

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 137

H. P. 134

House of Representatives, Dec. 8, 1933.

Referred to Committee on Taxation and 1,500 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Walker of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND
THIRTY-THREE

AN ACT Providing for the Levying, Collecting, and Paying of an Income Tax on Individuals, Fixing Penalties for the Violation Thereof, and Providing for the Manner of Filing Returns of Income and the Fee to be Paid Therefor.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Title. This act shall be known and may be cited as the Income Tax Act.

Sec. 2. Terms defined. For the purpose of this act and unless otherwise required by the context:

(a) The term "tax commission" means the state tax commission.

(b) The term "taxpayer" means any person, trust or estate required to make a return or subject to a tax imposed by this act, or whose income is in whole or in part subject to a tax imposed by this act, and does not include banks, corporations, companies, joint stock companies, joint stock associations, business trusts or other associations wherein interest or ownership is evidenced by certificates or other written instruments.

(c) The term "military or naval forces of the United States" includes the marine corps, the coast guard, the army nurse corps, female, and the navy nurse corps, female, but this shall not be deemed to exclude other units otherwise included within such words.

(d) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this act, or under regulations prescribed by the tax commission, the period for which such return is made. The 1st taxable year shall be the calendar year 1934 or any fiscal year ending during the calendar year 1934. "Fiscal year" means an accounting period of 12 months, ending on the last day of any month other than December.

(e) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(f) The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The term "received" for the purpose of the computation of net income under this act, means "received or accrued" and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

(g) The term "resident" applies only to natural persons, and includes for the purpose of determining liability to the tax imposed by this act upon or with reference to the income of any taxable year, any person domiciled in the state of Maine and any other person who maintains a permanent place of abode within the state, and spends in the aggregate more than 6 months of the taxable year within the state.

(h) The term "dividend" means any distribution made by corporation to its shareholders whether in money or in other property out of its earnings or profits accumulated after December 31, 1933.

(i) The term "stock" includes the share in an association or joint stock company.

(j) The term "shareholder" includes a member in an association or joint stock company.

(k) The term "corporation" includes associations, joint stock companies and insurance companies.

(l) The terms "includes" and "including" when used in a definition contained in this act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Sec. 3. Imposition of tax; rates; property tax offset. There shall be levied, collected, and paid for each taxable year, including the 1st taxable year upon the net income of every resident of the state, a tax equal to the sum of the following:

- (a) One per cent of the 1st \$1,000 of the amount of net income in excess of the credits against net income provided in section 8;
- (b) One and one-quarter per cent of the next \$1,000 of such excess amount;
- (c) One and one-half per cent of the next \$1,000 of such excess amount;
- (d) One and three-quarters per cent of the next \$1,000 of such excess amount;
- (e) Two per cent of the next \$1,000 of such excess amount;
- (f) Two and one-half per cent of the next \$1,000 of such excess amount;
- (g) Three per cent of the next \$1,000 of such excess amount;
- (h) Three and one-half per cent of the next \$1,000 of such excess amount;
- (i) Four per cent of the remainder of such excess amount.
- (j) A taxpayer, subject to the tax herein provided for, shall receive an offset against said tax in the amount of taxes paid upon his real and personal property in the state of Maine during the taxable year, but the amount of such offset shall not exceed $33 \frac{1}{3}$ per cent of the tax herein provided, and shall not apply against any filing fee herein provided.

If it is necessary to compute the tax for a period beginning prior to January 1, 1934, the tax shall be that proportion of a tax for the entire period, determined as provided in this act, which the portion of such period falling in the year 1934 is of the entire period.

Sec. 4. Net income defined. "Net income" means the gross income computed under section 5 less the deductions allowed by section 6.

Sec. 5. Gross income defined. (a) "Gross income" includes gains, profits, and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) **Exclusions from gross income.** The following items shall not be included in gross income and shall be exempt from taxation under this act:

(1) **Life insurance.** Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) **Annuities, etc.** Amounts received (other than amounts paid by

reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under this paragraph or paragraph (b) (1) of this section;

(3) **Gifts, bequests and devises.** The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

(4) **Tax free interest.** Interest upon (a) the obligations of a state, territory or any political subdivision thereof, or the District of Columbia, or (b) the obligations of the United States or its possessions, or (c) the obligations or securities issued under the provisions of any act of congress. Such interest shall be exempt only if and to the extent that the same may be exempt from taxation by the state of Maine either by the laws of the United States or of this state. Every taxpayer holding any of the obligations or securities enumerated in this paragraph shall in the return required by this act submit a statement showing the number and amount of such obligations and securities owned by him, and the income received therefrom during the taxable year, in such form and with such information as the tax commission may require;

(5) **Compensation for injuries or sickness.** Amounts received through accident or health insurance or under workmen's compensation acts as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) **Pensions and war compensation payments, etc.** Amounts received as compensation, family allotments, and allowances under the provisions of the war risk insurance and vocational rehabilitation acts or the world war veteran's act, or as pensions or bonuses from the United States for services rendered by the beneficiary or another in the military or naval forces of the United States in time of war, or as a state pension for services rendered by the beneficiary or another for which the state is paying a pension or bonus.

(7) **Tax free salaries.** Amounts received as compensation, salaries, or wages from the United States or any possession thereof for services

rendered in connection with the exercises of an essential governmental function.

(c) **Inventories.** Whenever in the opinion of the tax commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the tax commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade, profession, or business and as most clearly reflecting the income.

(d) **Distributions by corporations.** Distributions by corporations shall be taxable to the shareholders as provided in section 12.

(e) **Determination of gain or loss.** In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in sections nine, ten and eleven.

Sec. 6. Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) **Expenses.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any profession, trade, or business or in the production of income required to be included in gross income under this act, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a profession, trade, or business; and rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the profession, trade, or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) **Interest.** All interest paid or accrued within the taxable year or indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon which is wholly exempt from taxation under this act.

(c) **Taxes.** Taxes paid or accrued within the taxable year, except—

(1) Income taxes imposed by this act; and

(2) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintain or interest charges.

For the purpose of this subsection, estate, inheritance, legacy, and succession taxes accrue on the due date thereof, except as otherwise provided by the law of the jurisdiction imposing such taxes, and shall be allowed as a deduction only to the estate.

(d) **Losses.** Losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) If incurred in trade or business; or

(2) If incurred in any transaction entered into for profit though not connected with the trade or business; or

(3) Of property not connected with the trade or business if the loss arises from fires, storms, shipwrecks, or other casualty, or from theft.

(e) **Basis for determining loss.** The basis for determining the amount of the deduction for losses sustained, to be allowed under subsection (d), shall be the same as is provided in section 11 for determining the gain or loss from the sale or other disposition of property.

(f) **Bad debts.** Debts ascertained to be worthless and charged off within the taxable year(or, in the discretion of the tax commission, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part the tax commission may allow such debt to be charged off in part.

(g) **Depreciation.** A reasonable allowance for the exhaustion, wear and tear of property used in the trade, profession, or business, including a reasonable allowance for obsolescence. In case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(h) **Depletion.** In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the tax commission. In the case of leases, the deduction shall be equitably apportioned between the lessee and the lessor. In the case of property held by one person for life, with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(i) (1) **Basis for determining depreciation, etc., generally.** The basis

upon which depletion, depreciation, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the same as is provided in section 11 for the purpose of determining the gain or loss upon the sale or other disposition of such property, except as hereinafter in this section provided.

(2) **Percentage depletion for mines and oil and gas wells.** In the case of metalliferous, coal and other hydrocarbon mines, and oil and gas wells, the allowance for depletion shall be $33 \frac{1}{3}$ per centum of the net income from the property during the taxable year, computed without allowance for depletion, or on the basis provided in paragraph (1) of this subsection as the taxpayer may elect. The basis which the taxpayer elects under this subsection shall be the basis used in subsequent accounting periods and shall be changed thereafter only with the consent of the tax commission.

(j) **Charitable and other contributions.** Contributions or gifts made within the taxable year to or for the use of:

(1) The United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) Any corporation or association or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(3) Posts or organizations of war veterans or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States, or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(4) A fraternal society, order, or association operating under the lodge system but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children and animals; to an amount which in all the above cases combined does not exceed fifteen per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the tax commission.

(k) **Future expenses in case of casual sales of real property.** In the case of a casual sale or other casual disposition of real property, a reasonable allowance for future expense liabilities incurred under the provisions of the contract under which such sale or other disposition was made, under such regulations as the tax commission may prescribe.

Sec. 7. Items not deductible. (a) **General rule.** In computing net income no deduction shall in any case be allowed in respect of:

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for the permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(4) Premiums paid on any life insurance policy covering the life of any employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(b) **Losses on sale of stock or other securities.** In the case of any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition, the taxpayer has acquired (otherwise than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, no deduction for the loss shall be allowed under section 6 (d) (2), unless the claim is made by a taxpayer, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of business. If such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of the loss shall be disallowed.

Sec. 8. Credits against net income. There shall be allowed the following credits against the net income:

(a) **Personal exemption.** In the case of a single person, a personal exemption of \$1,000, or in the case of the head of a family, or a married person living with husband or wife, a personal exemption of \$2,000. A husband and wife living together shall receive but one personal exemption. The amount of such exemption shall be \$2,000. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(b) **Credit for dependent.** \$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under 21 years of age or is incapable of self-support because mentally or physically defective.

(c) **Change of status.** The exemptions allowed by this section shall be determined by the status of the taxpayer on the last day of his taxable

year, provided that a taxpayer shall be entitled to such exemption for husband or wife or dependent who has died during the taxable year.

(d) **Exemption allowed surviving spouse.** In the case of an individual who dies during the taxable year the exemptions allowed by this section shall be determined by his status at the time of his death, and in such case full exemption shall be allowed to the surviving spouse, if any, according to his or her status at the close of the taxable year.

Sec. 9. Determination of amount of gain or loss. (a) **Computation of gain or loss.** Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in section 11, and the loss shall be the excess of such basis over the amount realized.

(b) **Adjustment of basis.** In computing the amount of gain or loss under subsection (a)—

(1) Proper adjustment shall be made for any expenditure, receipt, loss or other item properly chargeable to capital account, and

(2) The basis shall be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, and depletion which have, since the acquisition of the property been allowable in respect of such property under this act; but in no case shall the amount of the diminution in respect of depletion exceed a depletion deduction computed without reference to percentage depletion under section 6 (i) (2). In addition, if the property was acquired before January 1, 1934, the basis (if other than the fair market value as of January 1, 1934) shall be diminished in the amount of exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date, and

(3) In the case of stock the basis shall be diminished by the amount of distributions previously made in respect of such stock, to the extent provided under this act.

(c) **Amount realized.** The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(d) **Recognition of gain or loss.** In the case of sale or exchange the extent to which the gain or loss determined under this section shall be recognized for the purposes of this act, shall be determined under the provisions of section 10.

(e) **Installment sales.** Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in instalments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

Sec. 10. Recognition of gain or loss. (a) **General rule.** Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 9, shall be recognized, except as hereinafter provided in this section.

(b) **Exchanges solely in kind.** (1) **Property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or profession or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade, business or profession or for investment.

(2) **Stock for stock of same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) **Stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) **Transfer or corporation controlled by transfer.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(c) **Gain from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (b) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(d) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (b) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recogni-

tion of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(e) **Involuntary conversions.** If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the treat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the tax commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(f) **Distribution of stock on reorganization.** If there is distributed, in pursuance of a plan of reorganization, to a shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(g) **Same—effect on future distributions.** The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation a party to the reorganization, of its stock or securities or stock or securities in a corporation a party to the reorganization, shall not be considered a distribution of earnings or profits within the meaning of section twelve (a) for the purpose of determining the taxability of subsequent distributions by the corporation.

(h) **Definition of reorganization.** As used in this section and sections 11 and 12—

(1) The term “reorganization” means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (b) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or (d) a mere change in identity, form or place of organization, however affected.

(2) The term “a party to a reorganization” includes a corporation

resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(i) **Definition of control.** As used in this section the term "control" means the ownership of at least 80% of the voting stock and at least 80% of the total number of shares of all other classes at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death, shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death;

(5) **Tax-free exchanges generally.** If the property was acquired upon an exchange described in section 10 (b) to (d) inclusive, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under this act. If the property so acquired consisted in part of the type of property permitted by section ten (b) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange;

(6) **Tax free distribution.** If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in section 10 (f) the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the tax commission, between such stock and the stock or securities distributed;

(7) **Involuntary conversion.** If the property was acquired as the result of a compulsory or involuntary conversion described in section 10 (e) the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of said section determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion;

(8) **Wash sales of securities.** If substantially identical property was acquired in place of stock or securities which are sold or disposed of stock of the corporation.

Sec. 11. Basis for determining gain or loss. (a) Property acquired after December 31, 1933. The basis for determining the gain or loss from the sale or other disposition of property acquired after December 31, 1933, shall be the cost of such property; except that—

(1) **Inventory value.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof;

(2) **Gift.** If the property was acquired by a gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, the tax commission shall, if possible, obtain such facts from such donor, or last preceding owner or any other person cognizant thereof. If the tax commission finds it impossible to obtain such facts the basis shall be the fair market value of such property as found by the tax commission as of the date or approximate date at which, according to the best information that the tax commission is able to obtain, such property was acquired by such donor last preceding owner;

(3) **Transfer in trust.** If the property was acquired by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain, or decreased in the amount of loss, recognized to the grantor upon such transfer under this act;

(4) **Property transmitted at death.** If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent the basis in the hands of the estate shall be the fair market value of the property at the time of the death of the decedent. In all other cases if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor of and in respect of which loss was not allowed as a deduction under section seven (b) the basis in the case of property so acquired shall be the basis in the case of the stock or securities so sold or disposed of, except that if the repurchase price was in excess of the sale price such basis shall be increased in the amount of the difference, or if the repurchase price was less than the sale price such basis shall be decreased in the amount of the difference.

(b) **Property acquired before January 1, 1933.** The basis for deter-

mining the gain or loss from the sale or other disposition of property acquired before January 1, 1934, shall be:

(1) The cost of such property (or in the case of such property as is described in subsection (a) (1) or (4) of this section the basis as therein provided, or in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition), or

(2) The fair market value of such property as of January 1, 1934, whichever is greater. In determining the fair market value of stock in a corporation as of January 1, 1934, due regard shall be given to the fair market value of the assets of the corporation as of that date.

Sec. 12. Distributions by corporations. (a) **Source of distributions.** For the purposes of this act every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before January 1, 1934, may be distributed exempt from tax, after the earnings and profits accumulated after December 31, 1934, have been distributed, but any such tax-free distribution shall be applied against and reduce the basis of the stock provided in section eleven.

(b) **Distribution in liquidation.** Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 9, but shall be recognized only to the extent provided in section 10. In the case of amounts distributed in partial liquidation (other than a distribution within the provisions of section 10 (g) of stock or securities in connection with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of subsection (a) of this section for the purpose of determining the taxability of subsequent distributions by the corporations.

(c) **Other distributions from capital.** If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before January 1, 1934, and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in section 11, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. The provision of this subsection shall also apply to distributions from depletion reserves based on percentage depletion allowed by this act.

(d) **Stock dividends.** A stock dividend shall not be subject to tax.

(e) **Redemption of stock.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock to the extent that it represents a distribution of earnings or profits accumulated after December 31, 1934, shall be treated as a taxable dividend.

(f) **Definition of partial liquidation.** As used in this section the term "amounts distributed in partial liquidation" means the distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

Sec. 13. Accounting periods—method of accounting. (a) (1) **General rule.** The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the tax commission does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 2 (d) of this act, or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(2) **Period in which items of gross income included.** The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted under this section, any such amounts are to be properly accounted for as of a different period.

(3) **Period for which deductions and credits taken.** The deductions and credits provided for in this act shall be taken for the taxable year in which "paid or accrued" or "paid or incurred" dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.

Sec. 14. Installment basis. (a) **Dealers in personal property.** Under regulations prescribed by the tax commission a taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of

the installment payments actually received in that year which the gross profit realized or to be realized when the payment is completed, bears to the total contract price.

(b) **Sales of realty and casual sales of personalty.** In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which properly would be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 40% of the selling price, the income may under regulations prescribed by the tax commission be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) **Change from accrual to installment basis.** If a taxpayer entitled to the benefits of subsection (a) of this section elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

(d) **Gain or loss upon disposition of installment obligation.** If an installment obligation is satisfied at other than face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation, and

(1) In the case of satisfaction at other than face value, or a sale or exchange—the amount realized, or

(2) In case of the distribution, transmission or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission or disposition. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

Sec. 15. Change of accounting period. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another the net income shall, with the approval of the tax commission, be computed on the basis of such new accounting period, subject to the provisions of section 16 of this act.

Sec. 16. Returns for short period resulting from change of accounting period. (a) If a taxpayer, with the approval of the tax commission, changes the basis of computing net income from fiscal year to calendar

year, a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31st. If the change is made from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made, and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

(b) **Income computed on basis of short period.** Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the tax commission, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(c) **Income placed on annual basis.** If a separate return is made under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by 12 and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of 12 months.

Sec. 17. Who must file returns; husband and wife; persons under disability. (a) Every resident having a net income for the taxable year of \$1,000 or over if single or if married and not living with husband or wife, or a net income of \$2,000 or over if married and living with husband or wife, shall make, under oath, a return stating specifically the items of his gross income and the deductions and credits allowed under this act. If a husband and wife living together have an aggregate net income of \$2,000 or over, each shall make a return, or the income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(b) Every resident of the age of 21 years or over whose net income if single is less than \$1,000.00, or if married is less than \$2,000.00, and every person whose income is included in a joint return made by his or her wife or husband, as hereinabove provided, shall make a return stating the amount of his or her gross income, together with such itemization

thereof and such other information as the State tax commission may from time to time by general regulations require.

Sec. 18. Time for filing returns; to whom made; filing fee; extension of time. Returns shall be made to the tax commission each accompanied by a filing fee of \$1.00 on or before the 15th day of March in each year, if the return is made on the basis of the calendar year or if the return is made on the basis of the fiscal year, then on or before the 15th day of the third month following the close of the fiscal year. On application the tax commission may grant a reasonable extension of time, not exceeding 90 days, for filing returns whenever in its judgment good cause exists therefor and shall keep a record of every such extension and the reason therefor; provided that no extension of time for filing shall be granted until the filing fee herein provided for has been paid; and provided further, that the tax commission may, in its discretion, and under rules and regulations to be prescribed by it, remit or abate the said filing fee for good cause shown, and, no insane, idiotic, infirm or indigent person, nor any ward of the state confined against his will, nor any student regularly enrolled and in good standing in any school or institution of learning of this state, nor any married woman living with her husband, who does not have an independent taxable income but who makes a joint return, shall be required to pay said filing fee; but such remission, abatement or exception shall not be construed in any case to relieve such person, ward or student from filing a return of his or her income, if otherwise required so to do under this act.

Sec. 19. Records by taxpayer; special returns. Every person liable to any tax imposed by this act shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the tax commission may from time to time prescribe. Whenever in the judgment of the tax commission necessary, it may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the tax commission deems sufficient to show whether or not such person is liable to tax under this act.

Sec. 20. Payment of tax. (a) **Time of payment.** The total amount of tax imposed by this act, shall be paid on the 15th day of March following the close of the calendar year, or if the return should be made on the basis of a fiscal year, then on the 15th day of the third month following close of the fiscal year.

(b) **Extension of time payment.** At the request of the taxpayer, the tax commission may extend the time for payment of the amount determined as the tax by the taxpayer, or any part thereof, for a period not to exceed 90 days from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be

paid on or before the date of the expiration of the period of the extension.

Sec. 21. Examination of returns. As soon as practicable after the return is filed the tax commission shall examine it and shall determine the correct amount of the tax.

Sec. 22. Failure to file return; penalty. In case of any failure to make and file a return required by this act, within the time prescribed by law or prescribed by the tax commission in pursuance of law, 25% of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax.

Sec. 23. Interest on deficiencies. Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the tax commission, and shall be collected as a part of the tax, at the rate of 6% per annum from the date prescribed for the payment of the tax to the date the deficiency is assessed.

Sec. 24. Addition to tax in case of deficiency. (a) **Negligence.** If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, five per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 23, relating to interest on deficiencies, shall not be applicable.

(b) **Fraud.** If any part of any deficiency is due to fraud with intent to evade tax, then 50% of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

Sec. 25. Additions to tax in case of non-payment. (a) **Tax shown on return.** (1) **General rule.** Where the amount determined by the taxpayer as the tax imposed by this act, or any part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the date prescribed for its payment until it is paid.

(2) **Of extension granted.** Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any part thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 26, is not

paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 1% a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) **Deficiency.** Where a deficiency or any interest or additional amounts assessed in connection therewith under section 23, or under section 24, or any addition to the tax in case of delinquency provided for in section 22, is not paid in full within 10 days from the date of notice and demand from the tax commission, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of one per centum a month from the date of such notice and demand until it is paid.

(c) **Fiduciaries.** For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of six per centum per annum in lieu of the interest provided in subsections (a) and (b) of this section.

Sec. 26. Interest upon tax shown on return where time for payment extended. If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of section 20 (b), there shall be collected as a part of such amount, interest thereon at the rate of 6% per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

Sec. 27. Interest upon deficiency where time for payment extended. If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6% per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of one per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

Sec. 28. Deficiency defined. As used in this act in respect of a tax imposed by this act "deficiency" means

(a) The amount by which the tax imposed by this act exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased

by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded or otherwise repaid in respect of such tax.

Sec. 29. Notice of deficiency; petition for redetermination. (a) If in the case of any taxpayer, the tax commission determines that there is a deficiency in respect of the tax imposed by this act, the tax commission is authorized to send notice of such deficiency to the taxpayer by registered mail. Such notice shall set forth the details of the deficiency and the manner of computing the tax. Within 60 days after such notice is mailed, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency.

(b) No assessment of a deficiency in respect of the tax imposed by this act, and no levy or proceeding in court for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60 day period, nor, if a petition has been filed with the tax commission, until its decision has become final.

Sec. 30. Collection of deficiency found upon redetermination. (a) If the taxpayer files a petition with the tax commission, the entire amount redetermined as the deficiency by the decision of the tax commission which has become final shall be assessed and shall be paid 10 days after such notice and demand from the tax commission.

(b) **Collection of deficiency.** If the taxpayer does not file a petition with the tax commission within the time prescribed by section 29, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid ten days after notice and demand from the tax commission.

Sec. 31. Hearing on petition for redetermination; decision by tax commission. If a petition for a redetermination of a deficiency has been filed by a taxpayer, notice and an opportunity to be heard shall be given to the taxpayer and after hearing, a decision shall be made as quickly as practicable.

Sec. 32. Redetermination of deficiency. The tax commission shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether

any penalty, additional amount or addition to the tax should be assessed— if at the hearing or prior thereto claim therefor is asserted.

Sec. 33. Mailing of notices. All notices required to be mailed to a taxpayer under the provisions of this act, if mailed to him at his last known address as shown on the records of the tax commission, shall be sufficient for the purposes of this act.

Sec. 34. Period of limitation upon assessment of taxes in general. Except as provided in section 35 of the amount of income taxes imposed by this act shall be assessed within 2 years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

Sec. 35. No limitation in case of false or fraudulent returns; limitation upon collections. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any income tax imposed by this act has been made within the period of limitation provided in section 34 such tax may be collected by warrant and levy as provided in section 58, or by a proceeding in court, but only if begun within three years after the assessment of the tax.

Sec. 36. Suspension of running of statute of limitations. The running of the statute of limitations provided in section 34 or 35 on the making of assessments and the beginning of a proceeding for collection by warrant and levy, or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 29) be suspended for the period during which the tax commission is prohibited from making the assessment or beginning proceedings for collection and for 60 days thereafter.

Sec. 37. Overpayment of taxes; credits or refunds. (a) Where there has been an overpayment of any tax imposed by this act, the amount of such overpayment shall be credited against any income tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) **Limitation of credits and refunds.** (1) **Period.** No such credit or refund shall be allowed or made after 2 years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **Amount.** The amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing

of the claim, or if no claim was filed, then during the 2 years immediately preceding the allowance of the credit or refund.

(c) **Overpayment found on appeal.** If the supreme court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the tax commission determined the deficiency, the supreme court shall have jurisdiction to determine the amount of such overpayment and such amount shall, when the decision of the supreme court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than 2 years before the filing of the claim or the filing of the petition, whichever is earlier.

Sec. 38. Claims for credits or refunds. Any taxpayer claiming to be entitled to a refund or credit under the provisions of section 37 may file a claim therefor with the tax commission within the time provided in said section, provided that on such claim may be filed for refund or credit on account of any tax in respect of which a review by certiorari has been had. Notice and an opportunity to be heard shall be given to the taxpayer and after hearing, a decision shall be made as quickly as possible.

Sec. 39. Decisions of tax commission; notice thereof; when become final. Every decision of the tax commission shall be in writing and notice thereof shall be mailed to the taxpayer within 10 days and all such decisions shall become final upon the expiration of 30 days after notice of such decision shall have been mailed to the taxpayer, unless proceedings are thereafter taken for review by the supreme court upon writ of certiorari as hereinafter provided, in which case it shall become final, (1) when affirmed or modified by the judgment of the supreme court; (2) if the supreme court remands the case to the tax commission for rehearing, when it is thereafter determined as hereinabove provided with respect to the initial proceeding.

Sec. 40. Review by supreme court; record. Within 30 days after notice of any decision of the tax commission any party affected thereby may apply to the supreme court of this State for a writ of certiorari or review for the purpose of having the lawfulness of such decision inquired into and determined. Such writ shall be made returnable not later than 30 days after the date of the issuance thereof, and shall direct the tax commission to certify its record, which shall include all the proceedings and the evidence taken in the case, to the court. Upon the hearing no new or additional evidence may be introduced into such court, but the cause shall be heard on the record before the tax commission as certified to by it. The decision of the tax commission may be reviewed both upon the law and the facts, and the provisions of law relating to appeals shall, so far as

applicable, and not in conflict with this act, apply to the proceedings in the supreme court under the provisions of this section.

Sec. 41. Jurisdiction limited to supreme court. No court of this state, except the supreme court, shall have jurisdiction to review, reverse, or annul any decision of the tax commission, or to suspend or delay the operation or execution thereof; provided that a writ of mandamus shall lie from the supreme court in all proper cases.

Sec. 42. Requirements precedent to review. Before making application to the supreme court for said writ the full amount of the taxes, interest, and other charges, audited and stated in the determination or decision of the tax commission must be deposited with the tax commission and an undertaking filed with the tax commission in such amount and with such sureties as the tax commission shall approve to the effect that if such writ is dismissed or the decision of the tax commission affirmed, the applicant for the writ will pay all costs and charges which may accrue against him in the prosecution of said case; or, at the option of the applicant, such undertaking may be in a sum sufficient to cover the taxes, interests, and other charges, audited and stated in such decision, plus the costs and charges which may accrue against him in the prosecution of said case in which event the applicant shall not be required to pay such taxes, interests, and other charges as a condition precedent to his application for the writ.

Sec. 43. Partnership not taxable. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

Sec. 44. Tax of partners. (a) **General rule.** There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year. If the taxable year of a partner is different from that of the partnership, the amount so included shall be based upon the income of the partnership for any taxable year of the partnership ending within his taxable year.

(b) **Partnership fiscal year.** If a fiscal year of a partnership begins in the year 1933 and ends in the year 1934 only that portion of the partner's distributive share of the partnership income for the full fiscal year shall be included in his return as the number of months of the fiscal year within the calendar year 1934 bears to the total number of months included in the fiscal year.

Sec. 45. Net income of partnership. The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except that the so-called "charitable contribution" deduction provided in section 6 (j) shall not be allowed.

Sec. 46. Partnership returns. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

Sec. 47. Estates and trusts. (a) Application of tax. The taxes imposed by this act upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment of tax; revocable trusts; income for benefit of grantor of trust. The tax shall be computed upon the net income of the estate or trust and shall be paid by the fiduciary, except that where the grantor of a trust has at any time during the taxable year, either alone or in conjunction with any other person not a beneficiary to the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor; and except that where any part of the income of the trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 6 (j) of this act relating to deductions for charitable contributions), such part of the income of the trust shall be included in computing the net income of the grantor.

Sec. 48. Net income of estates or trusts. The net income of the estate

or trust shall be computed in the same manner and on the same basis as in the case of an individual except that—

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 6 (j) of this act) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 6 (j) of this act, or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.

Sec. 49. Fiduciaries subject to act. Fiduciaries required to make returns under this act shall be subject to all of the provisions of this act which apply to individuals except as in this act expressly provided.

Sec. 50. Exemptions allowed to estates or trusts. The estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 8 (a).

Sec. 51. Taxable year of a beneficiary different from that of estate or trust. If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 48 (b) to include in computing his net income, shall be based upon the income of the

estate or trust for any taxable year of the estate or trust ending within his taxable year.

Sec. 52. Returns by fiduciaries. (a) Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following residents, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this act.

(1) Every resident having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every resident having a net income for the taxable year of \$2,000 or over, if married and living with husband or wife;

(3) Every estate or trust the net income of which for the taxable year is \$1,000 or over;

Sec. 53. Information at the source. Every individual, partnership, corporation, joint stock company, association, or marketing association, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other payment amounting to \$400 or over, paid or payable during any year to any taxpayer, shall when required by the tax commission, make a true and accurate return under oath, to the tax commission, under such regulations and in such form and manner and to such extent as may be prescribed by it, setting forth the amount of such payments, and the name and address of the recipient of the same. Such returns may be required, regardless of amounts, in the case of payments of interest upon bonds, mortgages, deeds of trust or other similar obligations of corporations.

Sec. 54. Powers and duties of tax commission; administration of tax. The tax commission shall administer and enforce the tax herein imposed for which purpose it may divide the state into districts in each of which a branch office of the tax commission may be maintained; provided, that in no case shall a county be divided in forming a district.

Sec. 55. Same; agents of tax commission. The tax commission is authorized at its discretion to designate agents for the purpose of collecting income taxes and shall require from each of them a reasonable bond.

Sec. 56. Same; (a) Estimate of taxable income. If any taxpayer fails to make a return as herein required, the tax commission is authorized

to make an estimate of the taxable income of such taxpayer from any information in its possession.

(b) **Examination of records, etc.** The tax commission, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, shall also have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

Sec. 57. Same; administration of oaths. Each member of the tax commission and such officers, agents or representatives as it may designate shall have the power to administer an oath to any person, or to take the acknowledgment of any person in respect of any income tax report or return required by or pursuant to this act, or the rules and regulations of the tax commission.

Sec. 58. Same; collection of tax; penalties, etc. If the tax imposed by this act or any portion thereof be not paid when the same becomes due, the tax commission may issue a warrant in duplicate under its official seal and directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant. Immediately upon receipt of said warrant in duplicate the sheriff shall file the duplicate with the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors the name of the delinquent taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer and shall also become a lien upon the real property of the person against whom it is issued in the same manner as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law

in respect to execution issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

Sec. 59. Penalty for failure to furnish information without fraudulent intent. Every individual, partnership, corporation, joint stock company, association or marketing association, or any officer or employee of any corporation, or member or employee of any partnership, or any officer or employee thereof, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than \$100 to be imposed, assessed, and collected by the state tax commission in the same manner as is provided in this act with regard to delinquent taxes.

Sec. 60. Penalty for failure to observe requirements of act with intent to evade any tax or any requirement of the act. Every person referred to in section 59, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the tax commission thereunder, shall fail to pay the tax, or to make, render, sign, or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, shall make, render, sign or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information shall be liable to a penalty of not more than \$1,000, to be recovered by the tax commission in the same manner as is provided in this act for the collection of delinquent taxes, and shall also be guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both, at the discretion of the court. The fines provided by this section shall be additional to all other penalties in this act provided.

Sec. 61. Tax commission may waive or reduce penalty. Upon making a record of its reasons therefor, the tax commission shall have the power, in its discretion to waive or reduce any of the penalties provided in this act or to compromise the same.

Sec. 62. Offenses; where committed; prima facie evidence. The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the tax commission. The certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

Sec. 63. Disposition of revenue; payment of refunds. (a) All rev-

enue, except receipts from filing fees, collected or received by the tax commission under this act shall be deposited daily with the state treasurer. 5% of the revenue so collected shall be retained by the state treasurer as a reserve fund for the payment of refunds to which taxpayers shall be entitled under the provisions of this act.

Refunds due to taxpayers under this act shall be paid out of said reserve fund. If at the end of any state fiscal year there is in said reserve fund a sum in excess of \$25,000.00, such excess shall be paid into the general fund.

Receipts from filing fees shall be allocated to the state general fund.

(b) The tax commission shall certify to the state treasurer the amount of any refund allowed by it, from whom it was collected, or by whom paid, and the same with interest shall be refunded to the taxpayer out of undistributed collections from this tax or out of the reserve fund as defined in subdivision (a) of this section, provided that if at any time the reserve fund is exhausted and there are no funds with which to pay refunds allowed by the tax commission then such refunds shall be paid in order out of the funds first accruing to said fund.

Sec. 64. Interest upon overpayments. Interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this act, at the rate of 6% per annum, as follows:

(a) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(b) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the tax commission.

Sec. 65. Rules and regulations. The tax commission is hereby authorized to make such rules and regulations, not inconsistent herewith and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this act.

Sec. 66. Secrecy of information; penalties. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particular set forth or disclosed in any report or return required under this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the tax commission, in an action or proceeding under the provisions of this act, to which it is a party, or on behalf of any party to any action or proceeding under the provisions of

this act when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein contained shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding is contemplated or has been instituted under this act. Reports and returns shall be preserved for three years and thereafter until the tax commission orders them destroyed.

(b) Any offense against subdivision (a) of this section shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both, in the discretion of the court, and if the offender be an officer or employee of the state, he shall upon conviction be dismissed from office and be incapable of holding public office in this state for a period of 5 years thereafter.

Sec. 67. Constitutionality of act. If any clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstances shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, nor the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. No caption of any article, section or set of sections shall in any way affect the interpretation of this act or any part thereof.