

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

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Legislative Document

No. 1613

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House of Representatives, June 25, 1969  
Filed by Mr. Levesque of Madawaska. Printed under House Rule 33.  
BERTHA JOHNSON, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-NINE

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HOUSE AMENDMENT "D" to H. P. 1281, L. D. 1608, Bill, "AN ACT Making Supplemental Appropriations for the Expenditures of State Government and for Other Purposes for the Fiscal Years Ending June 30, 1970 and June 30, 1971 and Raising Revenue for Funding Thereof"

Amend said Bill by striking out all of that part designated "SECTION F" and inserting in place thereof the following:

**"SECTION F**

Sec. 1. R. S., T. 36, Part 8, additional. Title 36 of the Revised Statutes is amended by adding a new part 8, to read as follows:

**PART 8**

**INCOME TAXES**

**CHAPTER 801**

**DEFINITIONS**

§ 5101. Short title

This part shall be known and may be cited as the "Maine Income Tax Law."

§ 5102. Definitions

The following definitions shall apply throughout this part, except as the context may otherwise require:

1. Assessor. "Assessor" shall mean the State Tax Assessor.
2. Nonresident estate or trust. "Nonresident estate or trust" shall mean an estate or trust which is not a resident estate or trust.

3. **Nonresident individual.** “Nonresident individual” shall mean an individual who is not a resident of this State.

4. **Resident estate or trust.** “Resident estate or trust” shall mean:

A. The estate of a decedent who at his death was domiciled in this State;

B. A trust created by will of a decedent who at his death was domiciled in this State; or

C. A trust created by, or consisting of property of, a person domiciled in this State.

5. **Resident individual.** “Resident individual” shall mean an individual:

A. Who is domiciled in Maine, unless he maintains no permanent place of abode in this State and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than 30 days of the taxable year in this State;

B. Who is not domiciled in Maine, but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State.

6. **Corporation.** “Corporation” means any business entity subject to income taxation as a corporation under the laws of the United States, excepting corporations having an election in effect under subchapter S of the Internal Revenue Code, and corporations subject to tax under sections 2511 to 2522.

7. **Fiscal year.** “Fiscal year” means an accounting period of 12 months ending on the last day of any month except December, or an accounting period of more or less than 12 months, which period is employed as the fiscal year of the taxpayer for the United States income tax purposes.

8. **Maine net income.** “Maine net income” means, for any taxable year and for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the laws of the United States, allocated or apportioned to this State under chapter 821 excluding:

A. Income which under laws of the United States is exempt from taxation by states;

B. A deduction for tax imposed by this part or the equivalent taxing statutes of another state;

C. The amount added to income under International Revenue Code Section 78. (Foreign dividend gross-up).

In the case of affiliated corporations under Internal Revenue Code, Section 1504(a), which file their federal returns on a consolidated basis as a group, the corporate taxpayer shall be deemed to be all the affiliated corporations as a group, if the group so elects, in which case taxable income shall be deemed to be consolidated taxable income of the group.

9. **Tax or tax liability.** “Tax” or “tax liability” is the liability for all amounts owing by a taxpayer to the State of Maine under this part.

10. Taxable corporation. "Taxable corporation" means, for any taxable year, a corporation which, at any time during that taxable received any income allocable or apportionable to this State under chapter 821. In the case of affiliated corporations under International Revenue Code, Section 1504(a) which file their federal returns on a consolidated basis as a group and which have made the election provided for in subsection 8 the group shall be deemed to be the taxable corporation.

11. Meaning of terms. Any "term" used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this part to the laws of the United States shall mean the provisions of the Internal Revenue Code 1954, and amendments thereto and other provisions of the laws of the United States relating to federal income taxes, as same may be or become effective, at any time or from time to time for the taxable year.

CHAPTER 803

IMPOSITION OF TAX ON INDIVIDUALS

§ 5111. Imposition and rate of tax

A tax is hereby imposed for each taxable year on the entire taxable income of every resident individual of this State and on the taxable income of every nonresident individual which is derived from sources within this State. The amount of the tax shall be determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over \$2,000	1% of the taxable income
\$2,000 but not over \$5,000	\$20 plus 2% of excess over \$2,000
\$5,000 but not over \$10,000	\$80 plus 3% of excess over \$5,000
\$10,000 but not over \$25,000	\$230 plus 4% of excess over \$10,000
\$25,000 but not over \$50,000	\$830 plus 5% of excess over \$25,000
\$50,000 or more	\$2,080 plus 6% of excess over \$50,000

§ 5112. Cross references

For application of the tax to estates and trusts, see chapter 809, for application to partnerships, chapter 815.

§ 5113. Joint return or return of surviving spouse

In the case of a joint return of a husband and wife, the tax imposed by section 5111 shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section and section 5124 (standard deduction), a return of a surviving spouse shall be treated as a joint return of husband and wife.

**CHAPTER 805**  
**COMPUTATION OF TAXABLE INCOME OF**  
**RESIDENT INDIVIDUALS**

**§ 5121. Taxable income**

The entire taxable income of a resident individual of this State shall be his federal adjusted gross income as defined in the laws of the United States with the modifications and less the deductions and personal exemptions provided in this chapter.

**§ 5122. Modifications**

1. Additions. There shall be added to federal adjusted gross income:

A. Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof (other than this State and its political subdivisions and authorities); and

B. Interest or dividends on obligations of any authority, commission, instrumentality, territory or possession of the United States which by the laws of the United States are exempt from federal income tax but not from State income taxes.

2. Subtractions. There shall be subtracted from federal adjusted gross income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from State income taxes under the laws of the United States, provided that the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses including amortizable bond premiums are deductible in determining federal adjusted gross income.

3. Fiduciary adjustment. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under section 5164.

4. Cross reference. For modifications required to be made by a partner relating to items of income, gain, loss or deduction of a partnership, see chapter 815.

**§ 5123. Deduction**

The deduction of a resident individual shall be his standard deduction unless he elects to itemize his deductions as provided in section 5125.

**§ 5124. Standard deduction**

The standard deduction of a resident individual or of a resident husband and wife who file a joint return shall be 10% of his or their adjusted gross

income as modified by this part, or \$1,000, whichever is less. The standard deduction of a married person who files a separate return shall not exceed \$500.

§ 5125. Itemized deductions

1. General. If a resident individual has itemized his deductions from adjusted gross income in determining his federal taxable income, he may elect in determining his taxable income under this part to deduct the sum of such itemized deductions (other than deductions for personal exemptions):

A. Reduced by any amount thereof representing (i) income taxes imposed by this State or any other taxing jurisdiction and (ii) interest or expenses incurred in the production of income exempt from tax under this part and

B. Increased by the amount of interest or expense incurred in the production of income taxable under this part but exempt from federal income tax (and which has not been deducted in determining federal adjusted gross income).

2. Husband and wife. A husband and wife, both of whom are required to file returns under this part shall be allowed to itemize their deductions only if both elect to do so. The total of itemized deductions of a husband and wife whose federal taxable income is determined on a joint return but whose taxable incomes are determined separately for purposes of this part, may be taken by either or divided between them as they may elect.

§ 5126. Personal exemptions

A resident individual shall be allowed an exemption of \$1,000 for each exemption to which he is entitled for the taxable year for federal income tax purposes.

§ 5127. Credit for income tax paid to another state

1. Resident individual. A resident individual shall be allowed a credit against the tax otherwise due under this part for the amount of any income tax imposed on him for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to tax under this part.

2. Limitation on credit. The credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to his entire adjusted gross income as modified by this part.

§ 5128. Dual residence; reduction of tax

If the taxpayer is regarded as a resident of both this State and another jurisdiction for purposes of personal income taxation, the assessor shall reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence, provided that the other taxing jurisdiction allows a similar reduction. The reduction shall be in an amount equal to that portion of the lower of the two taxes applicable

to the income taxed twice which the tax imposed by this State bears to the combined taxes of the two jurisdictions on the income taxed twice.

CHAPTER 807  
COMPUTATION OF TAXABLE INCOME OF  
NONRESIDENT INDIVIDUALS

§ 5140. Nonresident individuals — Taxable income

The taxable income of a nonresident individual shall be that part of his federal adjusted gross income derived from sources within this State determined by reference to section 5142 less the deductions and personal exemptions provided in this chapter.

§ 5141. Husband and wife

1. Separate federal return. If the federal taxable income of husband or wife, both nonresidents of this State, is determined on a separate federal return, their taxable incomes in this State shall be separately determined.

2. Joint federal return. If the federal taxable income of husband and wife, both nonresidents, is determined on a joint federal return, their tax shall be determined in this State on their joint taxable income.

3. One spouse a nonresident. If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined on their separate taxable incomes in this State on such forms as the assessor shall prescribe unless both elect to determine their point taxable income in this State as if both were residents. If a husband and wife file a joint federal income tax return but determine their taxable income in this State separately, they shall compute their taxable incomes in this State as if their federal adjusted gross incomes had been determined separately.

§ 5142. Adjusted gross income from sources in this State

1. General. The adjusted gross income of a nonresident derived from sources within this State shall be the sum of the following:

A. The net amount of items of income, gain, loss, and deduction entering into his federal adjusted gross income which are derived from or connected with sources in this State including (i) his distributive share of partnership income and deductions determined under section 5192 and (ii) his share of estate or trust income and deductions determined under section 5176, and

B. The portion of the modifications described in section 5122 subsections 1 and 2 which relate to income derived from sources in this State, including any modifications attributable to him as a partner.

2. Attribution. Items of income, gain, loss, and deduction derived from or connected with sources within this State are those items attributable to:

A. The ownership or disposition of any interest in real or tangible personal property in this State; and

**B. A business, trade, profession or occupation carried on in this State.**

3. **Intangibles.** Income from intangible personal property including annuities, dividends, interest and gains from the disposition of tangible personal property, shall constitute income derived from sources within this State only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this State.

4. **Deductions for losses.** Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources in this State, under regulations to be prescribed by the assessor but otherwise shall be determined in the same manner as the corresponding federal deductions.

5. **Small business corporation.** For a nonresident individual who is a shareholder of a corporation which is an electing small business corporation for federal income tax purposes, the undistributed taxable income of such corporation shall not constitute income derived from sources within this State and a net operating loss of such corporation shall not constitute a loss or deduction connected with sources in this State.

6. **Apportionment and allocation.** If a business, trade, profession or occupation is carried on partly within and partly without this State, the items of income and deduction derived from or connected with sources within this State shall be determined as allocated or apportioned to this State under chapter 821 or in the case of the rendering of purely personal services by an individual under regulations to be prescribed by the assessor.

7. **Service in armed forces.** Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident shall not constitute income derived from sources within this State.

§ 5143. **Standard deduction**

The standard deduction of a nonresident individual or husband and wife who file a joint return shall be 10% of his or their adjusted gross income from sources within this State or \$1,000, whichever is less. The standard deduction of a nonresident married person who files a separate return shall not exceed \$500.

§ 5144. **Itemized deductions**

1. **General.** If the federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his itemized deductions connected with income derived from sources within this State in lieu of taking the standard deduction. Subject to the limitation in subsection 2, the itemized deductions of a nonresident individual shall be the same as for a resident individual determined under section 5125. A husband and wife both of whom are required to file returns under this part shall be allowed to itemize deductions connected with income derived from sources within this State only if both elect to itemize their deductions.



2. **Limitation.** If the amount of adjusted gross income a nonresident individual would be required to report under section 5121 if he were a resident, exceeds by more than \$100 the amount of adjusted gross income he receives from sources within this State, his itemized deductions shall be limited by the percentage which his adjusted gross income from sources within this State is to the adjusted gross income he would be required to report if he were a resident. For purposes of this apportionment, a nonresident individual may elect to treat his federal adjusted gross income as adjusted gross income from sources within this State unless the amount of the modifications increasing federal adjusted gross income under section 5122 would exceed \$100.

#### § 5145. Personal exemptions

A nonresident individual shall be allowed the same personal exemptions allowed to resident individuals under section 5126.

### CHAPTER 809

#### IMPOSITION OF TAX ON ESTATES AND TRUSTS

#### § 5160. Imposition of tax

The tax imposed by this part on individuals shall apply to the taxable income of estates and trusts.

#### § 5161. Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided by this chapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

#### § 5162. Tax not applicable

1. **Associations taxable as corporations.** An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this chapter.

2. **Exempt associations, trusts and organizations.** An association, trust, or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from the tax imposed by this part except with respect to its unrelated business taxable income.

### CHAPTER 811

#### COMPUTATION OF TAXABLE INCOME

#### OF

#### RESIDENT ESTATES AND TRUSTS

#### § 5163. Taxable income of resident estate or trust

The taxable income of a resident estate or trust means its federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under section 5164.

**§ 5164. Fiduciary adjustment**

1. **Fiduciary adjustment defined.** The fiduciary adjustment shall be the net amount of the modifications described in section 5122, including subsection 3 if the estate or trust is a beneficiary of another estate or trust, which relates to items of income or deduction of an estate or trust.

2. **Shares of fiduciary adjustment.** The respective shares of an estate or trust and its beneficiaries, including solely for the purpose of this allocation, nonresident beneficiaries, in the fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

3. **Alternate attribution of adjustment.** The assessor may by regulation authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the assessor may require.

**§ 5165. Credit for income tax of another state**

A resident estate or trust shall be allowed the credit provided in section 5127, relating to an income tax imposed by another state, except that the limitation shall be computed by reference to the taxable income of the estate or trust.

**§ 5166. Credit to beneficiary for accumulation distribution**

1. **General.** A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code (or its equivalent), shall be allowed a credit against the tax otherwise due under this part for all or a proportionate part of any tax paid by the trust under this part of any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in Section 666 (or its equivalent) of the Internal Revenue Code.

2. **Limitation on credit.** The credit under this section shall not reduce the tax otherwise due from the beneficiary under this part to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his adjusted gross income.

**CHAPTER 813****COMPUTATION OF TAXABLE INCOME OF  
NONRESIDENT TRUSTS AND ESTATES****§ 5175. Taxable income of a nonresident estate or trust**

1. **General rules.** For purposes of this chapter:

A. Items of income, gain, loss and deduction mean those derived from or connected with sources in this State.

B. Items of income, gain, loss and deduction entering into the definition of federal distributable net income includes such items from another estate or trust of which the first estate or trust is a beneficiary.

C. The source of items of income, gain, loss or deduction shall be determined under regulations prescribed by the assessor in accordance with the general rules in section 5142 as if the estate or trust were nonresident individual.

2. Determination of taxable income. The taxable income of a nonresident estate or trust consists of:

A. Its share of items of income, gain, loss and deduction which enter into the federal definition of distributable net income;

B. Increased or reduced by the amount of any items of income, gain, loss or deduction which are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust;

C. Less the amount of the deduction for its federal exemption.

§ 5176. Share of a nonresident estate, trust or its beneficiaries in income from sources in this State

1. General rule. The share of a nonresident estate or trust of items of income, gain, loss and deduction entering into the definition of distributable net income and the share for purpose of section 5142 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss and deduction shall be determined as follows:

A. To the amount of items of income, gain, loss and deduction which enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications described in section 5122 to the extent they relate to items of income, gain, loss and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income.

B. The amount determined under the preceding paragraph shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated shall have the same character as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

C. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined

under subsection 1 paragraph A shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

2. Alternate methods. The assessor may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this State, and in the modifications related thereto, as may be appropriate and equitable.

#### § 5177. Credit to beneficiary for accumulation distribution

A nonresident beneficiary of a trust whose adjusted gross income derived from sources in this State includes all or part of an accumulation distribution by such trust, as defined in Section 665 (or its equivalent) of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this part, computed in the same manner and subject to the same limitation as provided by section 5166 with respect to a resident beneficiary.

### CHAPTER 815

#### PARTNERS AND PARTNERSHIPS

#### § 5190. Entity not taxable

A partnership as such shall not be subject to the tax imposed by this part. Persons carrying on business as partners shall be liable for the tax imposed by this part only in their separate or individual capacities.

#### § 5191. Resident partner—adjusted gross income

1. Modification in determining the adjusted gross income of a resident partner. Any modification described in section 5125 which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

2. Character of items. Each item of partnership income, gain, loss or deduction shall have the same character for a partner under this part as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

3. Tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by a special provision in the partnership agreement with respect to such item, and the principal purpose of such provision is the



ter of partnership items for a nonresident partner shall be determined under subsection 2 of section 5191. The effect of a special provision in a partnership agreement, other than a provision referred to in subsection 3, having as a principal purpose the avoidance or evasion of tax under this part shall be determined under subsection 3 of section 5191.

#### CHAPTER 817

### IMPOSITION OF TAX ON CORPORATIONS

#### § 5200. Imposition and rate of tax

A tax is hereby imposed upon the entire taxable income of every "Taxable Corporation" as follows:

% of the Maine net income of the corporation.

#### § 5201. Alternative tax computation

Any corporation required to file a return under this part may elect to waive the provisions of chapter 821 and section 5200 and to pay tax at the rate of 1% of gross sales within this State, provided that:

1. The corporation did not own or rent any real estate or tangible personal property in this State during the taxable year; and
2. The only activity of the corporation in this State during the taxable year consisted of sales; and
3. The gross sales of the corporation within this State during the taxable year did not exceed \$100,000.

#### CHAPTER 819

### FRANCHISE TAX

#### § 5205. Franchise tax on banking corporations and loan associations

A tax is imposed for each calendar year or fiscal year ending during that calendar year upon the franchise or privilege of doing business in this State of every corporation which is a bank, savings bank, savings institution, trust company, and every savings and loan association, or loan and building association, that has a business location in this State. The tax is 6% of the taxable income of the corporation or association for that taxable year under the laws of the United States, reduced by the amount of the tax payable by the corporation or association for the taxable year under chapter 817.

#### CHAPTER 821

### ALLOCATION AND APPORTIONMENT OF INCOME

#### § 5210. Definitions

As used in this section, unless the context otherwise requires:

A. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, manage-

ment and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

B. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

C. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

D. "Nonbusiness income" means all income other than business income.

E. "Sales" means all gross receipts of the taxpayer not allocated under subsections 3 to 7 of section 5211.

F. "State" means any state of the United States, District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

#### § 5211. General

1. Any taxpayer, other than a resident individual, estate, or trust, having income from business activity which is taxable both within and without this State, other than the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this section. Any taxpayer having income solely from business activity taxable within this State shall allocate or apportion his entire net income to this State.

2. For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

3. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 4 to 7.

#### 4. Rents and royalties:

A. Net rents and royalties from real property located in this State are allocable to this State.

B. Net rents and royalties from tangible personal property are allocable to this State: (i) if and to the extent that the property is utilized in this State, or (ii) in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location

of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

5. Capital gains and losses :

A. Capital gains and losses from sales of real property located in this State are allocable to this State.

B. Capital gains and losses from sales of tangible personal property are allocable to this State if: (i) the property had a situs in this State at the time of the sale, or (ii) the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

6. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

7. Patent and copyright royalties :

A. Patent and copyright royalties are allocable to this State :

(i) If and to the extent that the patent or copyright is utilized by the payer in this State, or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

8. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

9. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.



10. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

11. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Assessor may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

12. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

13. Compensation is paid in this State if:

A. The individual's service is performed entirely within the State; or

B. The individual's service is performed both within and without the State, but the service performed without the state is incidental to the individual's service within the State; or

C. Some of the service is performed in the State and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

14. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

15. Sales of tangible personal property are in this State if:

A. The property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or

B. The property is shipped from an office, store, warehouse, factory or other place of storage in this State and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser.

16. Sales, other than sales of tangible personal property, are in this State if:

A. The income-producing activity is performed in this State; or

B. The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

17. If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this State,

the taxpayer may petition for, or the tax assessor may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- A. Separate accounting;
- B. The exclusion of any one or more of the factors;
- C. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or
- D. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

## CHAPTER 823

### INCOME TAX RETURNS

#### § 5220. Persons required to make returns of income

An income tax return with respect to the tax imposed by this part shall be made by the following:

1. Every resident individual,
  - A. Who is required to file a federal income tax return for the taxable year, or
  - B. Who has adjusted gross income of more than \$1,000 if single or more than \$2,000 if married, or
  - C. Who having attained the age of 65 before the close of his taxable year has adjusted gross income of more than \$2,000 if single and more than \$3,000 if married and his spouse has not attained the age of 65 and more than \$4,000 if both have attained the age of 65 before the close of the taxable year.
2. Every nonresident individual,
  - A. Who has adjusted gross income from sources in this State of more than \$1,000 if single and \$2,000 if married, or
  - B. Who having attained the age of 65 before the close of his taxable year has adjusted gross income from sources within this State of more than \$2,000 if single and more than \$3,000 if married and his spouse has not yet attained the age of 65 and more than \$4,000 if both have attained the age of 65 before the close of the taxable year.
3. Every resident estate or trust which is required to file a federal income tax return.
4. Every nonresident estate or trust which for the taxable year has from sources within this State,
  - A. Any taxable income,
  - B. Gross income of \$600 or more regardless of the amount of taxable income.

5. Every "taxable corporation" which is required to file a federal income tax return.

§ 5221. Joint returns by husband and wife

1. General. A husband and wife may make a joint return with respect to the tax imposed by this part even though one of the spouses has neither gross income nor deductions except that:

A. No joint return shall be made under this part if the spouses are not permitted to file a joint federal income tax return.

B. If the federal income tax liability of either spouse is determined on a separate federal return their income tax liabilities under this part shall be determined on separate returns.

C. If the federal income tax liabilities of husband and wife, other than a husband and wife described in subsection 2, are determined on a joint federal return, they shall file a joint return under this part and their tax liabilities shall be joint and several.

D. If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this part, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several.

2. One spouse a nonresident. If either husband or wife is a resident and the other is a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the assessor in which event their tax liabilities shall be separate; but they may elect to determine their joint taxable income as if both were residents and in such case, their liabilities shall be joint and several.

§ 5222. Returns by fiduciaries

1. Decedents. An income tax return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with the care of his property. A final return of a decedent shall be due when it would have been due if the decedent had not died.

2. Individuals under a disability. An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his duly authorized agent, his committee, guardian, conservator, fiduciary or other person charged with the care of his person or property other than a receiver in possession of only a part of the individual's property.

3. Estates and trusts. The income tax return of an estate or trust shall be made and filed by the fiduciary thereof.

4. Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

5. Corporations. The income tax return of a taxable corporation shall be made and filed by an officer thereof.

6. Cross reference. For provisions relating to information returns by partnerships, see section 5241.

§ 5223. Notice of qualification as receiver

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, shall give notice of his qualifications as such to the assessors, as may be required by regulation.

§ 5224. Change of status as resident or nonresident during year

If an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident, the assessor may by regulation require him to file one return for the portion of the year during which he is a resident and one for the portion of the year during which he is a nonresident.

§ 5225. Taxable income as resident and nonresident

1. Except as provided in subsection 2, the taxable income of the individual shall be determined as provided in section 5121 for residents and section 5140 for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of his resident and nonresident status respectively.

2. There shall be included in determining taxable income from sources within or without this State, as the case may be, income, gain, loss or deduction accrued prior to the change of status even though not otherwise includible or allowable in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

§ 5226. Minimum tax and prorating of exemptions

Where 2 returns are required to be filed as provided in section 5224:

1. Personal exemptions and the standard deduction shall be prorated between the 2 returns, under regulations prescribed by the assessor, to reflect the proportions of the taxable year during which the individual was a resident and a nonresident, and

2. The total of the taxes due thereon shall not be less than would be due if the total of the taxable incomes reported on the 2 returns were includible in one return.

§ 5227. Time and place for filing returns and paying tax

The income tax return required by this part shall be filed on or before the date a federal income tax return (without regard to extension) is due to be filed. A taxpayer required to make and file a return under this part shall, without assessment, notice or demand, pay any tax due thereon to the assessor on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The assessor shall prescribe by regulation the place for filing any return, declaration, statement or other document required pursuant to this part and for the payment of any tax.

**§ 5228. Declarations of estimated tax**

1. Requirement of declaration. Every resident and nonresident individual shall make a declaration of his estimated tax for the taxable year, in such form as the assessor may prescribe if his adjusted gross income, in the case of a nonresident from sources within this State, other than from wages on which tax is withheld under this part, can reasonably be expected to exceed \$2,000 plus the sum of the personal exemptions to which he is entitled.

2. Estimated tax defined. The term "estimated tax" means the amount which the individual estimates to be his income tax under this part for the taxable year less the amount which he estimates to be the sum of any credits allowable for tax withheld.

3. Joint declaration of husband and wife. If they are eligible to do so for federal tax purposes, a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes under this chapter separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

4. Amendment of declaration. An individual may amend a declaration under regulations prescribed by the assessor.

5. Return or declaration as amendment. If on or before January 31st, or February 15th in the case of an individual referred to in subsection 2 of section 5229, of the succeeding taxable year an individual files his return for the taxable year for which the declaration is required, and pays in full the amount shown on the return as payable, such return (1) shall be considered as his declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15th, or (2) shall be considered as the amendment permitted by subsection 4 to be filed on or before January 15th if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

6. Short taxable year. An individual having a taxable year of less than 12 months shall make a declaration in accordance with regulations of the assessors.

7. Declaration for individual under a disability. The declaration of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection 2 of section 5222 for an income tax return.

**§ 5229. Time for filing declaration of estimated tax**

1. Time for filing. A declaration of estimated tax of an individual other than a farmer shall be filed on or before April 15th of the taxable year, except that if the requirements of section 5228 are first met:

A. After April 1st and before June 2nd of the taxable year, the declaration shall be filed on or before June 15th, or

B. After June 1st and before September 2nd of the taxable year, the declaration shall be filed on or before September 15th, or

C. After September 1st of the taxable year, the declaration shall be filed on or before January 15th of the succeeding year.

2. Declaration by farmer. A declaration of estimated tax required by section 5228 from an individual having an estimated adjusted gross income from farming in this State for the taxable year which is at least  $\frac{2}{3}$  of his total estimated adjusted gross income taxable in this State for the taxable year, may be filed at any time on or before January 15th of the succeeding taxable year, in lieu of the time otherwise prescribed.

3. Declaration of estimated tax of \$40 or less. A declaration of estimated tax of an individual having a total estimated tax for the taxable year of \$40 or less may be filed at any time on or before January 15th of the succeeding taxable year under regulations prescribed by the assessor.

4. Fiscal year. In the application of this section and the preceding section to the case of a taxable year beginning on any date other than January 1st, there shall be substituted, for the months specified in this section and the preceding section, the months which correspond thereto.

#### § 5230. Payments of estimated tax

1. General. The estimated tax with respect to which a declaration is required under this part shall be paid as follows:

A. If the declaration is filed on or before April 15th of the taxable year, the estimated tax shall be paid in 4 equal installments. The first installment shall be paid at the time of the filing of the declaration, the 2nd and 3rd on June 15th and September 15th, respectively, of the taxable year, and the 4th on January 15th of the succeeding taxable year.

B. If the declaration is filed after April 15th and not after June 15th of the taxable year, and is not required to be filed on or before April 15th of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the 2nd on September 15th, of the taxable year, and the 3rd on January 15th of the succeeding taxable year.

C. If the declaration is filed after June 15th and not after September 15th of the taxable year, and is not required to be filed on or before June 15th of the taxable year, the estimated tax shall be paid in 2 equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15th of the succeeding taxable year.

D. If the declaration is filed after September 15th of the taxable year and is not required to be filed on or before September 15th of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

E. If the declaration is filed after the time prescribed in section 5229, including cases in which an extension of time for filing the declaration has been granted, paragraphs B, C, and D shall not apply, and there shall be

paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 5229, and the remaining installments shall be paid at the time at which, and in the amounts in which they would have been payable if the declaration had been so filed.

2. **Farmers.** If an individual referred to in subsection 2 of section 5229, (relating to income from farming) makes a declaration of estimated tax after September 15th of the taxable year and on or before January 15th of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

3. **Amendments of declaration.** If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15th of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

4. **Application to short taxable years.** The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the assessor.

5. **Fiscal year.** In the application of this section to the case of a taxable year beginning on any date other than January 1st, there shall be substituted, for the months specified in this section, the months which correspond thereto.

6. **Installments paid in advance.** At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

7. **Payment of account.** Payment of the estimated income tax or any installment thereof, shall be considered payment on account of the income tax imposed under this part for the taxable year.

#### § 5231. Extension of time for filing and payment

1. **General.** The assessor may grant a reasonable extension of time for payment of tax or estimated tax or any installment thereof, or for filing any return, declaration, statement or other document required pursuant to this part, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or document, shall exceed 6 months.

2. **Security.** If any extension of time is granted for payment of any amount of tax, the assessor may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the assessor may require.

#### § 5232. Change of election

Any election expressly authorized by this part may be changed on such terms and conditions as the assessor may prescribe by regulation.

**§ 5233. Signing of returns and other documents**

1. **General.** Any return, declaration, statement or other document required to be made pursuant to this part shall be signed in accordance with regulations or instructions prescribed by the assessor. The fact that an individual's name is signed to a return, declaration, statement or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

2. **Partnerships.** Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

3. **Certifications.** The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

**CHAPTER 825****INFORMATION RETURNS****§ 5240. General requirements concerning returns, notices, records and statements**

The assessor may prescribe regulations as to the keeping of records, the content and form of returns and statements and the filing of copies of federal income returns and determinations. The assessor may require any person, by regulation or notice served on such person, to make such returns, render such statements, or keep such records, as the assessor may deem sufficient to show whether or not such person is liable under this part for tax or for the collection of tax.

**§ 5241. Partnership return**

Every partnership having a resident partner or having any income derived from sources in this State, determined in accordance with the applicable rules of section 5142 as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss, and deduction, and the names and addresses of the individuals whether residents or non-residents who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual and such other pertinent information as the assessor may prescribe by regulations and instructions. Such return shall be filed on or before the 15th day of the fourth month following the close of each taxable year. For purposes of this section, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this part.

**§ 5242. Information returns**



The assessor may prescribe regulations and instructions requiring returns of information to be made and filed on or before February 28th of each year by any person making payment or crediting in any calendar year the amounts of \$600 or more (\$10 or more in the case of interest or dividends) to any person who may be subject to the tax imposed under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

#### § 5243. Report of change in federal taxable income

If the amount of a taxpayer's federal taxable income report on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the assessor, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within 90 days thereafter an amended return under this part, and shall give such information as the assessor may require. The assessor may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

### CHAPTER 827

#### WITHHOLDING OF TAX

#### § 5250. Employer to withhold tax from wages

1. **General.** Every employer maintaining an office or transacting business within this State and making payment of any wages taxable under this part to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages included in his adjusted gross income during the calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the assessor. This section shall not apply to payments by the United States for service in the armed forces of the United States.

2. **Withholding exemptions.** For purposes of this section :

A. An employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a different number of withholding exemptions in this State;

B. The amount of each exemption in this State shall be \$1,000 whether individual is a resident or a nonresident.

3. Withholding agreements. The assessor may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under provisions of this chapter. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under regulations prescribed by the assessor, may relieve employers in this State from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this State.

#### § 5251. Information statement for employee

Every employer required to deduct and withhold tax under this part from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year on or before February 15th of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of wages is made, a written statement as prescribed by the assessor showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the assessor shall prescribe.

#### § 5252. Credit for tax withheld

Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid to the assessor on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than 12 months, the credit shall be made under regulations of the assessor.

#### § 5253. Employer's return and payment of tax withheld

1. General. Every employer required to deduct and withhold tax under this part shall, for each calendar quarter, on or before the fifteenth day of the month following the close of such calendar quarter, file a withholding return as prescribed by the assessor and pay over to the assessor or to a

depository designated by the assessor, the taxes so required to be deducted and withheld, except that for the fourth quarter of the calendar year, the return shall be filed and the taxes paid on or before January 31st of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer for a calendar month exceeds \$500, the employer shall by the 15th day of the succeeding month pay over such aggregate amount to the assessor or to a depository designated by the assessor. The amount so paid shall be allowed as a credit against the liability shown on the employer's quarterly withholding return required by this section. Where the aggregate amount required to be deducted and withheld by any employer is less than \$100 in a calendar quarter, the assessor may by regulation permit an employer to file a withholding return on or before July 31st for the semi-annual period ending on June 30th and on or before January 31st of the succeeding year for the semi-annual period ending on December 31st. The assessor may, if he believes such action necessary for the protection of the revenue, require any employer to make such return and pay him the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this chapter to require the withholding of tax from the wages of any of his employees, the assessor may by regulation permit such employer to file an annual return on or before January 31st of the succeeding calendar year.

2. Deposit in trust for assessor. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required by this section, the assessor may serve a notice requiring such employer to collect the taxes which became collectible after service of such notice, to deposit such taxes in a bank approved by the assessor, in a separate account, in trust for and payable to the assessor, and to keep the amount of such tax in such account until paid over to the assessor. Such notice shall remain in effect until a notice of cancellation is served by the assessor.

#### § 5254. Employer's liability for withheld taxes

Every employer required to deduct and withhold tax under this part is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the assessor, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this part shall be held to be a special fund in trust for the assessor. No employee shall have any right of action against his employer in respect to any money deducted and withheld from his wages and paid over to the assessor in compliance or in intended compliance with this part.

#### § 5255. Employer's failure to withhold

If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any additions to tax penalties or interest otherwise applicable in respect to such failure to deduct and withhold.

## CHAPTER 829

## ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

## § 5256. Period for computation of taxable income

1. **General.** For purposes of the tax imposed by this part, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

2. **Change of taxable year.** If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of the tax imposed by this part shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, taxable income, the standard deduction and the deduction for personal exemption, if applicable, allowed by this part may be prorated under regulations prescribed by the assessor.

3. **Termination of taxable year for jeopardy.** Notwithstanding the provisions of subsections 1 and 2, if the assessor terminates the taxpayer's taxable year under section 5321, relating to tax in jeopardy, the tax shall be computed for the period determined by such action.

## § 5257. Methods of accounting

1. **Same as federal.** For purposes of the tax imposed by this part, a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this part shall be computed under such method that in the opinion of the assessor fairly reflects income.

2. **Change of accounting methods.** If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this part shall similarly be changed.

## § 5258. Adjustments

In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the assessor, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

## § 5259. Limitation on additional tax

1. **Change other than to installment method.** If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

2. **Change from accrual to installment method.** If a taxpayer's method of accounting is changed from an accrual to an installment method, any addi-

tional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the assessor.

## CHAPTER 831

### PROCEDURE AND ADMINISTRATION

#### § 5260. Examination of return

1. **Deficiency or overpayment.** As soon as practical after the return is filed, the assessor shall examine it to determine the correct amount of tax. If the assessor finds that the amount of tax shown on the return is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the assessor finds that the tax paid is more than the correct amount, he shall credit the overpayment against any taxes due under this part by the taxpayer and refund the difference.

2. **No return filed.** If the taxpayer fails to file an income tax return, the assessor shall estimate the taxpayer's taxable income and the tax thereon from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

3. **Notice of deficiency.** A notice of deficiency shall set forth the reason for the proposed assessment. The notice may be mailed by certified or registered mail to the taxpayer at his last known address. In the case of a joint return, the notice of deficiency may be a single joint notice except that if the assessor is notified by either spouse that separate residences have been established he shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his last known address unless the assessor has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

#### § 5261. Assessment final if no protest

Thirty days after the date on which it was mailed, 60 days if the taxpayer is outside the United States, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax and penalties except only for such amounts as to which the taxpayer has filed a protest with the assessor.

#### § 5262. Protest by taxpayer

Within 30 days, 60 days if the taxpayer is outside the United States, after the mailing of a deficiency notice, the taxpayer may file with the assessor a written protest against the proposed assessment in which he shall set forth the grounds on which the protest is based. If a protest is filed, the assessor shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representatives an oral hearing.

§ 5263. Notice of determination after protest

Notice of the assessor's determination shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the assessor's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

§ 5264. Action of assessor final

The action of the assessor on the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks judicial review of the assessor's determination.

§ 5265. Burden of proof in proceedings before the assessor.

In any proceeding before the assessor under this part the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the assessor:

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax.

2. Whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

3. Whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and a protest under section 5262 filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under section 5243, and of which change or correction the assessor had no notice at the time he mailed the notice of deficiency.

§ 5266. Evidence of related federal determination

Evidence of a federal determination relating to issues raised in a proceeding under section 5262 shall be admissible, under rules established by the assessor.

§ 5267. Mathematical error

In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the assessor shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been assessed. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this part.

§ 5268. Waiver of restriction

The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the assessor.

**§ 5269. Assessment of tax**

1. **Date of assessment.** The amount of tax which is shown to be due on the return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the assessor shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in section 5261 if no protest is filed; or, if a protest is filed then upon the date when the determination of the assessor becomes final. If an amended return or report filed pursuant to section 5243 concedes the accuracy of a federal change or correction, any deficiency in tax under this part resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of this part. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provision of this part.

2. **Other assessment powers.** If the mode or time of the assessment of any tax under this part, including interest, additions to tax and penalties is not otherwise provided for, the assessor may establish the same by regulation.

3. **Supplemental assessment.** The assessor may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provision of section 5260 where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

4. **Cross reference.** For assessment in case of jeopardy, see section 5321.

**§ 5270. Limitations on assessment**

1. **General.** Except as otherwise provided in this act, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within 3 years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the 3-year period or the period otherwise fixed.

2. **Omission of more than 25% of income.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within 6 years after the return was filed. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the assessor of the nature and amount of such item.

3. **No return filed or fraudulent return.** If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this part, a notice of deficiency may be mailed to the taxpayer at any time.

4. Failure to report federal change. If a taxpayer fails to comply with the requirement of section 5243 by not reporting a change or correction increasing his federal taxable income, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, a notice of deficiency may be mailed to the taxpayer at any time.

5. Report of federal change or correction. If the taxpayer shall pursuant to section 5243 report a change or correction or file an amended return increasing his federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment, if not deemed to have been made upon the filing of the report or amended return, may be made at any time within two years after such report or amended return was filed.

6. Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the assessor and the taxpayer shall have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

7. Time return deemed filed. For purposes of this section an income tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

#### § 5271. Recovery of erroneous refund

An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within 2 years from the making of the refund, except that the assessment may be made within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

#### § 5272. Interest on underpayments

1. General. If any amount of tax imposed by this part, including tax withheld by an employer, is not paid on or before the last date prescribed for payment, interest on such amount at the rate of  $\frac{1}{2}\%$  per month shall be paid for the period from such last date to date paid. No interest shall be imposed if the amount due is less than one dollar nor shall this section apply to any failure to pay estimated income tax under section 5230.

2. Last date prescribed for payment. For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

3. Suspension of waiver of restrictions. If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the assessor for payment of such deficiency is not made within 30 days after



the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

4. Interest treated as tax. Interest prescribed under this section on any tax including tax withheld by an employer shall be paid on notice and demand and shall be assessed, collected and paid in the same manner as taxes.

5. Interest on penalties, or additions to tax. Interest shall be imposed under this section in respect to any penalty, or addition to tax only if such penalty or addition to tax is not paid within 10 days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

6. Payments made within 10 days after notice and demand. If notice and demand is made for the payment of any amount due under this part and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

7. Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which if the credit had not been made, interest would have been allowable with respect to such overpayment.

8. Interest on erroneous refund. Any portion of the tax imposed by this part or any interest, penalty or addition to tax which has been erroneously refunded and which is recoverable by the assessor shall bear interest at the rate of 6% per annum from the date of payment of the refund.

9. Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

#### § 5273. Failure to file tax returns

1. Failure to file tax return. In case of failure to file any return required under this part on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

2. Failure to file certain information returns. In case of each failure to file a statement of payment to another person required under the authority of

this part including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to a reasonable cause and not to willful neglect, there shall be paid upon notice and demand by the assessor and in the same manner as by the person so failing to file the statement, a penalty of \$2 for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$2,000.

§ 5274. Failure to pay tax

1. Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5% of the deficiency.

2. Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50 percent of the deficiency. This amount shall be in lieu of any amount determined under subsection 1.

3. Failure by individual to file declaration of underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of any tax, he shall be deemed to have made an underpayment of estimated tax, and there shall be added to the amount required to be paid under this part a penalty at the rate of  $\frac{1}{2}\%$  per month based on the amount of the underpayment for the period of the underpayment. The assessor may prescribe by regulation the method for determining the amount of the underpayment and the period of the underpayment.

4. Nonwillful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of this part, such employer shall be liable for such taxes and shall pay the same together with interest thereon and the addition to tax provided in subsection 1, and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The assessor shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer as are now prescribed by this part for the collection of tax against an individual taxpayer.

5. Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this part who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subsection 1 or 2 shall be imposed for any offense to which this subsection applies.

6. Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign

or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this part, shall be liable to a penalty of not more than \$1,000 in addition to any other amounts required under this part, to be imposed, assessed and collected by the assessor.

7. Additions treated as tax. The additions to tax and penalties provided by this part shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in this part to income tax or the tax imposed by this part shall be deemed also to refer to additions to the tax, and penalties provided by this section. For purposes of the deficiency procedures provided in section 5260 this subsection shall not apply to:

- A. Any addition to tax under subsection 1 of section 5273 except as to that portion attributable to a deficiency;
- B. Any addition to tax for failure to file a declaration of underpayment of estimated tax as provided in subsection 3;
- C. Any additional penalty under subsection 6.

8. Determination of deficiency. For purposes of subsections 1 and 2 related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return were filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

9. Person defined. For purposes of subsections 5 and 6 the term person includes an individual, corporation or partnership, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

#### § 5275. False information with respect to withholding allowance

In addition to any other penalty provided by law, if any individual in claiming a withholding allowance states:

1. As the amount of the wages shown on his return for any taxable year an amount less than such wages actually shown, or

2. As the amount of the itemized deductions referred to in section 5125 shown on the return for any taxable year an amount greater than such deductions actually shown, he will pay a penalty of \$50 for such statement, unless:

- A. Such statement did not result in a decrease in the amounts deducted and withheld, or
- B. The taxes imposed with respect to the individual under this part for the succeeding taxable year do not exceed the sum of the payments of estimated tax which are considered payments on account of such taxes.

Section 5260 relating to deficiency procedure shall not apply in respect to the assessment or collection of any penalty imposed by this section.

§ 5276. Authority to make credits or refunds

1. General rule. The assessor within the applicable period of limitations may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed under this Title on the taxpayer who made the overpayment, and the balance shall be refunded by the treasurer out of the proceeds of the tax retained by him for such general purposes.

2. Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

3. Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 5250, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

4. Credits against estimated tax. The assessor may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

5. Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

§ 5277. Abatements

1. General rule. The assessor is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which

A. Is excessive in amount, or

B. Is assessed after the expiration of the period of limitations properly applicable thereto, or

C. Is erroneous or illegally assessed.

2. No claim by taxpayer. No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under this part.

3. Small tax balances. The assessor is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if he determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due.

§ 5278. Limitations on credit or refund

1. General. A claim for credit or refund of an overpayment of any tax imposed by this part shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid whichever

of such periods expires the later; or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

2. Limit on amount of claim or refund. If the claim is filed by the taxpayer during the 3-year period prescribed in subsection 1, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such 3-year period, but is filed within the 2-year period, 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. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

3. Extension of time by agreement. If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection 1 for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed, shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection 1 if a claim had been filed on the date the agreement was executed.

4. Notice of change or correction of federal income. If a taxpayer is required by section 5243 to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the assessor, claim for credit or refund of any resulting overpayment of the tax shall be filed by the taxpayer within 2 years from the time the notice of such change or correction or such amended return was required to be filed with the assessor. If the report or amended return required by section 5243 is not filed within the 90-day period therein specified, interest on any resulting refund or credit shall cease to accrue after such 90th day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

5. Special rules. The following rules shall apply:

A. If the claim for credit or refund relates to an overpayment of tax on account of the deductibility by the taxpayer of a debt as a debt which be-

came worthless or a loss from worthlessness of a security or the effect that the deductibility of a debt or of a loss has on the application to the taxpayer of a carry-over, the claim may be made, under regulations prescribed by the assessor, within 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

B. If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back, the claim may be made, under regulations prescribed by the assessor, within the period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which resulted in such carry-back or the period prescribed in subsection 3 in respect of such taxable year, whichever expires later.

#### § 5279. Interest on overpayment

1. General. Under regulations prescribed by the assessor, interest shall be allowed and paid at the rate of  $\frac{1}{2}\%$  per month upon any overpayment in respect of the tax imposed by this Act. No interest shall be allowed or paid if the amount thereof is less than \$1.

2. Date of return or payment. For purposes of this section:

A. Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

B. Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the last day prescribed for the paying thereof.

3. Return and payment of withholding tax. For purposes of this section with respect to any withholding tax:

A. If a return for any period ending with or within a calendar year is filed before April 15th of the succeeding calendar year, such return shall be considered filed on April 15th of such succeeding calendar year; and

B. If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April 15th of the succeeding calendar year, such tax shall be considered paid on April 15th of such succeeding calendar year.

4. Refund within 3 months. If any overpayment of tax imposed by this part is refunded within 3 months after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within 3 months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

#### § 5280. Refund claim

Every claim for refund shall be filed with the assessor in writing and shall state the specific grounds upon which it is founded. The assessor may grant

the taxpayer or his authorized representatives an opportunity for an oral hearing if the taxpayer so requests.

#### § 5281. Notice of denial

If the assessor disallows a claim for refund, he shall notify the taxpayer accordingly. The action of the assessor denying a claim for refund is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer, unless within this period the taxpayer seeks judicial review of the assessor's determination.

#### § 5282. Refund claim deemed disallowed

If the assessor fails to mail a notice of action on any refund claim within 6 months after the claim is filed, the taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

### CHAPTER 833 JUDICIAL REVIEW

#### § 5300. Appeal

A taxpayer may appeal a determination of the assessor concerning a notice of deficiency, an assessment of penalty or interest, or a claim for refund, to the Superior Court of the county in which the taxpayer has a place of business, or if he does not have a regular place of business in the State, to the Superior Court of Kennebec County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the assessor, and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the Superior Court to hear and determine such appeals and to enter such orders and decrees as the nature of the case may require. The decision on all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the assessor.

#### § 5301. Judicial review exclusive remedy in deficiency proceedings

The review of a determination of the assessor provided by section 5300 shall be the exclusive remedy available to any taxpayer for the judicial review of the action of the assessor in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or against any office of this State to prevent or enjoin the assessment or collection of any tax imposed under this part.

#### § 5302. Assessment pending review; review bond

The assessor may assess a deficiency after the expiration of the period specified in section 5264 notwithstanding that an application for judicial review in respect of such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the assessor the amount of the deficiency or has filed with the assessor a bond, in the amount of the deficiency being

contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this State to act as surety, conditioned upon the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

§ 5303. Proceedings after review

1. Credit refund or abatement. If the amount of a deficiency determined by the assessor is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

2. Assessment final. An assessment of proposed deficiency by the assessor shall become final upon the expiration of the period specified in section 5261 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided; or if the protest provided in section 5262 has been filed, upon the expiration of time provided for filing an application for judicial review, or upon the final judgment of the reviewing court or upon the rendering by the assessor of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making an application for the review of a determination of the assessor, the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in section 5263.

§ 5304. No suit prior to filing claim

No suit shall be maintained for the recovery of any tax imposed by this part alleged to have been erroneously paid until a claim for refund has been filed with the assessor as provided in section 5280 and the assessor has denied the refund or has failed to mail a notice of action on the claim within 6 months after the claim was filed.

§ 5305. Limitation of suit for refund

The action authorized in section 5300 shall be filed within 3 years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after the denial of a claim for refund by the assessor or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the assessor to mail a notice of action within 6 months after the claim was filed whichever period expires the later.

§ 5306. Judgment for taxpayer

In any action for a refund, the court may render judgment for the taxpayer for any part of the tax, interest penalties or other amounts found to be erroneously paid, together with interest on the amount of the overpayment. The amount of any judgment against the assessor shall first be credited against any taxes, interest, penalties or other amounts due from the taxpayer under the tax laws of this State and the remainder refunded by the Treasurer of State.



## CHAPTER 835

## MISCELLANEOUS ENFORCEMENT PROVISIONS

## § 5310. Timely mailing

If any claim, statement, notice, petition, or other document including, to the extent authorized by the assessor a return or declaration of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of this part is, after such period of such date, delivered by United States mail to the assessor, or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the assessor, office, officer or person therein with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the assessor, or the office, officer or person to which or to whom it is addressed. To the extent that the assessor shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the assessor. When the last day prescribed under the authority of this part, including any extension of time, for performing any act falls on Saturday, Sunday or a legal holiday in this State, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

## § 5311. Collection procedures

1. General. The tax imposed by this part shall be collected by the assessor and he may establish the mode or time for the collection of any amount due under this part if not otherwise specified. The assessor shall, on request, give a receipt for any amount collected under this part. The assessor may authorize incorporated banks or trust companies which are depositaries or fiscal agents of this State to receive and give a receipt for any tax imposed under this part, in such manner, at such times, and under such conditions as he may prescribe; and the assessor shall prescribe the manner, times and conditions under which the receipt of tax by such banks and trust companies is to be treated as payment of tax to the assessor.

## 2. Notice and demand.

The assessor shall as soon as practicable give notice to each taxpayer liable for any amount of tax, addition to tax, additional amount, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding within 10 days of the date of the notice and demand payment thereof. Such notice shall be left at the dwelling place or usual place of business of such person or shall be sent by mail to such person's last known address.

Except where the assessor determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

3. Cross-reference. For requirements of payment without assessment, notice or demand of amount shown to be due on return, see section 5227.

#### § 5312. Issuance of warrant

If any taxpayer liable to pay any tax, addition to tax, penalty, or interest imposed under this part neglects or refuses to pay the same within 10 days after notice and demand, the assessor may issue a warrant directed to the sheriff of any county of this State commanding him to levy upon and sell such taxpayer's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the assessor and to pay him the money collected by virtue thereof within 60 days after receipt of the warrant. If the assessor finds that collection of the tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the assessor and upon failure or refusal to pay such tax the assessor may issue a warrant without regard to the 10-day waiting period provided in this section.

#### § 5313. Lien of tax

If any tax imposed by this part is not paid when due, the assessor may file in the office of the registry of deeds of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed a notice of lien specifying the amount of the tax, addition to tax, penalty and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the assessor has complied with all the provisions of this part in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all property of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been filed in the proper office, shall be subject to the prior mortgage unless the assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien herein provided for. The lien provided herein has the same force, effect and priority as a judgment lien and continues until it becomes unenforceable by reason of lapse of time unless sooner released or otherwise discharged.

#### § 5314. Release of lien

The assessor shall issue to the taxpayer a certificate of release of the lien or release all or any portion of the property subject to any lien provided for in this part or subordinate the lien to other liens if:

1. The assessor finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;
2. There is furnished to the assessor a bond with surety approved by the assessor in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the assessor to enforce collection thereof at law or of any amount agreed upon in writing by the assessor to constitute the full amount of the liability;
3. The assessor determines at any time that the interest of this State in the property has no value;
4. The assessor determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

#### § 5315. Enforcement of lien

The lien provided for by section 5313 may be enforced at any time after the tax liability with respect to which the lien arose becomes collectible under section 5311 by a civil action brought by the Attorney General in the name of the State of Maine in the Superior Court of the county in which the property is located to subject any property, of whatever nature, of the taxpayer, or in which he has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties have been only notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State of Maine therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State of Maine, the State of Maine may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the assessor directs.

#### § 5316. Taxpayer not a resident

When notice and demand for the payment of a tax is given to a nonresident and it appears to the assessor that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the notice of lien provided for in section 5313 to the taxpayer at his last known address together with a notice that such certificate has been filed with the registry of deeds. Thereafter, the Attorney General at the request of the assessor may institute any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this State could be collected or enforced. The assessor is authorized to enter into agreements with the tax departments of other states and the District of Columbia for the collection of taxes from persons found in in this State who are delinquent in the payment of income taxes imposed by those states or the District of Columbia on condition that the agreeing states and the District of Columbia afford similar assistance in the collection of

taxes from persons found in those jurisdictions who are delinquent in the payment of taxes imposed under this part.

§ 5317. Action for recovery of taxes

The Attorney General within 6 years after the assessment of any tax may bring an action in any court of competent jurisdiction within or without this State in the name of the State of Maine to recover the amount of any taxes, additions to tax, penalties and interest due and unpaid under this part. In such action, the certificate of the assessor showing the amount of the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency, and of the compliance by the assessor with all the provisions of this part in relation to the assessment of the tax. Claims of the State for sums under this part shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment shall be paid to the assessor.

§ 5318. Income tax claims of other states

The courts of this State shall recognize and enforce liabilities for personal income taxes lawfully imposed by any other state which extends a like comity to this State, and the duly authorized officer of any such state may sue for the collection of such a tax in the courts of this State. A certificate by the Secretary of State of such other state that an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, the word "taxes" shall include additions to tax, interest and penalties, and liability for such taxes, additions to tax, interest and penalties shall be recognized and enforced by the courts of this State to the same extent that the laws of such other state permit the enforcement in its courts of liability for such taxes, additions to tax, interest and penalties due this State under this part.

§ 5319. Order to compel compliance

1. Failure to file tax return. If any taxpayer willfully refuses to file an income tax return required by this part, the assessor may apply to a Justice of the Superior Court of Kennebec County, and upon the complaint of the assessor, the justice shall issue an order requiring the taxpayer, and, if the taxpayer is a corporation, any principal officer of such corporation, to file a proper return in accordance with this part, upon pain of contempt. The court shall forthwith fix a time and place for hearing and cause 20 days' notice thereof to be given the taxpayer, having regard to the speediest possible determination of the case consistent with the rights of the parties.

2. Failure to furnish records or testimony. If any taxpayer willfully refuses to make available any books, papers, records or memoranda for examination by the assessor or his representative or willfully refuses to attend and testify pursuant to the powers conferred on the assessor by section 5340, subsection 3 of this part, the assessor may apply to a Justice of the Superior Court of Kennebec County for an order directing the taxpayer to comply with the assessor's request for books, papers, records or memoranda or for his attendance and testimony. If the books, papers, records or memoranda required by the assessor are in the custody of a corporation, the order of the

court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such order, he shall be guilty of contempt of court.

#### § 5320. Transferees

1. **General.** The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, addition to tax, penalty or interest due the assessor under this part shall be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except as hereinafter provided in this section. The term transferee includes, but is not limited to, donee, heir, legatee, devisee and distributee.

2. **Period of limitation.** In the case of the liability of an initial transferee, the period of limitation for assessment of any liability is within one year after the expiration of period of limitation against the transferor. In the case of the liability of a transferee of a transferee, within one year after the expiration of the period of limitation against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the original transferor; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a proceeding for the collection of the liability has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the proceeding is terminated.

3. **Extension by agreement.** If before the expiration of the time provided in this section for the assessment of the liability, the assessor and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon or an extension thereof. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee of overpayments of tax made by the transferor of which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement or extension referred to in subsection 3 of section 5278. If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee arises, then in applying the limitations under subsection 2 of section 5278 on the amount of the credit or refund, the periods specified in subsection 1 of section 5278 shall be increased by the period from the date of such expiration to the date of the agreement.

4. **Transferor deceased.** If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect had death not occurred.

#### § 5321. Jeopardy assessments

1. **Filing and notice.** If the assessor finds that the assessment or the collection of a tax or a deficiency for any year, current or past, will be jeopardized in whole or in part by delay, he may mail or issue notice of his finding to the taxpayer, together with a demand for immediate payment of

the tax or the deficiency declared to be in jeopardy, including additions to tax, interest and penalties.

2. Termination of taxable year. In the case of a tax for a current period, the assessor shall declare the taxable period of the taxpayer immediately terminated and his notice and demand for a return and immediate payment of the tax shall relate to the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period.

3. Collection. A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within 10 days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or other security in the amount of the assessment, including additions to tax, penalties and interest as to which the stay of collection is sought. If a request for reassessment, accompanied by a bond or other security of the appropriate amount, is not filed within the 10-day period, the assessment becomes final.

4. Proceeding on reassessment. If a request for reassessment accompanied by a bond or other security is filed within the 10-day period, the assessor shall reconsider the assessment and, if the taxpayer has so requested in his petition, the assessor shall grant him or his authorized representatives an oral hearing. The assessor's action on the request for reassessment becomes final upon the expiration of 30 days from the date when he mails notice of his action to the taxpayer, unless within that 30-day period, the taxpayer files an application to seek judicial review of the assessor's determination.

5. Presumptive evidence of jeopardy. In any proceeding brought to enforce payment of taxes made due and payable by this section, the finding of the assessor under subsection 1 is for all purposes presumptive evidence that the assessment or collection of the tax or deficiency was in jeopardy.

6. Abatement if jeopardy does not exist. The assessor may abate the jeopardy assessment if he finds that jeopardy does not exist.

#### § 5322. Bankruptcy or receivership

1. Immediate assessment. Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or any state or territory or of the District of Columbia, any deficiency, together with additions to tax and interest provided by law, determined by the assessor may be immediately assessed.

2. Adjudication of claims. Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the assessor under section 5262. No protest against a proposed assessment shall be filed with the assessor after the adjudication of bankruptcy or appointment of the receiver.

3. Cross reference. For the requirement of notice to the assessor of the qualification of a trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other like judiciary, see section 5223.

## CHAPTER 837 CRIMINAL OFFENSES

### § 5330. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this part or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both, together with the costs of prosecution.

### § 5331. Failure to collect or pay over

Any person required under this part to collect, truthfully account for and pay over any tax imposed by this part, who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both, together with the costs of prosecution.

### § 5332. Failure to file return, supply information, pay tax

Any person required under this part to pay any tax or estimated tax, or required by this part or regulation prescribed thereunder to make a return, other than a return of estimated tax, keep any records or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than one year, or both, together with the costs of prosecution.

### § 5333. False statements

Any person who willfully makes and subscribes any return, statement or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or willfully aids or procures the preparation or presentation in a matter arising under the provisions of this part of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both, together with the costs of prosecution.

### § 5334. Limitations

Any prosecution under this part shall be instituted within 3 years after the commission of the offense, provided that if such offense is the failure to do an act required by or under this part to be done before a certain date, a

prosecution for such offense may be commenced not later than 3 years after such date. The failure to do any act required by or under this part shall be deemed an act committed in part at the principal office of the assessor. Any prosecution under this part may be conducted in any county where the person or corporation to whose liability the proceeding relates resides or has a place of business, or in any county in which such crime is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under this part.

## CHAPTER 839

### POWERS OF ASSESSOR

#### § 5340. Powers of assessor

1. **General.** The assessor shall administer and enforce the tax imposed by this part and he is authorized to make such rules and regulations and to require such facts and information to be reported as he may deem necessary to enforce the provisions of this part. The assessor may for enforcement and administrative purposes divide the State into a reasonable number of districts in which branch offices may be maintained.

2. **Returns and forms.** The assessor may prescribe the form and contents of any return or other document required to be filed under this part.

3. **Examination of books and witnesses.** The assessor for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any taxpayer, shall have power to examine or to cause to have examined, by any agent or representative designated by him 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 taxpayer rendering the return or any officer or employee of such taxpayer, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

4. **Secrecy of returns and information.** Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the assessor or any officer or employee of the Bureau of Taxation, any person engaged or retained by such bureau on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, 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 part. 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 assessor in an action or proceeding under the provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under this part 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 shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or 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 representatives of the State of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the State, he shall be dismissed from office and be ineligible to hold any public office in this State for a period of 5 years thereafter.

5. Reports and returns preserved. Reports and returns required to be filed under this part shall be preserved for 3 years and thereafter until the assessor orders them to be destroyed.

6. Cooperation with the United States and other states. Notwithstanding the provisions of subsection 4, the assessor may permit the Secretary of the Treasury of the United States or his delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer subject to tax under this part, or may furnish to such officer or his authorized representative an abstract of the income tax return or supply him with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or income tax return, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the assessor of this State as the officer charged with the administration of the tax imposed by this part and provide for the secrecy of returns and information in a manner substantially similar to this section.

7. Cooperation with other tax officials of this State. The assessor may permit other tax officials of this State to inspect the tax returns and reports filed under this part but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the assessor.

#### § 5341. Closing agreements

1. Assessor authorized. The assessor, or any person authorized in writing by him, is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this part for any taxable period.

2. Finality. If such agreement is approved by the Attorney General within such time as may be stated in such agreement or later agreed to, such

agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of material fact:

A. The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this State, and

B. In any suit, action or proceeding under such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

§ 5342. Disposition of revenues

The assessor shall pay over all receipts collected to the Treasurer of State promptly and such receipts shall be credited to the General Fund.

**Sec. 2. Computation of tax for first taxable year.** All taxpayers subject to this Act may elect to compute their tax for the first taxable year of less than 12 months in accordance with either of the following methods:

1. The tax may be computed as if this Act had been effective on the first day of the taxpayer's annual accounting period and the amount so computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first taxable year, and the denominator of which is 12;

2. The tax may be computed by determining the taxable income in the first taxable year, in accordance with an accounting method, satisfactory to the assessor, which reflects the actual taxable income attributable to the period.

**Sec. 3. Effective date.** Section F of this Act shall take effect as to corporations January 1, 1969, and to all other taxpayers covered under this part July 1, 1969 and shall be applicable with respect to items of income, deduction, loss or gain accruing in taxable years ending on or after such effective date but only to the extent such items have been earned, received, incurred or accrued on or after such effective date.