

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 471

H. P. 1361

House of Representatives, February 12, 1935.

Referred to Committee on Taxation, sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Shaw of Milbridge.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

AN ACT Imposing an Income Tax.

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

Sec. 1. Imposition of income tax; rates. 1. A tax is hereby imposed upon every person a resident of the state, which tax shall be levied, collected and paid annually upon and with respect to his entire net income at the following rates:

(a) a fee of \$3 for filing each return or statement required to be made under this act.

(b) 1% on the first \$3000 or any part thereof, of the amount of the net income in excess of the credits against net income provided in section 6.

(c) 2% of the next \$3000 or any part thereof, of such excess;

(d) 3% of the next \$3000 or any part thereof, of such excess;

(e) 4% of the remainder of such excess amount.

2. (a) In addition to the tax imposed under subdivision 1 of this section, a further tax is hereby imposed upon and with respect to interest, dividends and other income derived from intangible personal property, at the rate of 2% upon the amount thereof. Such tax shall be in lieu of the taxation of intangible personal property as property, and all such property shall not be subject hereafter to taxation in this state.

(b) The tax herein imposed upon interest, dividends and other income from intangible property shall be collected upon all such income received by every person a resident of this state, without deduction of personal credits against net income or for any other taxes paid, but this provision shall not be interpreted as undertaking to impose a tax upon interest, dividends or other income from intangible property not subject to the taxing power of this state.

3. A tax is also hereby imposed upon every person not a resident of the state and shall be levied, collected and paid annually at the rates specified in paragraphs (b), (c), (d), and (e) of subdivision 1 of this section, upon and with respect to the net income as defined in this act, from all property owned and from every business, trade, profession or occupation carried on in this state by such non-resident, except as provided in subdivision 4 of section 3 of this act.

4. The taxes imposed hereby shall first be levied, collected and paid in the year 1936, upon and with respect to the taxable income for the calendar year 1935, or for any fiscal year ending during the year 1935.

Sec. 2. Net income defined. The term "net income" means the gross income of a taxpayer less the deductions allowed by this act.

Sec. 3. Gross income defined. The term "gross income" includes:

1. Gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales; or from dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property in the course of the taxpayer's trade or business; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or profits or income derived through estates or trusts by the beneficiaries thereof whether as distributed or as distributable shares. The compensation received by any constitutional officer of this state, taking office after the time of the taking effect of this act, shall be included in gross income and all acts fixing the compensation of such constitutional officers of this state are hereby amended accordingly.

2. The term "gross income" does not include the following items, which shall be exempt from taxation under this act:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured;

(b) The amount received by the insured as a return of premium or premiums paid by under life insurance, endowment or annuity contract, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Interest upon the obligations of the United States or its possessions; or upon securities issued under the provisions of the federal farm loan act of July 17th, 1916; or upon bonds issued by the War Finance Corporation or the bonds or securities of any corporation or organization established under federal laws which are not subject to the taxing power of the state.

(e) Any amount received through accident or health insurance or under workmen's compensation acts as compensation for personal injury or sickness, plus the amount of any damages received, whether by suit or agreement on account of the injuries or sickness.

(f) Amounts received as pensions, family allotments and allowances under the provisions of the War Risk Insurance and the Vocational Rehabilitation Acts or the World War Veterans' Act of 1924, or as pensions from the United States for service of the beneficiary or another in the military or naval forces of the United States in time of war, or as pensions from the state of Maine or any of its local subdivisions for services of the beneficiary or another.

(g) Salaries, wages and other compensation received from the United States by officials or employees thereof, including persons in the military or naval forces of the United States, or from the state of Maine by any official or employee thereof whose compensation at the time of passage of this act shall be exempt from deduction or diminution by any constitutional provisions of the state.

(h) Income received in trust by any officer of a religious denomination or by any institution, or trust, for moral or mental improvement, religious bible, tract, charitable, benevolent, fraternal, missionary, hospital, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes; but nothing herein shall be construed to exempt the fees, stipends, personal earnings or other private income of such officer or trustee.

(i) The amount deducted pursuant to the income tax law of the United States from interest on a bond, mortgage, deed of trust or other similar obligation of a corporation containing a contract or provisions by which

the obligor agrees to pay any portion of the tax imposed by such law upon the obligee or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom, under any law of the United States.

(j) Stock dividends as defined in subdivision 8 of section 16 of this act.

(k) The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation and occupied by him or his immediate family.

(l) Gains and profits realized upon the sale, exchange or other disposition of property not regularly dealt or traded in by the taxpayer in the course of his trade or business and not constituting part of the capital assets employed therein.

(m) Income from whatever source derived which was earned or accrued or was payable before January 1st, 1935, and all distributions made by a corporation to its shareholders, whether in money or property, out of earnings or profits accumulated or increase in value of property accrued before January 1st, 1935.

(n) Amounts received from a corporation in cancellation or redemption of its stock in whole or in part, except to the extent that the amount so received represents a distribution of earnings or profits accumulated after January 1st, 1935.

(o) The value of rights issued by a corporation to its shareholders to subscribe to stock or securities of the same corporation.

3. In the case of taxpayers other than residents, gross income includes only the gross income from sources within the state, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends from corporations, except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state subject to taxation under this act.

Sec. 4. Deductions. In computing net income there shall be allowed as deductions:

1. All the ordinary and necessary expenses paid or accrued during the taxable year in carrying on any trade or business or in connection with the production of income to be included in gross income under this act, including a reasonable allowance of the salaries or other compensation for per-

sonal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for the purposes of the trade or business or property to which the taxpayer has not taken or is not taking title or in which he has no equity; also traveling expenses, including the entire amount expended for meals and lodging while away from home in the pursuit of a trade or business.

2. All interest paid or accrued during the taxable year on indebtedness, except:

(a) on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from the taxes imposed by this act, and

(b) on indebtedness incurred or continued in connection with the purchasing or carrying of an annuity.

3. Taxes, other than income taxes paid or accrued within the taxable year, imposed:

(a) by authority of the United States, or of any of its possessions;

(b) by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivision of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or

(c) by the authority of any foreign government.

4. Losses sustained during the taxable year, and not compensated for by insurance or otherwise, if incurred in trade or business. The basis for determining the amount of the deduction under this subdivision shall be the same as is provided in sections 19 and 20 of this act for determining the gain or loss from the sale, exchange or other disposition of property.

5. Debts occurring in trade or business ascertained by the taxpayer to be worthless and charged off within the taxable year. In the case of a debt existing on January 1st, 1935, no more than its fair market value on that date shall be deducted. A worthless debt arising since January 1st, 1935 from unpaid wages, salary, rent or other similar item of taxable income is not an allowable deduction unless the income which such item represents has been included as income by the taxpayer in a return rendered under this act.

6. A reasonable allowance for the exhaustion, wear and tear of property, the income of which is required to be included in gross income under this act, including a reasonable allowance for obsolescence.

7. An allowance for depletion and for depreciation of improvements in the case of mines, oil and gas and other natural deposits, and timber,

to be determined in accordance with the provisions of subdivision 5 of section 18 of this act.

8. Contributions or gifts made within the taxable year verified under rules and regulations prescribed by the state tax commissioner to an aggregate amount not in excess of 15% of the taxpayer's total net income as computed without the benefit of this deduction, if made to or for the use of:

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

(b) Any corporation or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the act of congress known as the vocational rehabilitation act;

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

(d) A fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Where the gift is other than money, the basis for calculation of the amount thereof shall be the fair market value of the property at the time of the gift.

In the case of a taxpayer other than a resident of the state, the deductions under this subdivision shall be allowed only as to contributions or gifts made to corporations or associations incorporated or organized under the laws of this state, or to the vocational rehabilitation fund above mentioned, or to this state or any political subdivision thereof exclusively for public purposes.

9. In the case of a taxpayer other than a resident of this state, the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the state and taxable under this act to a non-resident taxpayer, and the proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations to be prescribed by the tax commissioner.

Sec. 5. Items not deductible. In computing net income no deductions shall in any case be allowed in respect of:

1. Personal, living, or family expenses;
2. Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
3. Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or
4. Premiums paid on any life insurance policy or annuity contract, covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Sec. 6. Personal credits. The amount of net income shown in any return under this act shall be diminished before computation of the tax imposed by paragraphs (b), (c), (d) and (e) of subdivision 1 of section 1 of this act by the following amounts:

1. In the case of a single person, \$500;
2. In the case of a head of a family, or a married person living with husband or wife, \$1000;
3. In the case of a person who is supporting 1 or more dependents (other than husband or wife), if such dependents are under 18 years of age or are incapable of self support, \$1500.

A husband and wife living together shall be allowed but one personal credit. If such husband and wife make separate returns, the personal credit allowed by this section may be taken by either or divided between them.

Sec. 7. Partnerships. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year. If the net income of any partner for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then there shall be included in his individual return his distributive share of the net income of the partnership for its fiscal year ending within the fiscal or calendar year upon the basis of which the net income of the partner is computed. Taxpayers who are members of partnerships may be required by the tax commissioner to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided for computing the net income of individuals.

Sec. 8. Estates and trusts. 1. The taxes imposed by this act shall apply to the income of estates or of any kind of property held in trust.

2. The taxes shall be computed and paid upon the net income of the estate or trust by the beneficiary, except with respect to such income as is actually distributed or distributable during any taxable year to a beneficiary. There shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year. The income of a beneficiary not a resident, derived from such estate or trust, shall be taxable only to the extent provided in subdivision 3 of section 3 for individuals other than residents.

Sec. 9. Taxpayer's returns. 1. Every person a resident of this state having interest, dividends or other income from intangible property in any amount shall make a return thereof and pay the tax imposed by this act.

2. No person whose gross income for the taxable year includes no interest, dividends or other income from intangible property and is \$500 or less in total amount shall be required to make a return or pay a tax under this act.

3. Every person a resident of this state having a gross income for the taxable year of more than \$500 shall make under oath a return stating specifically the items of his gross income and the deductions allowed by this act, except that any such person whose gross income exclusive of interest, dividends or other income from intangible property does not exceed \$1000 if married and living with husband or wife, or \$1500 if supporting one or more dependents (other than husband or wife), may in lieu of such return file a statement showing the amount of his gross income. Such statement need not be made under oath but it shall contain a written declaration that it is made under the penalties for perjury. Whoever signs and issues such a statement containing such declaration shall be guilty of perjury and subject to the penalties thereof if such statement is wilfully false in a material matter.

4. If a husband and wife living together have an aggregate gross income of more than \$500 each shall make a return or statement of the income of each shall be included in a single joint return or statement in which case the tax shall be computed on the aggregate income.

5. If the taxpayer is unable to make his own return the return shall be made by a duly authorized agent or by the guardian or by any other person charged with the care of the person or the property of such taxpayer.

6. Every nonresident subject to the tax imposed by this act and having

a net income for the taxable year of \$500 or over, or a gross income for the taxable year of \$1000 or over, regardless of the amount of his net income, shall make under oath a return stating specifically the items of his gross income and the deductions allowed by this act. A taxpayer other than a resident shall not be entitled to the deductions authorized by section 4 of this act unless he shall make under oath a complete return of his gross income both within and without the state.

Sec. 10. Returns in case of changed residence. If a taxpayer during the taxable year changes his status from that of resident to that of non-resident, or from that of nonresident to that of resident, he shall file two returns, one as a resident covering the fraction of the year during which he was a resident, and one as a person other than a resident covering the fraction of the year during which he was a nonresident. If the aggregate of the taxpayer's gross income from all sources during the fraction of the year in which he was a resident, and his gross income from sources within this state during the fraction of the year in which he was a nonresident, shall be less than \$500, no return shall be required under this section.

Sec. 11. Time and place of filing returns. Returns of income by individuals shall be made to the tax commissioner on or before the 15th day of the 4th month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April of each year. The tax commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists, and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be granted for more than 6 months. Such returns shall set forth such facts as the tax commissioner may deem necessary for the proper enforcement of this act. There shall be annexed to the return the affidavit or affirmation of the person making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the tax commissioner upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

Sec. 12. Time of payment. The total amount of tax imposed by this act shall be paid on the date fixed in section 11 for filing returns. Unless the return shows that a filing fee only is to be paid, the taxpayer may elect to pay the tax in 4 equal installments in which case the 1st installment shall be paid on the date fixed for the filing of returns, the 2nd installment

shall be paid on the 15th day of the 3rd month, the 3rd installment shall be paid on the 15th day of the 6th month, and the 4th installment shall be paid on the 15th day of the 9th month, after such date. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the tax commissioner.

Sec. 13. Interest in case of extension of time. If the time for filing the returns shall be extended, the taxpayer shall pay, in addition to the tax, interest thereon at the rate of 6% per year from the time when the return was originally required to be filed to the time of payment. If the time for filing a return by a withholding agent shall be extended, the withholding agent shall pay, and may not charge to the taxpayer, interest at the rate of 6% per year from the time when the return was originally required to be filed to the time of payment.

Sec. 14. Credit for taxes in case of nonresidents. 1. Whenever a taxpayer other than a resident of the state has become liable to pay an income tax to the state or a foreign country where he resides upon his net income for the taxable year derived from sources within this state and subject to taxation under this act, the tax commissioner shall credit the amount of tax payable by him under this act with such proportion of the tax so payable by him to the state or country where he resides as his income subject to taxation under this act bears to his entire income upon which the tax so payable to such other state or country was imposed; provided, however, that such credit shall be allowed only if the laws of said state or country:

(a) grant a substantially similar credit to residents of this state subject to income tax under such laws; or

(b) impose a tax upon the personal incomes of its residents derived from sources within this state and exempt from taxation the personal incomes of residents of this state.

2. A like credit shall be allowed to any taxpayer who is domiciled in another state or foreign country notwithstanding that he maintains a permanent place of abode and spends in the aggregate more than 7 months of the taxable year within this state; provided, however, that such credit shall be allowed only if the laws of the state or country where such taxpayer is domiciled grant a substantially similar credit to a person who is domiciled in this state but maintains a permanent place of abode and spends in the aggregate more than 7 months of the taxable year within such other state or country.

3. No credit shall be allowed against the amount of the tax on any income taxable under this act which is exempt from taxation under the laws of such other state or country.

Sec. 15. Contract to assume income tax illegal. It shall be unlawful for any person to agree or contract directly or indirectly to pay or assume the burden of any income tax payable by any taxpayer under the provisions of this act. Any such contract or agreement shall be null and void and shall not be enforced or given effect by any court.

General and Administrative Provisions

Sec. 16. Definitions. As used in this act and unless otherwise required by the context:

1. The words "tax commissioner" mean the state tax commissioner.

2. The word "taxpayer" includes any person, trust, estate, fiduciary, partnership, unincorporated association or corporation, subject on its own account or for the account of another, to a tax imposed by this act.

3. The word "resident" when applied to natural persons, includes any person domiciled in the state of Maine, and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than 7 months of the taxable year within the state.

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

5. The words "taxable year" mean the calendar year or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under the act. The words "fiscal year" mean an accounting period of 12 months, ending on any day of any month other than December 31st.

6. The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate having legal title to and not being merely custodian or property for the benefit of another.

7. The word "paid" means "paid or accrued" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The term "received" means "received or accrued" and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

8. The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, not including stock dividends as herein defined or dividends paid or credited to policyholders by insurance companies. "Stock dividends" mean new stock issued, for surplus or profits capitalized, to shareholders in proportion to their holdings.

9. The word "interest" means any payment for the use of capital funds loaned, invested or deposited, whether represented by bonds, notes, mortgages, pass books or any other evidence of a loan, investment or deposit.

10. The words "foreign country" or "foreign government" mean any jurisdiction other than one embraced within the United States. The words "United States" include the states, the territories of Alaska and Hawaii and the District of Columbia.

11. The words "withholding agent" include all individuals, partnerships, associations or corporations, in whatever capacity acting, including lessees, or mortgagors or real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, perquisites or other fixed or determinable annual or periodical income payable to any individual and taxable under this act.

Sec. 17. Tax a debt. Every tax imposed by this act, and all increases, interest and penalties thereon, shall become, from the time it is due and payable, a personal debt from the person liable to pay the same to the state of Maine.

Sec. 18. Computation of net income. 1. All items of gross income shall be reported for the taxable year in which received by the taxpayer, unless under methods of accounting permitted in this act any such amounts are to be properly accounted for as of a different period.

Dividends from corporations may at the option of the taxpayer be reported by him either in the year in which they are declared by the corporation to be payable or in the year in which actually received by him; provided, however, that whichever method is first adopted by the taxpayer shall be used continuously thereafter unless the tax commissioner shall give permission to change such method under rules and regulations to be prescribed by him.

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

3. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the tax commissioner, be computed on the basis of such new accounting period, subject to the provisions of sections 19 and 20 of this act.

4. A taxpayer who in the course of his trade or business regularly sells or otherwise disposes of real or personal property on the installment plan may report as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the total profit realized or to be realized when the payment is completed, bears to the contract price. In the case of a casual sale or other casual disposition of real or personal property by a dealer therein for a price exceeding \$1000, if the initial payments do not exceed $\frac{1}{4}$ of the purchase price, the income may be returned on the basis and in the manner above prescribed in this subdivision. As used in this subdivision the term "initial payments" means the payments received in cash or property at the time of sale, or other disposition, plus all payments made up to and at the time of transfer of title, provided that both the sale or other disposition and the transfer of title occur in the same taxable period. The term "initial payments" shall not include evidences of indebtedness of the purchaser or amounts secured by the property sold or otherwise disposed of.

5. In the case of mines, other natural deposits, except oil and gas wells, and timber, there may be deducted from gross income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost, including cost of development not otherwise deducted; provided, however, that in the case of such properties acquired prior to January 1st, 1935, the basis for computing depletion or depreciation shall be the cost or the fair market value of the property (or the taxpayer's interest therein) on that date, whichever is greater; provided, further, that in the case of mines discovered by the

taxpayer on or after January 1st, 1935, and not acquired as the result of a purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery or within 30 days thereafter; but such depletion allowance based on discovery value shall not exceed 50% of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value.

Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine after January 1st, 1935, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

In the case of oil and gas wells the allowance for depletion shall be 27½% of the gross income from the property during the taxable year. Such allowance shall not exceed 50% of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

Such reasonable allowance in all of the above cases shall be made under rules and regulations to be prescribed by the tax commissioner. In the case of leases the deductions allowed by this subdivision shall be equitably apportioned between the lessor and the lessee.

Sec. 19. Ascertainment of gain or loss. For the purpose of ascertaining the gain derived or loss sustained by a dealer in real or personal property or by any person in the course of his trade or business from the sale, exchange or other disposition of property, real, personal or mixed, the basis shall be determined in the following manner: 1. In the case of property acquired on and after January 1st, 1935, the cost thereof, or the inventory value if the inventory is made in accordance with this act.

2. In the case of property acquired prior to January 1st, 1935, and disposed of thereafter, the basis shall be the cost thereof or the value thereof on January 1st, 1935, whichever is greater.

3. In the case of property acquired by gift or by transfer in trust after December 31st, 1934, the basis shall be the value at the date of gift. In the case of property acquired by gift or by transfer in trust prior to January 1st, 1935, the basis shall be the value at the date of gift or the value on January 1st, 1935, whichever is greater.

4. If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, gain or loss shall be determined as provided in subdivisions 1 and 2 of this section, except that the word "cost" as used in said subdivisions shall be deemed to be the fair market price or value of such property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, gain or loss in the hands of the estate shall be determined as provided in subdivision 1 or 2 of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of the death of the decedent. In all other cases if the property was acquired either by will or by intestacy, gain or loss shall be determined as provided in subdivisions 1 or 2 of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of the actual distribution by the executor or administrator or trustee to the taxpayer.

5. In computing the amount of gain or loss under this section:

(a) proper adjustment shall be made for any expenditure receipt, loss or other item properly chargeable to capital account, and (b) the basis shall be diminished by the amount of deductions for exhaustion, wear and tear, obsolescence, amortization and depletion which have, since the acquisition of the property, been claimed by the taxpayer and allowed as deductions in respect of such property under this act; but in no case shall the amount of diminution in respect to depletion exceed a depletion deduction computed without reference to discovery value or to percentage depletion under subdivision 5 of section 18 of this act. In addition, if the property was acquired before January 1st, 1935, the basis (if other than the fair market value as of January 1st, 1935) shall be diminished in the amount of exhaustion, wear and tear, obsolescence and depletion actually sustained before such date but the cost shall not be diminished by an amount greater than the excess of such exhaustion, wear and tear, obsolescence and depletion above the cost of repairs made before January 1st, 1935.

6. Taxes assessed upon unimproved land may, at the option of the taxpayer, be charged to capital and added to the cost of the land instead of being treated as a deduction from income; provided, however, that if such method is adopted by the taxpayer it shall be continued in each year thereafter as long as said land remains wholly unimproved.

7. In the case of stock the basis shall be diminished by the amount of liquidating distributions previously made in respect to such stock out of capital, or out of earnings or profits accumulated or increase in value of the property accrued before January 1st, 1935.

Sec. 20. Exchange of property. Upon the sale or exchange of property in trade or business the entire amount of the gain or loss, determined under section 19 of this act shall be recognized except as hereinafter provided in this section.

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

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

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

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

5. If there is distributed, in pursuance of a plan of reorganization, to a shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such

corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

6. If an exchange would be within the provisions of subdivisions 1, 2 or 3 of this section were it not for the fact that the property received in exchange consists not only of property permitted by such subdivisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

7. If an exchange would be within the provisions of subdivisions 1, 2 or 3 of this section were it not for the fact that the property received in exchange consists not only of property permitted by such subdivisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

8. As used in this section the term "reorganization" means:

(a) a merger or consolidation (including the acquisition by one corporation of at least the majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation);

(b) a transfer by a corporation of all or part of its assets to another corporation if immediately after the transfer the transferee or its shareholders or both are in control of the corporation to which the assets are transferred;

(c) a recapitalization; or

(d) a mere change in identity, form or place of organization, however effected.

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

As used in this section the term "control" means the ownership of at least 80% of the voting stock and at least 80% of the total number of shares of all other classes of stock of the corporation.

9. When property is exchanged for other property and no gain or loss is realized under the provisions of this section, the property received shall be treated as taking the place of the property exchanged and its cost shall be deemed to be the same as the cost of the property given in exchange.

Sec. 21. Dividends paid in property-value determined. In the case of a dividend declared and paid by a corporation in property the value thereof

for the purposes of this act shall be the value of such property at the time at which it shall be declared by the corporation to be payable, and if no such time shall be specified by the corporation, then its value at the time of distribution there by the corporation.

Sec. 22. Inventory. Whenever in the opinion of the tax commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the tax commissioner may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

Sec. 23. Partnership returns. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed under this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

Sec. 24. Fiduciary returns. 1. Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of a taxpayer) shall make under oath a return for any individual, estate or trust for which he acts, stating specifically the items of gross income thereof and the deductions allowed under this act, in the following cases:

(a) if such individual, estate or trust has interest, dividends or other income from intangible property of any amount; or

(b) a gross income for the taxable year in excess of \$500.

2. Under such regulations as the tax commissioner may prescribe, a return by one of two or more joint fiduciaries shall be sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of the individual, estate or trust for which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

3. Fiduciaries required to make returns under this act shall be subject to all of the provisions herein which apply to taxpayers.

Sec. 25. Returns when accounting period changed. 1. If a taxpayer, with the approval of the tax commissioner, changes the basis of computing net income from fiscal year to calendar year, a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31st. If the change is made from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was

made and the date designated as the close of the fiscal year. If the change is made from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. If a taxpayer making his first return of income keeps his accounts on the basis of a fiscal year, he shall make a separate return for the period between the beginning of a calendar year in which such fiscal year ends and the end of the fiscal year.

2. In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be computed and paid thereon at the rate for the calendar year in which such period is included.

Sec. 26. Withholding and payment at the source. 1. For the calendar year 1935 and for each calendar year thereafter, every withholding agent having the receipt, control, custody, disposal or payment of salaries, wages, commissions, gratuities, emoluments, perquisites and other fixed or determinable annual or periodical compensation of whatever kind and in whatever period received, earned by any nonresident taxpayer for personal services taxable under this act, and amounting to \$500 or more, shall deduct and withhold therefrom the following amounts: 1% of the first \$3000 or less, 2% of the next \$3000 or less, 3% of the next \$3000 or less, and 4% of the excess over \$9000, by which the amount of such compensation paid or to be paid in the calendar year, by such withholding agent to such taxpayer, exceeds the amount of the personal credit granted to such taxpayer under section 6 of this act as shown by a certificate filed with the withholding agent in form to be prescribed by the tax commissioner or \$500 if no certificate showing his personal credit status is filed with the withholding agent by a taxpayer other than a resident of this state. Provided, however, that no deduction or withholding shall be required if it appears that another state has passed a law taxing incomes in such manner, as will result in its residents being entitled to credit under section 14 of this act, sufficient to offset all taxes imposed by this act, in which case the tax commissioner may by regulation, relieve residents of such state from being required to make any return under this act and may prescribe a form of certificate of exemption to be filed by residents of such state with withholding agents. The tax commissioner may, by regulation, require withholding agents to forward to him at stated times any of the certificates mentioned in this subdivision.

2. Every withholding agent required to deduct and withhold any tax under subdivision 1 of this section shall make return thereof on or before the 15th day of April in each year and shall at the same time pay the tax

to the tax commissioner. Every withholding agent is hereby made liable for such tax and is hereby indemnified against the claims and demands of any individual or partnership for the amount of any payments made in accordance with the provisions of this section.

3. Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

4. If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

Sec. 26. Information returns. Every person, firm, association or corporation, and every department, board, commission or agency of the state government and of any of its subdivisions having the receipt, control, custody, disposal or payment of salaries, wages, commissions, gratuities, emoluments, perquisites, interest, rent, dividends, royalties, and other fixed or determinable annual or periodical payments of whatever kind and in whatever form paid to or received by any person subject to taxation under this act, in an amount exceeding \$500 in any taxable year, shall report the same to the tax commissioner under such regulations and in such form and manner and to such extent as may be prescribed by him.

Sec. 27. Audit or returns; protests and additional taxes. 1. As soon as practicable after a return or report is filed under this act, the tax commissioner shall examine it and compute the tax.

2. If the tax commissioner determines, in the case of any taxpayer, that there is a deficiency in respect of the tax assessed under this act, he shall mail notice to the taxpayer stating the grounds for such determination and allowing the taxpayer not less than 20 days from the date of such notice within which to file a protest. Such protest shall be in writing, signed by the taxpayer or his duly authorized representative or officer under oath, and shall set forth the reasons therefor. A personal hearing shall be granted to the taxpayer if he shall so request in the protest, to be held at the office of the tax commissioner in Augusta, or in his discretion at some place in the county where the taxpayer resides, or at the taxpayer's place of business.

3. After such hearing, or if the taxpayer shall fail to attend such hearing, or shall fail to request such hearing in the protest, the tax shall be

assessed by the tax commissioner in such amount as shall be determined by him to be owing; or if the taxpayer fails to file a protest within the time prescribed in the notice of deficiency the tax shall be assessed in the amount stated in said notice and shall be paid within 10 days after notice and demand shall have been mailed by the tax commissioner to the taxpayer. In such case, if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no interest, penalty or additional tax because of such understatement, provided the deficiency be paid within 10 days after notice of the amount is mailed to the taxpayer. If payment is not made within 10 days, there shall be added to the amount of the deficiency 5% thereof, and in addition, interest at the rate of 1% per month for each month or fraction of a month calculated from the date of notice.

4. If the understatement is due to negligence on the part of the taxpayer but without intent to defraud, there shall be added to the amount of the deficiency 5% thereof, and in addition, interest at the rate of 1% per month for each month or fraction of a month.

Except as otherwise provided in this subdivision, the interest provided for in this subdivision shall in all cases be computed from the date the tax was originally due to the date of payment.

Sec. 28. Limitation of time of assessments; jeopardy assessments.

1. No additional tax shall be assessed against any taxpayer until after the tax commissioner shall have given him an opportunity to be heard in opposition thereto as provided in the preceding section, except as provided in the next subdivision.

2. If, however, the tax commissioner believes that the assessment or collection of deficiency of tax will be jeopardized by delay, he shall not be obliged to furnish the taxpayer an opportunity to be heard as provided in the preceding section, but shall immediately assess such deficiency (together with interest and all additional amounts provided by law) and notice and demand shall be made by him for the payment thereof.

3. But if a jeopardy assessment be made without having given the taxpayer an opportunity to be heard, then the notice thereof shall give to the taxpayer the opportunity to file a protest with the tax commissioner in the same manner as provided in the preceding section in the case of a deficiency of tax. If no protest is filed within the time limited in said notice then the tax commissioner shall immediately proceed to collect the tax, but if a protest shall be filed, then on giving adequate security collection thereof shall be stayed until the final determination of the tax commissioner thereon and until the expiration of the period within which the

taxpayer may apply for a review of such determination without such application having been made as provided in section 27 of this act, and if certiorari proceedings are brought, then, on giving like security, until 10 days after notice of the final determination of the court therein shall have been given by the tax commissioner.

4. The amount of tax due under any return or report required by this act shall be determined and assessed by the tax commissioner within 3 years after the return was due unless the taxpayer shall in writing consent to an extension of time except, that

(a) in the case of wilfully false or fraudulent returns the amount of tax due may be determined and assessed at any time after the return is filed and the tax may be collected at any time after it becomes due;

(b) where no return has been filed the tax may be assessed at any time; and

(c) in cases where certiorari proceedings are brought to review the determination of the tax commissioner as provided in this act the tax may be determined and assessed within 60 days after a final determination by the court.

Sec. 29. Refunds and credits. 1. The taxpayer, at any time within 2 years after the payment of any original or additional tax assessed against him, may file with the tax commissioner a claim for refund under oath stating the grounds therefor, and in such form as the tax commissioner may prescribe, except that no claim for refund shall be required to be filed with respect to a tax paid after protest has been filed with the tax commissioner or after certiorari proceedings have been begun as provided in the next section.

2. If, upon examination of such claim for refund it shall be determined by the tax commissioner that there has been an overpayment of tax, the amount of such overpayment shall first be credited against any other tax then due from the taxpayer which has been assessed under this act and any balance thereof shall be immediately refunded to the taxpayer. If the tax commissioner rejects the claim in whole or in part he shall mail notice of the rejection to the taxpayer by registered mail stating his reasons therefor.

3. Where no questions of fact or law are involved and it appears from the records of the tax commissioner that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts or law, the tax commissioner shall have the power at any time upon making a record of his reasons therefor in writing, to cause such moneys so paid and erroneously

and illegally held to be refunded and to issue therefor his certificate to the treasurer of state as provided in the following paragraph.

4. Refunds shall be made by the treasurer of state out of the proceeds of the tax retained by him as provided in this act, and only upon a certificate of the tax commissioner. The certificate of the tax commissioner shall be final unless the treasurer of state believes from information in his possession that there is fraud.

5. Upon the refund of any tax, except a refund made according to the provisions of subdivision 3 of this section, there shall be paid to the taxpayer interest on the amount of overpayment of tax at the rate of 6% per year from the date of payment.

6. Except as provided in subdivision 3 of this section and in subdivision 2 of section 30 of this act, no refund or credit for any excess tax paid shall be made unless a claim for the refund thereof shall have been filed as provided in subdivision 1 of this section.

Sec. 30. Review of determination of tax commissioner. 1. The taxpayer may cause the final determination of the tax to be reviewed in the following cases:

(a) A determination by the tax commissioner after protest filed confirming in whole or in part a tax assessed under this act;

(b) A determination by the tax commissioner after protest filed that there is a deficiency of tax owing by the taxpayer as provided in section 27 of this act;

(c) A determination by the tax commissioner after protest filed confirming in whole or in part a jeopardy assessment made by him under the provisions of section 28 of this act;

(d) A determination by the tax commissioner rejecting in whole or in part a claim for refund filed under the provisions of section 29 of this act;

(e) Provided, however, that no review shall be allowed unless written notice of the application therefor is given by the taxpayer to the tax commissioner within 90 days after notice of the final determination of the tax commissioner in the above cases shall have been mailed to him by the taxpayer, not counting Sunday or a legal holiday as the 90th day.

2. Such review shall be by certiorari proceedings before the supreme court, in the same manner as other appeals are brought before this court.

3. Any taxpayer, after protest filed and before the final determination of liability, may at his option, pay the deficiency of tax claimed by the tax commissioner. In the event that it is finally determined by the tax commissioner, or on review of his determination, that any part of the original or additional tax paid was in excess of the amount lawfully assessable

against such taxpayer, the amount of such overpayment shall be immediately refunded to him, notwithstanding that no claims for refund have been previously filed.

Sec. 31. Income tax assessment roll. 1. Upon receipt of the returns required to be filed under this act, the tax commissioner shall proceed forthwith to prepare an income tax assessment roll. Said roll shall consist of a book or books, in which shall be entered, in alphabetical order and by local political subdivisions, the name and address of each taxpayer as shown by the returns. And opposite to the name of each taxpayer there shall be entered, in separate columna under appropriate headings:

- (a) The amount of his gross income, classified by sources in such manner as the tax commissioner shall determine;
- (b) The amount of deductions claimed;
- (c) The amount of net income;
- (d) The amount of tax due.

2. A supplementary income tax assessment roll shall be prepared, in like form to the above, in which shall be entered the names, the amounts of gross income, deductions claimed, net income and tax due of all persons who shall report income for a fiscal year other than the calendar year.

3. The tax commissioner shall presume the incomes reported on the current returns to be correct for the purpose of preparing the initial assessment roll. Whenever, after audit and examination of the returns as provided in section 27 of this act, the tax commissioner shall determine that a correction shall be made in any return or in the amount of tax due upon any return of income, he shall enter forthwith, after final hearing and disposition thereof, the corrections determined upon in the assessment roll.

4. The income tax assessment roll and the supplementary income tax assessment roll shall be made in duplicate, and the duplicate copy of each shall be known as the income tax roll.

5. Upon the completion of the income tax assessment roll and the supplementary income tax assessment roll, respectively, the tax commissioner shall execute and attach to each of said rolls a certificate and warrant in substantially the following term:

“State of Maine,

I,, tax commissioner of the state of Maine, do hereby certify that the foregoing assessment roll contains a complete list of all persons liable to the payment of income tax for the year 19. . . , as shown by the returns submitted as required by law, and that the amount of net income shown in the said assessment roll opposite to the name of each person is the correct amount upon which he is to be assessed for income

tax as shown by his return and statement of income. I hereby do assess to each of said persons named in the foregoing roll the amount of net income shown in said roll opposite to his name.

I further do hereby certify that the amount of tax shown in said assessment roll opposite to the name of each person named therein is the correct amount of tax to be levied against him for the year 19... , as shown by his return and statement of income, and I do hereby levy upon each of said persons the amount of tax set down in the foregoing assessment roll opposite to their respective names.

I hereby warrant the collection of the amount of income tax hereby levied against each person named in the said roll, and I direct that the tax shall be paid at my office, or to any deputy or other agent who may be duly and properly authorized by me to receive the same. The amount of tax levied, as shown by the foregoing roll, shall be credited with any and all advance payments or installments which may be made by any person liable to pay the same, at the time of filing a return or at any later time.

Given under my hand and seal this day of, 19....
.....

Tax Commissioner.”

6. The execution of the foregoing certificate and warrant shall not be deemed to prevent the later correction of the assessment of income or levy of tax in any case after examination and audit of the return, as provided in section 27, or after review of the determination of the tax commissioner, as provided in section 30 of this act.

7. Payment of the tax, in whole or in part, as provided in section 12, shall be deemed to be an advance payment on account and not a final settlement of the tax obligation imposed by this act. The amount of tax set opposite to the name of each person in the assessment roll, as finally corrected after examination and review as in this act provided, shall be the correct amount which each of such persons shall be liable to pay.

Sec. 32. Penalties. 1. If any taxpayer or withholding agent without intent to evade any tax imposed by this act, shall fail to file a return or a corrected return or pay any tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily make a correct return and pay the tax due within 60 days thereafter, there shall be added to the tax an additional amount equal to 5% thereof, but such additional amount shall in no case be less than \$2, and an additional 1% per month for each month or fraction of a month during which the tax remains unpaid.

2. If any taxpayer or withholding agent fails voluntarily to file a return or corrected return or to pay a tax if one is due, within 60 days of the time required by or under the provisions of thsi act, but without intent

to evade the tax, there shall be added to the tax payable by him an additional amount equal to 25% thereof and an additional 1% for each month or fraction of a month from the time the tax was originally due to the date of payment.

3. Any person and any officer of a corporation filing or causing to be filed any return, certificate, affidavit or statement required or authorized by this act which is wilfully false shall be guilty of a felony.

4. The tax commissioner shall have the power to compromise any penalty and additional interest chargeable against the taxpayer in accordance with the provisions of subdivisions 1 and 2 of this section where it is shown to his satisfaction that the failure to file and to pay the tax was due to a reasonable cause and not due to wilful neglect or fraudulent intent; and he shall have power to suspend the accruing of all penalties upon any additional tax assessed by virtue of said subdivisions 1 and 2 and to extend the time for payment of such assessment in any case where due application has been made for a revision and readjustment of the same under this act to not later than 30 days after the service of the notice of a determination thereon.

5. If any individual, or any officer or employee of any partnership, association or corporation, with intent to evade any tax or any requirement of this act or any lawful requirement of the tax commissioner thereunder, shall fail to pay the tax, or to make, render, sign or certify any return, or to supply any information, within the time required by or under the provisions of this act, or with like intent shall make, render, sign or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, the tax payable by such individual, partnership, association or corporation, whether as a taxpayer or as a withholding agent, shall be doubled and there shall be added thereto 1% for each month or fraction of a month from the time the tax was originally due until the date of payment; and such individual, partnership, association or corporation shall also be liable to a penalty of not more than \$1000, to be recovered by the attorney-general, in the name of the state, by action in any court of competent jurisdiction, and such individual, officer or employee of a partnership, association or corporation, shall also be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than \$1000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment, at the discretion of the court.

6. The attorney-general shall have the power, with the consent of the tax commissioner, to compromise any penalty for which he is authorized to bring action under subdivision 5 of this section. The penalty provided

by subdivision 5 of this section shall be in addition to all other penalties in this act provided.

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

Sec. 33. Proceedings to recover tax. 1. Whenever any person shall fail to pay any tax or penalty imposed by this act as herein provided, the attorney-general shall, upon the request of the tax commissioner, bring an action to enforce payment of the same. The proceeds of a judgment in such action shall be paid to the tax commissioner.

2. As an additional or alternative remedy, the tax commissioner may issue a warrant under his official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person, partnership, association or corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the tax commissioner and pay to him the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall within 5 days after the receipt of the warrant, file with the clerk of courts of his county a copy thereof and thereupon the clerk shall enter in the judgment docket in the column for judgment debtors, the name of the taxpayer or withholding agent mentioned in the warrant, and appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the tax commissioner a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the tax imposed by this act, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, including the power to collect for the benefit of the state, the same fees as are collectible by sheriffs; but said agent personally shall be entitled to no fees or compensation in excess of actual expenses in the

performance of such duty. If a warrant be returned not satisfied in full, the tax commissioner shall have the same remedies to enforce the claim for taxes against the taxpayer or withholding agent as if the state had recovered judgment against the taxpayer or withholding agent for the amount of the tax.

Sec. 34. Powers of tax commissioner. 1. The tax commissioner shall administer and enforce the taxes herein imposed, for which purpose he may divide the state into districts in each of which a branch office of the state tax department may be maintained; he may appoint agents for the purpose of collecting such taxes and shall require from them reasonable bond.

2. The tax commissioner is hereby 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 act.

3. If, in the opinion of the tax commissioner any return or report is in any essential respect incorrect he shall have power to revise it, or if any taxpayer fails to make return as herein required, the tax commissioner is authorized to make an estimate of the taxable income of such taxpayer from any information in his possession, and to audit and state an account according to such revised return or the estimate so made by him for the taxes, penalties and interest due the state from such taxpayer.

4. The tax commissioner, for the purpose of ascertaining the correctness of any such return or report or for the purpose of making an estimate of taxable income of any taxpayer where information has been obtained, shall also 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 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.

5. The tax commissioner may also appoint a commissioner by a written appointment under his official seal for the purpose of such examination. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs, and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the tax commissioner. The tax commissioner shall, therefrom, or from any other data which shall be satisfactory to him, audit and state and account for the tax due the state.

6. The tax commissioner and each assistant, deputy and district di-

rector, or agent, and each cashier, senior auditor, auditor and junior auditor of the tax department shall have the power to administer an oath to any person, or to take the acknowledgment of any person in respect of any income tax report or return required by or pursuant to this act, or the rules and regulations of the tax commissioner.

Sec. 35. Lien of tax. All taxes, penalties and interest imposed under this act shall be a lien and binding upon the real and personal property of the individual, partnership, association or corporation liable to pay the same, from the time the warrant for their collection is docketed as provided in section 31 until the same is paid in full. But the lien of each such tax or additional tax imposed under this act shall be subject to the lien of any recorded mortgage indebtedness existing against real property previous to the time when the tax or additional tax is due and payable and where such mortgage indebtedness has been incurred in good faith, whether as a purchase money mortgage or otherwise. Where title to real property passes from an individual or corporation to another individual or corporation which is in default for such tax or additional tax, the lien herein provided shall not be enforceable except as to any equity after the prior mortgage encumbrance.

Sec. 36. Release from tax lien. The tax commissioner may, upon application made to him and the payment of a fee of \$5, release any real property from the lien of any tax or taxes due or to become due under this act, provided payment be made to the tax commissioner of such a sum as the tax commissioner shall deem adequate consideration for such release, or deposit be made of such security or such bond be filed as the tax commissioner shall deem proper to secure payment of any tax or taxes the lien of which is being released. The application for such release shall contain an accurate description of the property to be released, together with such other information as the tax commissioner may require. Such release shall be given under the seal of the tax commissioner and may be recorded in any office in which conveyances of real estate are entitled to be recorded.

Sec. 37. Preservation of reports. All reports required to be filed under this act shall be preserved for 5 years and thereafter until they shall be destroyed by order of the tax commissioner.

Sec. 38. Secrecy required of officials; penalty for violation. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax commissioner, his agent, clerk or other officer or employee to divulge or make known in any manner the amount

of income or any particular set forth or disclosed in any report or return required under this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the tax commissioner in an action or proceeding under the provisions of this act to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this act when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or proceedings 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 nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney-general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based therein, or against whom an action or proceeding has been instituted in accordance with the provisions of this act.

2. Any offense against subdivision 1 of this section shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment, at the discretion of the court, and if the offender be an officer or employee of the state he shall be dismissed from office and incapable of holding any public office in this state for a period of 5 years thereafter.

3. Notwithstanding the provisions of this section, the tax commissioner may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing taxes substantially similar to those imposed under this act, or the authorized representative of any such officer to inspect the returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return or supply him with information concerning any item contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted or such information furnished to such officer only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of the taxes imposed by this act.

Sec. 39. Repeal of poll tax. Section 7 of chapter 13 of the revised statutes is hereby repealed.

Sec. 40. Validating provision. If any clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 41. When this act to take effect. This act shall take effect on July 1st, 1935, except that the tax hereby imposed shall be first levied, collected and paid upon and with respect to incomes received during the calendar year 1935, or any fiscal year ending within such calendar year.