March 31, and, annually, covering the period from April 1 to March 31.

**If the tax-payer's year ends April 30th,** returns are to be filed, in order, as follows: (1) Fractional estimated return covering the period from July 1,

1921 to July 31, 1921; (2) quarterly estimated return covering August 1, 1921 to October 31, 1921; (3) quarterly estimated return covering November 1, 1921 to January 31, 1922; (4) quarterly estimated return covering February 1, 1922 to April 30, 1922; and (5) an annual return showing actual figures covering the period from July 1, 1921 to April 30, 1922. Thereafter, returns are to be filed quarterly covering quarters ending July 31, October 31, January 31 and April 30, and, annually, covering the period from May 1 to April 30.

**If the tax-payer's year ends May 31st,** returns are to be filed, in order, as follows: (1) Fractional estimated return covering the period from July 1, 1921 to August 31, 1921; (2) quarterly estimated return covering the period from September 1, 1921 to November 30, 1921; (3) quarterly estimated return covering the period from December 1, 1921 to February 28, 1922; (4) quarterly estimated return covering the period from March 1, 1922 to May 31, 1922, and (5) an annual return showing actual figures covering the period from July 1, 1921 to May 31, 1922. Thereafter, returns are to be filed quarterly covering quarters ending August 31, November 30, February 28 and May 31, and, annually, covering the period from June 1 to May 31.

#### CONCERNING THE SPECIFIC EXEMPTION OF \$10,000.00

13-A. In addition to the other exemptions provided in the act, a specific exemption of \$10,000 is allowed each tax-payer, and is to be deducted from his gross proceeds of sales, or from his gross income (in cases in which the tax is based upon gross income), before computation of tax is made. The application of this exemption depends upon the subject of tax. Following the act, the subjects of tax, in order, are as follows:

- (1) The privilege of engaging in the business of mining and producing for sale, or for profit, certain products.
- (2) The privilege of engaging in the business of manufacturing, compounding or preparing for sale any articles, substances or commodities.
- (3) The privilege of selling any tangible property (other than at wholesale by wholesalers and jobbers).
- (4) The privilege of selling any tangible property at wholesale by wholesalers and jobbers.
- (5) The privilege of engaging in their respective businesses by banks, public utilities, etc.
- (6) The privilege of engaging in any profession, or any gainful business not included in Items 1 to 5.

Persons engaged in more than one of the businesses above listed are deemed by the act to have a license to engage in each business. Therefore, such person would be entitled to a \$10,000 exemption from the gross proceeds of sales or gross income arising from each business. For example, a coal company's return shows gross proceeds from sales of coal produced of \$100,000; gross proceeds from sale of coke manufactured of \$75,000, and gross sales of merchandise at retail, \$50,000. That company may claim the \$10,000 exemption from each of the above businesses (not \$30,000 from the aggregate gross proceeds of sale) since such company must be licensed to engage in the business of production (Item 1), manufacturing (Item 2), and selling at retail (Item 3).

The specific exemption of \$10,000 may be deducted in full from the gross proceeds of sales, or gross income, arising from the business conducted for a full year; but in cases wherein the business has been carried on for a part of the year only, the tax-payer is entitled to an exemption of that part of the sum of \$10,000, which bears the same proportion to the total sum that the period of time during which he is engaged in such business bears to a whole year. To illustrate: If the tax-payer had engaged in the business of manufacturing coke for only seven months of the year, the amount of the specific exemption allowable is seven-twelfths of \$10,000, or \$5,833.33; if he had engaged in the business of selling merchandise at retail for only four months of the year, the amount of the specific exemption allowable is four-twelfths of \$10,000, or \$3,333.33.

#### PERMISSION TO COMBINE ACTIVITIES IN ONE SCHEDULE

14-A. **Manufacturers:** Any person engaged in manufacturing, compounding, or preparing articles, substances or commodities for sale, and who, as incidental to such business, purchases and sells other articles in connection with the articles, substances or commodities manufactured, compounded or prepared for sale, may, if he elects so to do, include the sale price of the articles so purchased and sold in the gross value on which his tax is based on the privilege of manufacturing, compounding and preparing articles, substances, or commodities for sale.

14-B. **Sales of Tangible Property:** Any person engaged in selling tangible property, other than at wholesale, who as incidental to such business, compounds or prepares for sale and sells other articles, may include in his return of gross proceeds of sales, the proceeds of the sales of such articles.

14-C. The privilege given to embrace in a single schedule certain activities which are taxable under separate schedules is for the benefit of the tax-payer and to enable him to avoid keeping complicated accounts and burdensome details, and anyone availing himself of the privilege thereby waives all objections to having the tax assessed on the return so made.

#### EXTENSION OF TIME FOR FILING RETURNS

15-A. **Annual Returns:** The annual return must be made and filed within thirty days from the end of the "tax year." For good cause shown in any particular case the tax commissioner may on application of the tax-payer extend the time for filing the annual return for a reasonable period. In all cases in which the tax-payer for any reason cannot complete and file his annual return within the time prescribed by law, that is, thirty days from the close of the tax year, prompt application within said thirty day period should be made to the tax commissioner for an extension of time. Any such application must state fully the reasons why the return cannot be made within the period prescribed by the act.

15-B. **Quarterly Returns:** The quarterly return must be made and filed within thirty days from the end of the period to be covered by the return. No extension in any case will be granted for the filing of quarterly returns.

Respectfully,

W. S. HALLANAN,  
State Tax Commissioner.

# The Business-Profession Tax Law

## An Act of the Legislature of West Virginia

(Being Senate Bill No. 265 by Mr. Lewis)

(Passed April 29, 1921. In effect July 1, 1921. Approved by the Governor May 3, 1921.)

AN ACT providing for the raising of additional public revenues by a tax upon the privilege of engaging in certain occupations, and upon the privilege of making sales of property; and by a similar tax upon the gross earnings of public service companies and other companies and persons, not derived from the sales of property; and providing, also, for the repeal of certain statutes.

Be it Enacted by the Legislature of West Virginia:

#### Definitions

Section 1. That when used in this act the term "person" includes co-partnerships, associations and corporations, as well as individuals, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context. The terms "tax commissioner" and "state tax commissioner" mean the state tax commissioner of the state of West Virginia. The term "tax year" or "taxable year" mean either the calendar year, or the fiscal year, in accordance with the method of accounting regularly employed and in which the books of the tax-payer are kept. The term "sale" or "sales" include the exchange of properties as well as the sale thereof for money,—every closed transaction constituting a sale; but a gift for religious, charitable or educational purposes, or a conveyance or transfer from parent to child, or from husband to wife, or wife to husband, without consideration, or upon a nominal consideration, shall not be deemed a sale. The word "tax-payer" means any individual, corporation, or association liable for any tax hereunder. The words "gross income" applied to wholesalers and jobbers under clause (b) of section two of this act mean the gross difference between the cost and selling price of the articles or merchandise sold, without any deduction for cost of carrying on the business, or without any deduction for losses or operating or other expenses. Said words when used with reference to public service and other corporations

mentioned in and taxable under clause (c) of section two of this act include all income from discounts, interest, exchange and sales of services of every character, rentals, dividends and all other receipts derived from the operation of the business of the company, without any deductions for losses of operating or other expenses. Said words when used in reference to individuals and corporations taxable under clause (d) of section two of this act shall include all of the income and receipts derived from the business or profession of the tax-payer without any deductions for losses or for the expenses of carrying on or conducting the business or practicing the profession.

Sec. 2. (a) That from and after June thirtieth, A. D., nineteen hundred and twenty-one, there is hereby levied and shall be collected an annual privilege tax upon every person engaging or continuing, within this state, in the business of mining and producing for sale, or for profit, any coal, oil, natural gas, limestone, sand, or other mineral product, the amount of each tax to be determined and ascertained by the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, (except as hereinafter provided), which tax shall be equal in amount to two-fifths of one per centum of the value of the articles as so ascertained; and from and after said date there is hereby levied and shall be collected an annual privilege tax upon every person engaging or continuing within this state, in the business of manufacturing, compounding, or preparing for sale, any article or articles, substance or substances, commodity or commodities, the amount of such tax to be determined and ascertained by the value of the articles manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same (except as hereinafter provided), which tax shall be equal in amount to one-fifth of one per centum of the value of the articles so ascertained.

If any person liable for any tax under paragraph (a) shall ship or transport

his products, or any part thereof, out of the state, and before making sale of such products, shall further manufacture, transform, or consume the same, the value of the products or articles in the condition or form in which they existed when transported out of the state, shall be the basis for the assessment of the tax imposed in said paragraph; and the tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, in cases of sales from one to another of affiliated corporations, 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 quantity by the other tax-payers where no common interest exists between buyer and seller, but otherwise under similar circumstances and conditions.

(b) Upon the privilege of selling any tangible property whatsoever, real or personal (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be collected, a like tax of one-fifth of one per centum of the gross proceeds of such sales: **Provided, however,** that in the case of sales of merchandise by wholesalers or jobbers, as distinguished from sales at retail to the consumer or users of the article sold, the tax shall be equal to one-third of one per centum of the excess of the gross proceeds from the sales over and above the purchase price paid by such wholesaler or jobber, instead of one-fifth of one per centum of the gross proceeds of such sales; and there shall be excepted from the tax provided by this paragraph (b) the proceeds of any sale of articles, substances, or commodities, by the person, firm or corporation manufacturing, compounding or preparing the same for sale, when such proceeds are included in determining the amount of the tax imposed in paragraph (a) of this section; and there is excepted also from the tax provided in paragraph (b) of this section sales of articles, substances or commodities for continuous transportation and delivery outside this state, in commerce between this state and other states of the United States, or between this state and foreign countries, and sales of articles, substances or commodities by the importer thereof from any foreign country or from any other state of the United States, when sold in the original package before being commingled with the mass of property in the state.

(c) There is likewise levied, and shall be collected, upon the privilege of engaging in their respective businesses, a tax of one-fifth of one per centum upon the gross income of banks, banking institutions, trust companies, railroad, street railroad (whether steam or electric), telephone, telegraph, oil pipe line, water, navigation, and express companies; excepting, however, from such gross income so to be taxed, so much thereof as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries.

(d) There is likewise levied and shall be collected upon the privilege of engaging in any gainful business or profession within this state, not included in the preceding paragraphs (a), (b) and (c), an annual tax equal to one-fifth of one per centum upon the gross income derived from such businesses or professions, of any individual or corporation engaging or continuing therein.

There shall be included in the gross income of any individual taxable under paragraph (d) that part of the gross income not taxed under clauses (a), (b) or (c) of this section, of any co-partnership or association of which he is a member, represented by his interest in, or share of, the co-partnership or association's business.

In computing the amount of the tax levied hereunder, however, for any year, there shall be deducted in addition to the other exemptions herein provided for, from the gross proceeds of sales, or gross value of articles produced, manufactured, compounded and prepared, mentioned in paragraph (a) and from the gross proceeds of sales or gross income mentioned in paragraph (b), and from the gross income mentioned in paragraphs (c) and (d), respectively, of this section, of each tax-payer, an exemption of ten thousand dollars of the amount of such gross proceeds of sales or value of articles, or gross income, as the case may be. Each person who shall engage in any business or profession, upon which a tax is imposed under the provisions of this act, for any fractional part of a tax year, shall be entitled to an exemption of that part of the sum of ten thousand dollars which bears the same proportion to the total sum that the period of time during which he is engaged in such business or occupation bears to a whole year.

Sec. 3. If any person shall, after the thirtieth day of June, A. D., nineteen hundred and twenty-one, engage or continue in any of the businesses or professions for which a privilege tax is imposed by this act, he shall be deemed to have applied for and to have duly obtained from the state of West Virginia a license to engage in and to conduct such business or profession for the year ending on the thirtieth day of June next following the date on which he shall so engage therein, upon the condition that he shall pay the tax accruing to the state of West Virginia under the provisions of this act; and he shall hereby be duly licensed to engage in and conduct such business or engage in such profession.

Sec. 4. There are, however, exempted from the provisions of this act; (a) insurance companies which pay to the state of West Virginia a tax of two per centum upon premiums levied under the provisions of chapter seventy-seven of the acts of the legislature A. D., one thousand, nine hundred and seven; (b) mutual savings banks not having a capital stock represented by shares, and which are operated exclusively for the benefit of their depositors; labor, agricultural and horticultural societies and organizations not operated for profit; cemetery companies which are organized and operated exclusively for the benefit of their members; fraternal benefit societies, orders or associations operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself operating under a lodge system, and providing for the payment of death, sick, accident or other benefits to the members of such societies, orders or associations, and to their dependents; domestic loan and building associations operated exclusively for the benefit of their members; corporations, associations or societies organized and operated exclusively for religious, charitable, scientific or educational purposes; business leagues, chambers of commerce, boards of trade, civic leagues, or organizations operated exclusively for the benefit of the community and for the promotion of social welfare; none of which companies, organizations, corporations or societies named in this section are organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual.

Sec. 5. In case of a sale of tangible property in which the payment of a part of the consideration is deferred beyond the current tax year, the seller may elect to pay the taxes thereon upon the entire consideration in the year in which the sale is made, or he may treat the amount of the consideration paid in each year as the proceeds of a sale made in that particular year, or as a part of the gross value of that year, in which event the privilege tax shall be based upon, or the sales tax payable upon, the amount of the consideration paid in the tax year in which the payment is made. When goods are sold at a delivered price and estimated or actual freight charges have been added to the price from the point of shipment to the point of delivery the actual charges so added may be deducted from the gross invoice price to ascertain the value upon which to compute the tax. Trade discounts which are regularly allowed under similar conditions of sale may be allowed for excise tax purposes if such discounts are allowed and deducted upon the face of the invoice by the seller. Likewise cash discounts may be allowed for excise tax purposes if allowed and deducted on the face of the invoices by the seller.

Sec. 6. The taxes levied hereunder shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which the tax accrues. The tax-payer shall, within thirty days from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance for the amount of the tax, to the office of the state tax commissioner, at Charleston, West Virginia. In estimating the amount of the tax due for each quarter the tax-payer may deduct one-fourth of the total exemption allowed for the year. **Provided, however,** that when the total tax for which any person is liable under this act does not exceed the sum of one hundred dollars in any year, the total amount of said tax shall be payable at the end of the month next following the close of the tax year.

On or before thirty days from the end of any tax year, each person liable for the payment of a tax under clause (a) of section two of this act shall make a return showing the gross proceeds of sales, or gross value of articles produced during the preceding tax year; and if liable for a tax under clause (b) of section two of this act, he shall make a return showing the gross proceeds of sales for such tax year, or gross income, as the case may be; and if liable for a tax under clause (c) or (d) of section two of this act, he shall make a return showing the gross income during such tax year; and compute the amount of the tax chargeable against him in accordance with the provisions of this act, and deduct the amount of quarterly payments, if any made upon the tax for the preceding tax year, and transmit with his report the residue of the tax chargeable against him, to the office of the state tax commissioner; such return shall be verified by the oath of the tax-payer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation, if made on behalf of a corporation. If for any reason it is not practicable for the individual tax-payer to make the oath, the same may be made by any duly authorized agent.

All taxes shall be remitted to the state tax commissioner who shall issue his receipts therefor to the tax-payers, and shall pay the moneys into the state treasury to be kept and accounted for as provided by law.

The tax commissioner may, for good cause shown, extend the time for making a return on the application of any tax-payer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Sec. 7. If the tax-payer shall make any error in computing the tax assessable against him, or if the state tax commissioner shall be dissatisfied with the tax as computed and paid, the tax commissioner shall correct such error or re-assess the proper amount of taxes, and notify the tax-payer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such tax-payer may be liable shall be paid within ten days after the receipt of such statement.

The tax-payer may recover any tax improperly collected, in the manner prescribed in section nine of this act.

Sec. 8. If any person liable for the payment of a tax hereunder shall fail or refuse to make a return to the tax commissioner as herein provided, and pay the tax, the tax commissioner shall proceed to ascertain the facts and information necessary to enable him to assess the proper tax against such person, and in so doing he shall be entitled to call upon and require the assessor of the county in which the tax-payer resides, as well as the prosecuting attorney of the county, to make investigation, examine the books, records and papers of the tax-payer, and to take evidence under oath; all of which shall be transmitted to the state tax commissioner.

From the information so obtained the state tax commissioner shall assess the tax chargeable against the party, and the tax so assessed shall at once become due and payable, and the party charged with the same shall not be permitted to dispute or contest the amount of such tax until he shall first file with the tax commissioner the return required of him under section six of this act.

Upon receipt of such return the tax commissioner may correct the assessment if erroneous or improper, and within ten days after the same shall have been corrected, or after the tax commissioner shall have refused to correct the same, the party liable for the tax shall pay the tax so assessed, but if improperly assessed the taxpayer may recover the same in the manner prescribed in the following section.

Sec. 9. A tax assessed under this act shall constitute a debt due the state and may be collected by action of assumpsit or other appropriate judicial proceeding. If not paid when due it shall constitute a lien upon all the property of the tax-payer, and the same shall be collected, together with a penalty of ten per centum of the amount of the tax and the costs of collection.

No injunction shall be awarded by any court or judge to restrain the collection of any tax imposed by this act, except upon the ground that the assessment thereof was in violation of the constitution of the United States or the constitution of the state of West Virginia, or that the same was fraudulently assessed.

Any person improperly charged with any tax and required to pay the same, may recover the amount paid, together with interest, in any proper action or suit against the state tax commissioner and the circuit court of the county in which the tax-payer resides or is located shall have original jurisdiction of any action to recover any tax improperly collected. It shall not be necessary for the tax-payer to protest against the payment of the tax or to make any demand to have the same refunded in order to maintain such suit. In any suit to recover taxes paid or to collect taxes the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

Sec. 10. The assessment of taxes herein made and the returns required thereof shall be for the fiscal year ending on the thirtieth day of June; **provided,** however, that if the tax-payer in transacting his business keeps his books reflecting the same on the basis of the calendar year, and makes the calendar year his annual accounting period, the taxes chargeable against him shall be computed on the basis of the calendar year, and the annual returns required of such tax-payer shall be for the calendar year. If the tax-payer's annual accounting period is other than the fiscal year or the calendar year, he may, with the assent of the tax commissioner, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping the books of his business.

Sec. 11. The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, occupation, trade or profession, or doing any act taxable hereunder, except as in this act otherwise specifically provided.

Sec. 12. It shall be unlawful for any person to refuse to make the return provided to be made in section six of this act; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this act; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this act; or for the president, vice-president, secretary or treasurer to make or permit to be made for any corporation any false return, or any false statement in any return required in this act, with the intent to evade the payment of any tax hereunder. And any person violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than five thousand dollars, or imprisoned not exceeding one year in the county jail, or punished by both fine and imprisonment, in the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction therefor, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement as aforesaid shall be made, shall be guilty of a misdemeanor and may be punished by a fine of not more than five thousand dollars. The circuit and criminal courts of the county in which the offender resides, or if a corporation, in which it carries on business, shall have jurisdiction to enforce this section.

Sec. 13. If the tax commissioner shall have any reason to believe that any person liable for the payment of a tax has made a false or fraudulent return and is thereby evading the payment of a tax, or any part thereof, he may cause an investigation to be made by the attorney general through the prosecuting attorney of the county in which the tax-payer resides or is located. In order to conduct such investigation the prosecuting attorney may notify the tax-payer to appear before the circuit court of the county, which court shall require the production of all books, papers, and documents necessary to ascertain the facts in the premises, and may examine the delinquent and other witnesses under oath, and no witness shall be excused from testifying concerning any pertinent matter on the ground that his testimony might incriminate, or tend to incriminate, him, or render him liable to punishment or to any penalty. But no person shall thereafter be prosecuted and punished or suffer any penalty in any court in the state for any offense which he shall have been required to disclose, or about which he shall have been required to testify in such proceedings.

Sec. 14. The state tax commissioner shall prescribe forms to be used in making returns and in the assessment and payment of the taxes imposed by this act, but all such forms shall be as simple as practicable, and the tax-payer shall not be required to disclose any matter not germane to the ascertainment of the amount of the tax with which he is properly chargeable.

The tax commissioner may prescribe reasonable rules of procedure in conformity with this act for the ascertainment, assessment and collection of the taxes imposed hereunder.

Sec. 15. The administration of this act is vested in and shall be exercised by the state tax commissioner for the state of West Virginia, but the enforcement of any of the provisions of this act in any of the courts of the state shall be under the exclusive jurisdiction of the attorney general of the state who may require the assistance of and act through the prosecuting attorney of any county, and he may, with the assent of the board of public works of the state, employ special counsel in any county to aid the prosecuting attorney, the compensation of whom shall be fixed by, and paid only upon, the order of the state board of public works.

Neither the attorney general nor any prosecuting attorney of any county shall receive any fees or compensation for services rendered in enforcing this act in addition to the salary paid by the state of West Virginia, or by the county, to such officer.

Sec. 15-a. The board of public works shall not, for the year one thousand nine hundred and twenty-one and for the year one thousand nine hundred and twenty-two, lay any state levy or levies exceeding in the aggregate the sum of ten cents, as now authorized by law, except that such board shall lay such levies as may be required under the Virginia debt act and under the good roads bond act.

Sec. 16. Sections five to seventeen, both inclusive, of chapter three of the acts of the legislature of West Virginia, of nineteen hundred and fifteen, second extra session, and sections one to five, both inclusive, of chapter six of the acts of the second extraordinary session of the legislature of West Virginia of one thousand nine hundred and seventeen, and chapter seven of the acts of the legislature of West Virginia of nineteen hundred and nineteen, extra session, and sections one to nine, both inclusive, of chapter five of the acts of the legislature of West Virginia, extraordinary session of one thousand nine hundred and nineteen, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. **Provided, however,** that said sections shall remain in force for the assessment and collection of all taxes which have accrued thereunder up to and including June thirtieth, one thousand nine hundred and twenty-one and for the imposition and collection of all penalties which have accrued and may accrue in relation to any such taxes up to and including June thirtieth, one thousand nine hundred and twenty-one.