

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 601

H. P. 1477

House of Representatives, February 11, 1941.

Referred to Committee on Taxation and sent up for concurrence. 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Mercier of Rumford by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

**AN ACT Relating to Taxation and Providing for a Universal Tax on
Gross Incomes.**

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

Sec. 1. Title. This act may be cited as the "Income Tax Act of 1941."

Sec. 2. Persons taxable. Every person residing within the state, or in case of death his personal representative, shall pay a tax on gross income, and every non-resident shall pay a tax on such gross income as is derived from property located or business transacted within the state. Said tax shall be assessed, levied and collected as hereinafter provided.

Sec. 3. Object of tax. The object for which the said tax is imposed is to provide adequate funds to care for pensions, as now established by law, for the blind, aged, and incapacitated of the state.

Sec. 4. Definitions for the purpose of this act. A. "Person" shall mean and include natural persons, fiduciaries, and corporations, including all corporations, joint stock companies and associations.

B. "Residence" or "residing within the state" shall mean or refer to a natural person domiciled within the state. A person living within the state, or who spends a period aggregating not less than 9 months of the

income year, within the state, shall prima facie be deemed to be domiciled within the state.

C. "Income year" shall mean the calendar year or corresponding fiscal year.

D. "Years open to audit" shall mean the 2 successive income years next preceding the last income year for which the income of any persons has been assessed, and any income year for which no report of income was made.

E. "Value" shall mean the fair market value.

Sec. 5. Gross income. Gross income shall include:

A. Rent of real estate situated within the confines of the state of Maine.

B. Dividends derived from stocks, whether paid in cash or property.

C. Interest derived from money loaned or invested in notes, mortgages, bonds, or other evidences of debt.

D. Wages, salaries or fees derived from services.

E. Profits derived from transactions of business or from the disposition of real estate or other capital assets.

F. Royalties derived from mines, or the possession or use of franchises or other legalized privileges.

G. Life insurance paid to the insured, and insurance paid to a corporation or partnership upon policies on the lives of its officers, partners or employees, after deducting from such insurance the cash surrender value thereof on January 1, 1941, and all net premiums paid thereafter and not deducted on Maine income tax returns; provided that when the wife or other surviving heir of the insured is the beneficiary of a policy carried by, or on which the premium is paid by a corporation or partnership on the life of a stockholder or part owner therein, under an agreement whereby in view of the insurance paid at death the corporation receives the stock or interest of the insured in the business, the net gain of the corporation or partnership shall be treated as gross income.

H. All other gains, profits, or income, subject to the exemptions hereinafter provided.

Sec. 6. Administration. The state tax assessor shall administer and enforce the provisions of this act.

A. He may from time to time make such rules and regulations, not inconsistent with this act, as he may deem necessary.

B. In addition to all other powers of assessment granted him by law, the assessor shall possess the power to assess incomes.

C. For the purpose of ascertaining the correctness of any report of income, or making the estimate of the taxable income of any taxpayer, the assessor shall have power to examine or cause to be examined by any agent or representative, any books, papers, records, or memoranda, bearing upon the matters required to be included in the report, including a copy of the taxpayer's current income tax return to the United States Government, and all amendments to said return, whether arrived at by compromise or adjudication, after hearing and final determination by the federal government, and to require the attendance of the taxpayer or of any other person having knowledge in the premises, administer oaths, take testimony and require proof material for its information, by the same means and in the same manner as allowed to courts of record. If any person summoned to appear to testify or to produce books, papers, records, or other data, shall refuse to do so, the superior court for the county in which such person resides shall have jurisdiction by appropriate process to compel such attendance of testimony, or production of books, papers, records or other data.

D. The president, cashier or other responsible accounting officer of every commercial bank, savings bank or trust company, or other financial institution, and every person or company engaged in the banking business, shall keep and maintain records which shall clearly disclose and reflect a true statement of all interest paid by them, and shall on request of the assessor or its duly authorized agent, allow an inspection of said records by an agent of the assessor.

E. All agents or representatives of the assessor shall have, for identification purposes, credentials signed by the assessor and countersigned by the governor.

F. The assessor shall have the power to appoint and employ such agents, specialists, and clerks, **within the limits of appropriations and compensation prescribed by law**, as he may deem necessary to fully effectuate the purposes of this act.

Sec. 7. Exemptions. There shall be exempt from taxation under this act income as follows:

A. Pensions received from the United States or the state of Maine.

B. Insurance received in payment of a death claim and contract paid by reason of the death of the insured, except insurance paid to a corporation

or partnership upon policies on the lives of the officers, partners or employees, except insurance (other than amounts paid by reason of the death of the insured) received under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract, equal to the total amount of premiums paid thereon.

C. Inheritances, devises, bequests and gifts received during the year which are subject to other specific state tax.

D. Income of all religious, humanitarian, benevolent, scientific, educational or other corporations or associations of individuals not organized or conducted for pecuniary profit.

E. Incomes received by the United States, the state and all counties, cities, villages, school districts or other political units of the state.

F. Premium income of insurance companies which pay to the state a tax thereon.

G. Any receipts by or payments to the taxpayer for or on account of any claim for workmen's compensation, or unemployment compensation.

Sec. 8. Deductions. Every taxpayer, in reporting income for purposes of taxation, shall be entitled to the following deductions:

A. The amount of all payments made for national, state, county or municipal taxes, including water, light, school, and bridge districts operated as a public necessity and not for pecuniary profit.

B. There shall be deducted from the tax after the same shall have been computed, a personal exemption for natural persons as follows:

(1) For an individual, \$10.

(2) For husband and wife or head of a family, \$20, and for each dependent child or other person dependent upon and entirely supported by such husband and wife or head of a family, an additional \$4.

(3) To the head of a family, who is a widow or widower, for each child actually dependent upon and supported by such taxpayer, an additional \$4.

(4) For each person dependent upon and actually supported by a taxpayer not the head of a family, an additional \$4.

C. The personal exemption provided by this section shall be determined by the personal status of a taxpayer on the last day of the last year included in the computation of income, except as otherwise provided in this act.

Sec. 9. Income year, calendar or fiscal. A. Taxpayers who custom-

arily determine their income on the basis of an established fiscal year instead of on that of a calendar year, may return their gross income under this act on the basis of such fiscal year, in lieu of that of the calendar year; providing that all fiscal years ending between July 1 preceding and June 30 following the close of the calendar year shall correspond to such calendar year for the purposes of this act. No fiscal year shall end on a date other than the last day of a month.

B. A taxpayer may, with the approval of the assessor, and under such regulations as it may prescribe, change his income year from the fiscal year to the calendar year or otherwise, in which case his gross income shall be computed upon the basis of such new income year.

C. If a taxpayer, with the approval of the assessor, changes the income year on the basis of which his net income is computed, he shall, at such time and in such manner as the assessor may prescribe, make a separate report of income for the period intervening between the end of his former income year and the beginning of his new income year.

Sec. 10. Filing reports. A. Every corporation, as defined in section 4, doing business within the state, whether taxable under this act or not; every person other than a corporation who received during the year an income, shall on or before March 15 of each year, file with the assessor a report of income in such manner and form and setting forth such facts, necessary to the enforcement of the provisions of this act, as the assessor shall prescribe; provided, that a corporation shall not be deemed to be doing business within the state merely because of its incorporation under the laws of the state, nor because of holding within the state of organization or other meetings of its stockholders or board of directors.

B. The report of a corporation, including investment company co-partnerships, shall be made upon the oath or affirmation of the president, vice president, or other principal officer and the treasurer thereof; or if a corporation in liquidation or in the hands of a receiver, upon the oath or affirmation of the person responsible for the conduct of its affairs.

C. The report of a person other than a corporation, and the report of a partnership (other than an investment company co-partnership) shall be made upon the oath or affirmation of a member of such partnership.

D. Corporations doing business within the state shall also file, with the report of income as provided herein, on forms prescribed by the assessor, the following reports:

1. Names and addresses of and the amount paid to each officer or em-

ployee residing within the state for salaries, wages, fees, or bonuses, for services actually rendered in carrying on the business, profession or occupation from which the income is derived.

2. The names and addresses of creditors residing within the state to whom interest was paid in the operation of the business from which the income is derived; provided, every commercial bank, savings bank, or other financial institution shall, in lieu of the reports required by this paragraph, keep and maintain for the inspection of the tax assessor, or his agents, the records required by section 6 subsection D of this act.

3. Payments made, and the names and addresses of persons residing within the state to whom dividends or liquidating dividends were paid.

4. Payments made, and the names and addresses of persons, within or without the state, to whom payments were made for rents or royalties on property situate within the state.

E. Whenever in the judgment of the assessor any person other than a corporation is subject to income tax, or for any reason ought to file a report of income, he shall notify such person to make such report, and to include therein such information as the assessor shall prescribe. Failure to receive such notice shall not excuse a person required to file a report of income.

F. Married persons living together as husband and wife may make separate reports or join in a single joint report of income.

G. Upon written request thereof the assessor may, for absence, sickness, or other sufficient reason, grant a reasonable extension of time for filing a report of income.

Sec. 11. Computation of taxes. A. The basis of assessment of taxable income shall be the gross income of the preceding income year; provided, that any taxpayer who keeps his books and reports his income on a fiscal year basis shall on or before March 15, 1942, file a report of income received during the period beginning January 1, 1941, and ending with the first day of said taxpayer's fiscal year, and for the purposes of such assessment the basis shall be the gross income of said period.

B. Liability to taxation for income which follows the residence of a recipient shall, in the case of persons other than corporations who move into or out of the state within the year, be determined for such year by the ratio of time which the residence of the taxpayer within the state bears to the entire calendar or fiscal year. Deductions for personal exemptions, as provided in section 8 shall be prorated on the basis of the time of residence within and without the state. The gross income of the taxpayer

assignable to the state for such year shall be used in determining the tax assessment.

Sec. 12. Payment of tax. A. All income taxes shall be due and payable on March 15 following the close of the calendar year in which the income accrued; or the taxpayer may pay the same in 2 installments, $\frac{1}{2}$ on the date when the full amount, as herein provided, shall become due and payable, and the second half 90 days after such date. For the purposes of this paragraph the report of income upon which the tax is computed shall be presumed to be correct.

B. In the event that an extension of time for filing a report of income has been granted, the time for payment of the first installment shall be postponed until the expiration of such extension, but the time for payment of the second installment shall not be extended unless the extension shall specifically provide.

C. If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the assessor.

Sec. 13. Corporate tax evasion. A. When any corporation liable to tax action under this act conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor; or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper gross income, the assessor may determine the amount of taxable income of such corporation for the income year, having due regard to the reasonable profits which but for such arrangement or understanding might or could have been obtained from dealing in such products, goods or commodities.

B. For the purpose of this act, whenever a corporation which is required to file a report of income is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the tax assessor may require such consolidated statements as in his opinion are necessary in order to determine the taxable income received by any of the affiliated or related corporations; provided, however, that where 80% or more of the stock is owned by the parent

corporation within the state, the gross income may be computed on the basis of the combined returns of all such subsidiary corporations.

Sec. 14. Situs of income. A. Income from mercantile or manufacturing business not requiring apportionment under section 16 and income from rentals or royalties from real estate or tangible personal property, or from the operation of any farm, mine, or quarry, or from the sale of real property or tangible personal property shall follow the situs of the business or property from which derived. All other income, including royalties from patents, income from personal services, professions and vocations and from land contracts, mortgages, stocks, bonds and securities, or from the sale of similar intangible property, shall follow the resident of the recipient, except as in this act otherwise specifically provided.

Sec. 15. Non-resident fiduciary; non-resident beneficiary. A. A resident who receives income from a non-resident fiduciary shall be taxed the same as though such income had been received without the intervention of a fiduciary. A resident fiduciary receiving income for a non-resident beneficiary shall report such income in accordance with the provisions of sections 14, 15, and 16.

Sec. 16. Apportionment of income derived from within and without the state. A. Persons engaged in business within and without the state shall be taxed, only on such income as is derived from business transacted and property located within the state. The amount of such income apportionable to Maine may be determined by an allocation and separate accounting thereof when in the judgment of the assessor that method will reasonably reflect the income properly assignable to this state. Otherwise such income shall be determined by first deducting from the total gross income of the taxpayer such part thereof as follows the situs of the property or the residence of the recipient, and the remaining gross income shall be apportioned to Maine.

B. A foreign corporation whose principal business is carried on or transacted in Maine shall be deemed a resident of the state for income tax purposes and its income shall be determined and assessed as if it were incorporated under the laws of Maine, notwithstanding its domicile is elsewhere.

Sec. 17. Income of partnerships. A. Individuals carrying on business in partnership (except investment companies) shall be liable for income tax only in their individual capacity. In computing the income of each partner there shall be included only the distributed share for the

income year. Partners shall be required to file individual returns on the basis of a fiscal or calendar year which coincides with that upon which the partnership return is filed.

B. The gross income of the partnership shall be computed in the same manner and on the same basis as provided for persons other than corporations.

Sec. 18. Reports of executors and administrators. A. In all cases where a deceased person, if living, would have been required to file a report of income, the executor or administrator of the estate of such decedent shall, within the time that it should have been filed had the decedent survived, file such report, which shall show :

1. All income received by decedent during that portion of the year covered by the report preceding the demise of the decedent.

2. All income received by him from the estate of the deceased during the year covered by the report, if such receipt would have been assessable had the decedent survived.

3. All income received by him from the estate of the deceased covered by the report, accrued at the date of death but not reported by decedent on the accrual basis, if such receipt would have been assessable had the decedent survived.

4. If the decedent was a married person at the date of death, the income of the widow, if living, and of all children under 18, together with the income of any person actually supported by and dependent upon the estate.

B. Income arising from a transaction which was being reported by the decedent while living, on a deferred basis, shall be reported by the executor or administrator in the same manner. If all of such deferred income has not been reported and accounted for before the executor or administrator is discharged, he shall in his last report of income return as income the then value of the deferred income unreported.

C. The executor or administrator shall be allowed the same personal exemption that the decedent, had he survived, would have been entitled to.

D. If the decedent was a single person at the time of death, and was actually supporting children or any other person or persons dependent upon him, the personal exemption deductible under section 8, subsection B and C shall be allowed until such children or such other person or persons shall cease to be dependent.

E. If the decedent was a married person at the date of death and his

widow is the head of a family, the same personal exemption shall be allowed as is allowed to the head of a family under section 8, subsection B and C.

Sec. 19. Reports of guardians. A. A guardian shall make a report of income, which shall show the income from all sources received by or for his ward, and shall pay the tax. The gross income shall be ascertained in the same manner as the income of other persons, and shall be subject to the same deductions for personal exemptions as the ward would have been entitled to had he made the return; provided, that if any ward is under 18 and the child of a person required to file a report of income, the personal exemption shall be allowed to the guardian.

Sec. 20. Reports of trustees. A. The trustee of a trust estate created by will, contract, declaration of trust, or implication of law, shall make a report of income received by him as such, showing the total taxable income received during the year, the name and addresses of distributees and the amounts severally distributed, distributable or to be accumulated by them for unknown, unborn, or undisclosed beneficiaries, or for other reasons. A distributee who receives or is entitled to receive any part of such income shall report the same, together with other income as provided by this act. A non-resident distributee shall be assessed on such income as the income of non-residents is assessed. No personal exemption shall be allowed a distributee unless he makes claim therefor in his report of income.

B. All non-distributable income, or contingently distributable income not distributed, shall be assessed to the trustee in the same manner as income of persons other than corporations, except that the personal exemption shall not be allowed.

Sec. 21. Income taxes lien on trust estate. A. Income taxes levied against the income of beneficiaries, as provided in this act shall be a lien on that portion of the trust estate or interest therein from which the income taxes is derived, and if not paid by the distributee shall be paid by the fiduciary before the same becomes delinquent. Every person who as a fiduciary under the provisions of this act pays an income tax shall have all the rights of reimbursement provided by law for the allowance of expenses of executors and administrators, guardians, or trustees.

Sec. 22. Payment of tax before discharge of fiduciary. A. No fiduciary applying for discharge of his trust shall be so discharged until he has made a report of all income received in his representative capacity

to the date of such application, and paid the tax found to be due, as in this section provided.

1. Upon making application for discharge, any fiduciary shall file with the assessor a report of income received after the close of the last preceding income year, and a report of income received during each of the years open to audit, if such reports have not theretofore been filed.

2. The assessor shall determine the amount of taxes to become due and certify the same to the court, whereupon the court shall enter an order directing the fiduciary to pay into the treasury of the state the amount of tax, if any, found due.

3. The receipt of the treasurer shall be evidence of the payment of the tax and shall be filed with the court before final distribution of the estate or trust shall be ordered and the fiduciary discharged.

B. The treasurer shall enter the amount in a ledger account entitled "Advance Income Taxes."

Sec. 23. Office audit; correction. A. As soon as practicable the assessor shall audit each report of income filed, and compute the tax, and the amount so computed shall be the tax. If it shall be found that any person has been over or under assessed, or that no assessment has been made when one should have been, the proper correction or assessment shall be made. If the tax found due shall be greater than the amount theretofore paid, the deficiency shall be paid to the assessor within 20 days after notice to and demand upon the taxpayer.

B. If the report was made in good faith and the deficiency of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such deficiency, but interest shall be added to the amount of the same from the date the tax was originally due until paid, at the rate of 6% per annum.

C. If the tax found due shall be less than the amount theretofore paid, the assessor shall certify such overpayment to the auditor, for refund, and the auditor shall draw his warrant for the amount, on the "Income tax suspense fund", in favor of the taxpayer.

D. Any correction or assessment made as a result of such office audit shall be presumed to be the result of an audit of the report of income only, and shall not be deemed a verification of any item in the report nor preclude the assessor from making field audits of the books and records of the taxpayer and from making further correction or assessment.

Sec. 24. Field investigation. A. Whenever it is deemed advisable to

verify a report of income or otherwise ascertain the taxable income of any person, the assessor may direct such verification to be made, and for such purpose shall have the powers prescribed by section 5. Upon such information as may be gained, the assessor shall determine the true amount of income received during the year or years under investigation. If it shall appear upon investigation that a person has been over or under assessed, or that no assessment has been made when one should have been made, the assessor shall make a correct assessment.

Sec. 25. Limitation on corrections. A. Corrections or additional assessments of income may be made at any time within 2 years after the close of the period covered by a report of income; provided, that if in any year no return is filed, income of any such year may be assessed when discovered.

Sec. 26. Interest on back taxes; interest on over payments. A. In assessing back taxes, interest shall be added to such taxes at the rate of 6% per annum from the date they would have become delinquent if unpaid, had they been assessed when they first became assessable, to the date on which such back taxes when subsequently assessed will become delinquent, if unpaid.

B. In certifying refunds of taxes which have been overpaid, interest shall be added at the rate of 6% per annum from the date of the payment of such taxes until the date on which such overpayment is certified to the auditor.

Sec. 27. Notice of correction or of assessment. A. When a correction or assessment has been made, as provided in sections 23 and 24, the taxpayer shall be given notice thereof, in writing, by registered mail, or served as a superior court summons.

B. Within 30 days after such notice the taxpayer may present evidence, oral or in writing, under oath, and the controverted correction or assessment may be modified if, in the judgment of the assessor, such action is justified by the facts disclosed.

C. If within 30 days after such notice, the taxpayer does not request a hearing before the assessor, the correction or assessment as proposed, or as modified in accordance with subsection B shall be final and conclusive and the tax shall become immediately delinquent.

Sec. 28. Hearing by assessor. A. Any person aggrieved by the correction or assessment of his income shall be entitled to a hearing before the assessor, if within 20 days after the notice prescribed by section 26 he

shall in writing request the same and explain in detail his objections to such corrections or assessment. Upon a request for hearing the assessor shall fix the date and place of hearing, and shall hear the taxpayer and render his decision.

Sec. 29. Court review. A. No person against whom an income assessment has been made, corrected or confirmed, shall be allowed in any action or proceeding, either as plaintiff or defendant, to contest such assessment in court unless such person shall first have made in good faith written objection to such assessment, to the assessor, and full disclosure under oath of all assessable income, nor unless he shall have availed himself of the remedy provided by sections 26 and 27.

B. An appeal from a decision of the assessor shall be taken to the superior court of the county in which the taxpayer resides, within 20 days after written notice to the taxpayer of such decision has been given by registered mail, by serving a notice of appeal and a copy thereof on the assessor. The notice shall name the order or decision from which the appeal is taken, specify the objections to the correction, assessment, order or decision to be considered, and recite the assignments of error, together with a statement of facts upon which appellant relies and the propositions of law involved.

C. Within 20 days after the service of such notice, the assessor shall return to the court the original or a certified or photostatic copy of all documents, papers, evidence, statements and exhibits on file in the matter and of all testimony, taken therein.

D. Within 20 days after service of notice of appeal, the appellant shall serve upon the assessor a brief in support of his objections to such assessment, and shall at the same time file a copy thereof with the clerk of the court wherein said appeal is pending.

E. Within 30 days after service of appellant's brief the assessor shall serve upon the appellant or his counsel an answer to the objections raised on appeal, and a brief in support of such answer and of the assessment; whereupon the appeal shall be regarded as at issue.

F. Subject to the provisions of law for change of venue or the calling in of another judge, said appeal may thereupon be brought on for hearing by either party, on 10 days' notice to the other, upon the record made before the assessor and not otherwise. The attorney general shall appear for the assessor.

G. In all actions to contest the validity of income assessments the proceedings of the assessor shall be presumed to be legal, and its determina-

tion shall not be impaired, violated, or set aside upon any grounds not affecting the legal groundwork of the tax. If the court, disregarding any irregularity, informality or omission not affecting the legal groundwork of the tax shall find that the assessment complained of was neither in whole nor in part illegal, it shall enter an order confirming the assessment and directing judgment in accordance with the terms of the order. If it shall find that the assessment is in whole or in part illegal it shall direct the assessor to make such correction as it may deem necessary. Upon 8 days written notice to the adverse party the court shall enter judgment. It shall be the duty of the clerk of the court to promptly transmit 2 copies of the decision to the assessor.

H. Within 20 days after entry of judgment either party may appeal to the supreme court in the manner provided for appeals from judgment of a superior court, and such appeal shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as other state cases. If no appeal be taken, the clerk of the court shall certify such fact to the assessor and return the record to the assessor.

Sec. 30. Stay of collection pending appeal. A. When any person shall have served notice of appeal to the superior court, as provided in this act, all collection proceedings shall be stayed until final determination thereof; provided, that such appeal shall not operate to stay the delinquent penalty and interest on unpaid amounts.

Sec. 31. Payment of taxes on appeal. A. Any person who shall contest an assessment in court shall state in his notice of appeal what portion if any of the tax is considered to be assessable and shall pay to the assessor the tax thereon, but such payment shall not constitute an admission of the legality of the tax paid but the tax so paid cannot be recovered in any action or proceedings unless a claim for refund thereof is filed with the tax assessor within 2 years from the date of the payment of the tax.

B. An assessment, or part thereof appealed to the superior court, which the court shall finally order to be paid, shall be deemed to be delinquent from the date on which it would have become delinquent had no appeal been taken, and shall be subject to the penalty and interest prescribed for delinquent taxes.

Sec. 32. Final certification; collection or refund. A. When any correction or assessment, action or proceeding, affecting the income assessment of any taxpayer shall become final, the assessor shall collect the same, if any part thereof is delinquent, as provided for the collection of delinquent taxes. If the tax is overpaid, the assessor shall certify to the auditor for

refund the amount of such overpayment, and the auditor shall draw his warrant in favor of the taxpayer for the amount.

Sec. 33. Claim for refund. A. An action or proceeding for the allowance of credits or for the refund or recovery of income taxes alleged to have been erroneously collected or paid, shall be brought as provided in this section and not otherwise.

B. No refund shall be made nor credit allowed for taxes paid for years not open to audit.

C. No refund shall be made on any item of income or deduction assessed as a result of an office audit, nor for any year the income of which was assessed as a result of a field audit, which item or assessment shall become final.

D. Claims for refund or credit shall be filed with the assessor and shall set forth specifically and in detail the basis of and reason for any such claim. Upon the filing of a claim it shall be considered and acted upon as provided for the consideration of additional assessments. If any portion of a claim is disallowed the person filing the same shall have the right of hearing and appeal provided in section 27.

E. If the assessor shall fail or neglect to act on any claim for refund or credit within one year after the receipt thereof, such neglect shall have the effect of allowing such claim and the assessor shall certify such refund or credit.

Sec. 34. Collection of delinquent taxes. A. If any tax imposed by this act or any portion thereof be not paid within 30 days after the same becomes delinquent, the assessor shall issue a warrant under his hand and official seal directed to the sheriff of any county 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 of such tax, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the assessor and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the court a copy thereof, and the clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties and interest for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to any interest in real or personal property of the

taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the clerk. 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 judgment 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. In his discretion the assessor may issue a warrant of like terms, force and effect, directed to any agent authorized to collect income taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the assessor shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

B. Every tax imposed by this act, and all increases, interests and penalties thereon shall become, from the time the same is due and payable, a personal debt from the person liable to the state of Maine.

C. An action may be brought at any time by the attorney general, at the instance of the assessor, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

Sec. 35. Failure to file reports; penalties. A. Any person required to make a report of income, who shall fail to do so within the time and in the manner prescribed by this act, or shall make a report which does not disclose his entire taxable income, shall be assessed, in an amount not less than \$100, according to the best judgment of the assessor. If, after notice as provided in section 26, no request is made for a hearing, the assessment shall be final and conclusive, and the person assessed shall thereafter be forever barred from questioning the correctness of the same in any action or proceeding.

B. If any person required to make a report of income fails to file same within the time and in the manner prescribed by this act, the assessor shall add to the tax of such person \$10 in the case of corporations and \$5 in the case of persons other than corporations. If no tax is assessed against such person the amount of this fee shall be collected as income taxes are collected, and no person shall be allowed in any action or proceeding to contest the imposition of such fee.

C. Any person required to make a report of income, who fails to do so, or makes an incorrect report, with intent in either case to defeat or evade

the income tax, shall be assessed at twice the normal rate. Such increased assessment shall be in addition to all other penalties. The statutes of limitations shall not begin to run as against any such taxpayer until the assessment shall have been made as herein provided.

D. Any person required to do so, who fails to file a report as provided by section 10, subsections D, E, and F, shall be subject to a fine or penalty of not less than \$25 nor more than \$500, to be assessed and collected as income taxes.

E. Any person other than a corporation, or any officer of a corporation required by law to make, render, sign, or verify a report of income or any statement required by this act, who fails or refuses to make such report or statement at the time or times provided, or who makes a false or fraudulent report or statement, with intent to defeat or evade the income tax, or to obstruct the enforcement of any provision of this act, shall upon conviction be fined not less than \$100, nor more than \$5,000, or be imprisoned not to exceed one year, or both, at the discretion of the court, and be required to pay the cost of prosecution.

Sec. 36. Secrecy required, penalty; reciprocity. A. Except in accordance with the order of a court having jurisdiction or as otherwise provided by this section, it shall be unlawful for any officer, deputy, agent, clerk, or employee charged with any duty connected with or relating to the assessment or collection of income tax, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act.

B. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, 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 review or set aside the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this act.

C. The tax assessor may permit the United States commissioner of internal revenue or the proper officer of any state imposing an income tax upon the incomes of individuals, or the authorized representatives of either such officers, to inspect the report of income of any taxpayer, or it may give any such officer an abstract of the report of income, or supply him with information concerning any item contained in any report of income or disclosed by any investigation of the income or report of income, of any taxpayer; provided that such permission shall be granted or such informa-

tion furnished only if the statutes of the United States or of such state, as the case may be, grant substantially similar privileges to the officers of this state charged with the administration of this act.

D. Any violation of this section shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the state or of any county thereof, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 5 years thereafter.

Sec. 37. Preservation of report. A. Reports and returns received under the provisions of this act shall be preserved for 5 years, and thereafter until the assessor orders them to be destroyed.

Sec. 38. Disposition of income tax. A. The tax assessor shall promptly, and at least daily, remit all revenues collected under this act to the treasurer of state, through the state auditor, and any receipt or acknowledgment delivered by the tax assessor to the taxpayer shall serve and be recognized only as a receipt of the amount so tendered and accepted, subject to proper clearance and collection if in the form of a check, draft, or other instrument of exchange except lawful money of the United States, but shall not be evidence or be construed as an acknowledgment by said assessor of the sufficiency of such amount or as to the correctness of the report so filed, or of any matter contained therein.

B. With each remittance of such funds to the treasurer of state the assessor shall transmit to him a full statement of all amounts paid under protest. The treasurer of state shall set up a fund to be designated "Income tax suspense fund", into which he shall pay and carry all amounts so paid under protest until such time as their status is finally determined by appeal to the assessor or to the courts or for a period of 3 months if no such appeal be prosecuted by the taxpayer. The tax assessor shall keep the treasurer of state fully advised with respect to the status of all such payments.

C. Of all other income tax receipts or collections so transmitted to him, the treasurer of state shall pay into said "income tax suspense fund" 10% thereof until the total amount of said fund, less the amount held therein as paid under protest, shall amount to \$20,000, and at all times when such amount equals \$20,000 neither said 10% or any part thereof shall be paid into said fund. From said "Income tax suspense fund" the treasurer of state shall disperse and pay all refunds to income taxpayers upon order and certificate of the state tax assessor or by decree of a court of competent jurisdiction.

D. Appropriation. For the purpose of carrying out the provisions of the income tax act of 1941, there is hereby appropriated to the tax assessor such amount from the revenue derived thereby as may be necessary for the effective administration of the act, but not to exceed 4% of the total revenues collected hereunder during each calendar year or fraction thereof as determined by the receipts therefrom by the treasurer of state. The appropriation herein made shall be exclusive of and in addition to the appropriation contained in the general appropriation act for the use and benefit of the state tax assessor. Any other provisions of law notwithstanding any unexpended balance of the appropriation made hereunder shall not revert to the general fund at the end of the fiscal year.

Sec. 39. Invalid provisions. A. If any part or provision of this act shall be adjudged to be invalid, such judgment shall not invalidate the remainder of the act, but shall be confined in its operation to the particular clause, sentence or paragraph directly involved in the controversy out of which such interpretation may arise.

Sec. 40. Repealing clause. All acts or parts of acts inconsistent herewith are hereby repealed, or amended to conform hereof.

Sec. 41. Constitutional prohibition. A. The taxes herein levied shall not be construed to apply to income which under the constitution of the United States, the state of Maine is prohibited from taxing.