

MAINE STATE LEGISLATURE

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

Legislative Document

No. 951

S. P. 41

In Senate, January 10, 1939.

Referred to Committee on Taxation. Sent down for concurrence and 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Providing for Taxation of Incomes of Individuals and Partnerships and Franchises of Corporations.

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

Sec. 1. Definitions. For the purposes of this act and unless otherwise required by the context:

I. "Assessor" means the state tax assessor, appointed under chapter 216 of the public laws of 1931.

II. "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate acting in any fiduciary capacity for any person, estate, or trust.

III. "Fiscal year" means an income year, ending on the last day of any month other than December.

IV. "Foreign country" means any jurisdiction other than one embraced within the United States. The words "United States" when used in a geographical sense, include the states, the territories of Alaska and Hawaii, the District of Columbia and the possessions of the United States.

V. "Income year" means the calendar year or the fiscal year, upon the basis of which the net income is computed under this chapter; and if no fiscal year has been established, it means the calendar year.

VI. "Individual" means a natural person.

VII. "Net income" means the gross income of a taxpayer less the deductions allowed by this act.

VIII. "Paid" for the purposes of the deductions under this act means "paid or accrued" or "paid and incurred," and the words "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The word "received" for the purpose of computation of the net income under this act means "received or accrued," and the words "received and accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

IX. "Person" includes individuals, fiduciaries, partnerships and corporations.

X. "Taxpayer" includes any corporation, individual or fiduciary subject to the tax imposed by this act.

XI. "Tax year" means the calendar year in which the tax is payable.

Sec. 2. Rate; exemptions; amount. A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to:

I. His net income as herein defined, after deducting the exemptions provided in this act, at the rate of 2%; and

II. To the income received by him on account of the ownership or use of or interest in any stock, bond, note agreement or other interest bearing security at the rate of 4%; but the words "income received by him on account of the ownership or use of or interest in any stock, bond, note, agreement or other interest bearing security" shall not include the following items which shall be exempt from taxation under this chapter:

(a) Interest upon the obligations of the United States or its possessions.

(b) Interest upon the obligations of the state of Maine, or issued by any political subdivision of the state of Maine when the rate of interest does not exceed 5% per year.

(c) Interest on deposits in all savings banks, savings institutions, trust companies, savings banks and trust companies and in national banks within this state which pay a tax on such deposits, and in such institutions in those states by laws of which moneys on deposit are or shall be exempt from taxation in such state to the owner thereof.

(d) Dividends on stocks of those corporations which are subject to taxation under the provisions of chapter 13 of the revised statutes, but if a

corporate franchise tax is not measured by the entire net income of such corporation, than a portion of the dividends paid by such corporation shall be taxable under this chapter, and such taxable portion shall be that proportion of the dividend as the income earned by the corporation from business done without the state of Maine bears to the entire income of the corporation.

(e) In case the income taxed in this section is derived wholly from ownership of or interest in any stock, bond, note or other interest bearing security, there shall be deducted from such income the following exemptions:

1. In case of a single individual a personal exemption of \$400.
2. In the case of the head of a family, or a married individual living with husband or wife, a personal exemption of \$800; but if either a husband or a wife shall receive any income other than that derived from ownership of or interest in any stock, bond, note or other interest bearing security, then such personal exemption shall not be allowed. A husband and wife, living together, shall receive but 1 personal exemption of \$800 against their aggregate net income; and in case they make separate returns, the personal exemption of \$800 may be taken by either or divided between them.

Sec. 3. Fiduciaries. I. The taxes imposed by this act shall be imposed upon fiduciaries, which taxes shall be levied, collected and paid annually with respect to:

(a) That part of the net income and the gross income from stocks, bonds, notes, agreements or other interest bearing securities of estates or trusts which has not been distributed to beneficiaries during the income year. In the case of 2 or more joint fiduciaries, part of whom are non-residents of the state, such part of the net income shall be treated as if each fiduciary had received an equal share.

(b) The net income and income from stocks, bonds, notes, agreements or other interest bearing securities received during the income year by deceased individuals who, at the time of death, were residents and who have died during the tax year without having made a return.

(c) The net income and income from stocks, bonds, notes, agreements or other interest bearing securities of resident insolvent or incompetent individuals, whether or not any portion thereof is held for future use of the beneficiaries, where the fiduciary has complete charge of such net income.

II. The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust.

Sec. 4. Gross income defined; exemptions. I. The words "gross in-

come" include 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, business, commerce, and net rentals from real and personal property. The amount of such items shall be included in the gross income of the income year in which received by the taxpayer, unless, under the methods of accounting permitted by this act, any such amounts are to be properly accounted for as of a different period.

II. The words "gross income" do not include the following items, which shall be exempt from taxation under this act:

(a) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;

(b) Amounts received (other than amounts paid by reason of the death of the insured) under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract;

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

(d) 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;

(e) Any amounts received through accident or health insurance or under workman's compensation acts, or under any plan for employees' pensions, disability benefits and death benefits, as compensation for personal injuries or sickness or disability, plus the amount of any damages received, whether by suit or agreement, on account of any injury or sickness;

(f) An individual or fiduciary who holds in trust a fund to be used exclusively for charitable, benevolent, religious, public or educational purposes.

Sec. 5. Basis of return; partnerships and trusts. I. Taxpayers who customarily estimate their income on a basis other than that of actual cash receipts and disbursements may, with the approval of the assessor, return their net income under this chapter upon a similar basis. Taxpayers who customarily estimate their income on the basis of an established fiscal year, instead of on that of the calendar year, may, with the approval of the assessor, and subject to such rules and regulations as he may establish, return their net incomes under this act on the basis of such fiscal year, in lieu of that of the calendar year.

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

III. An individual carrying on a business in partnership shall be liable for income tax only in his individual capacity and shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the income year.

IV. Every individual, taxable under this act, who is a beneficiary of an estate or trust, shall include in his gross income the distributive share of the net income of the estate or trust and the income from stocks, bonds, notes, agreements or other interest bearing securities held by such estate or trust, received by him or distributable to him during the income year and upon which the fiduciary has not paid a tax under section 3, paragraph 1 (a) of this act. Unless otherwise provided by the will, the deed or other instrument creating the estate, trust or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary) in the case of income accumulated for future distribution ratably, in proportion to their respective interests.

Sec. 6. Inventory. When in the opinion of the assessor 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 assessor may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income, and conforming, so far as may be, to the forms and methods prescribed by the United States commissioner of internal revenue, under the acts of congress then providing for the taxation of incomes.

Sec. 7. Deductions allowed. In computing income there shall be allowed as deductions:

I. All ordinary and necessary expenses paid during the income year in carrying on any profession, vocation, trade or business, including a reasonable allowance for salaries or other compensation for personal 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 profession, vocation, trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

II. All interest paid or accrued within the income year, imposed by the authority of the United States or any of its possessions or of any state, territory or the district of Columbia or of any foreign country, chargeable to the profession, vocation, trade or business; except inheritance taxes, and except income taxes imposed by this act and taxes assessed for local betterments, of a kind tending to increase the value of the property assessed;

III. All interest paid by the taxpayer during the income year.

IV. Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in the profession, vocation, trade or business.

V. A reasonable allowance for the depreciation and obsolescence of property used in the profession, vocation, trade or business; and, in the case of mines and quarries, other natural deposits and timber, a reasonable allowance for depletion; provided, that in computing the deductions allowed under this paragraph, the basis shall be the cost (including in the case of mines, quarries and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, 1931, the fair market value of the property (or the taxpayers interest therein) on that date shall be taken in lieu of cost up to date. The reasonable allowances under this paragraph shall be made under the rules and regulations to be prescribed by the assessor.

VI. Debts ascertained to be worthless and charged off within the income year;

VII. In the case of taxpayers who keep regular books of account upon an accrual basis and in accordance with standard accounting practice, reserves for bad debts and for contingent liabilities, under such rules and restrictions as the assessor may impose. When he shall at any time deem the reserve excessive in amount, he may restore such excess to income either in a subsequent year or as part of the income of the income year and assess it accordingly;

VIII. Contributions or gifts within the income year to organizations operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 15% of the taxpayer's total net income as computed without the benefit of this subdivision. Such contributions or gifts shall be allowable as deductions only if verified under the rules and regulations prescribed by the assessor.

IX. Taxes, water rents, insurance, and a reasonable allowance for maintenance and depreciation on leased real and personal property.

Sec. 8. Deductions not allowed. In computing net income no deductions shall in any case be allowed in respect of:

I. Personal, living or family expenses;

II. Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;

III. Any amount expended in restoring property for which an allowance is or has been made;

IV. Premiums paid on any life insurance policy covering the life of any officer or employee or of any individual 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. 9. Exemptions. I. There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of \$1000;

(b) In the case of the head of a family, or a married individual living with husband or wife, a personal exemption of \$2000. A husband and wife living together shall receive but one personal exemption of \$2000 against their aggregate net income; and in case they make separate returns, the personal exemption of \$2000 may be taken by either or divided between them;

(c) \$250 for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under 18 years of age or is incapable of self-support, because mentally or physically defective;

(d) In the case of a fiduciary, if taxable under clause (a) of paragraph I of section 3, a personal exemption of \$1000; if taxable under clause (b) of such paragraph, the same exemption as would be allowed the deceased, if living; if taxable under clause (c) of such paragraph, the same exemption to which the beneficiary would be entitled.

II. The status on the last day of the income year shall determine the right to the exemptions provided in this section; provided that a taxpayer shall be entitled to such exemptions for husband or wife or dependent who has died during the income year.

Sec. 10. Deductions; foreign business. When any part of the income taxable under this act is derived from conduct of trade or business by the taxpayer wholly or partly outside of the state and the taxpayer has paid or will pay to any other state or country an income tax on the portion of such income attributable to the business in such state or country the amount of such taxes shall be allowed as a direct credit, in reduction of the taxes which would otherwise be payable hereunder upon the same income. Such credit shall be allowed only on presentation of satisfactory proof that the taxpayer is entitled to the same.

Sec. 11. Return. I. Each resident, having a net income as herein defined during the income year of \$1000 or over, if single, or if married and not living with husband or wife; or having a net income for the income year of \$2000 or over, if married and living with husband or wife; and every person receiving taxable interest or dividends; shall make a return under oath,

stating specifically the items of his gross income and the deductions and exemptions allowed by this act; and the items of interest and dividends so received.

II. When a husband and wife living together have an aggregate net income of \$2000 or over, each shall make such a return, unless the income of each is included in a single joint return.

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

Sec. 12. Return by fiduciary. I. Each fiduciary subject to taxation under the provisions of this act, as provided in section 3, shall make a return under oath, for the individual estate, or trust for whom or for which he acts, if the net income thereof amounts to \$1000 or over and of all interest and dividends received by him as such fiduciary.

II. The return made by a fiduciary shall state specifically the items of gross income, and the deductions and exemptions allowed by this act, the interest and dividends received by him and such other facts as the assessor may prescribe, and under such regulations as he may prescribe. A return may be made by 1 or 2 or more joint fiduciaries.

III. Fiduciaries required to make returns under this act shall be subject to all the provisions thereof which apply to individuals.

Sec. 13. Return by non-taxpayer. I. Each individual, partnership, corporation, joint stock company or association or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer and interest on savings deposits), salaries, wages, rentals, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income amounting to \$1000 or over, paid or payable during any year to any individual or fiduciary, resident of the state, shall make a complete return thereof under oath, to the assessor, under such regulations and in such form and manner and to such extent as he may prescribe.

II. Each partnership, having a place of business in the state, shall make return, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if dis-

tributed, and the amount of the distributive share of each individual. This return shall be sworn to by any one of the partners.

III. Each fiduciary shall make, under oath, a return for the individual, estate or trust for whom or for which he acts, in which case the fiduciary shall set forth in such return the items of the gross income if in excess of \$1000, the deductions allowed by this act, the net income, the interest and dividends received by him, the names and addresses of the beneficiaries, the amounts distributable or distributed to each and the amount, if any, lawfully retained by him for future distribution. Such return may be made by one of two or more joint fiduciaries.

Sec. 14. Form; time. Returns shall be in such form as the assessor may from time to time prescribe and shall be filed at his main office or at any branch office which he may establish, on or before the 15th day of the 3rd month next after the preceding calendar year and on or before March 1. In cases of sickness, absence or other disability, or whenever in his judgment good cause exists, the assessor may allow further time for filing returns. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The assessor shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve a taxpayer from the obligation of making the return herein required.

FRANCHISE TAXES

Sec. 15. Definitions. I. "Corporation" includes a joint stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument.

II. "Doing business" means any transaction or transactions in the course of its business by a corporation taxable hereunder created under the laws of this state; or by a foreign corporation qualified to do or doing business in this state.

III. "Franchise tax" means a tax on every domestic corporation for the privilege of exercising its franchise in this state in a corporate or organized capacity, and a tax on every foreign corporation for the privilege of doing business in this state, taxable under this act, measured by or according to the net income of such corporation.

IV. "Net income" means the total net income reported by the corporation to the United States treasury department for such fiscal or calendar year constituting the "income year" as herein defined plus all income re-

ceived by such corporation as dividends on shares of stock owned by it, and plus all interest received on bonds owned by such corporation except such dividends and such interest as shall not be included in "net income" as provided by section 18, but any exemption allowed by the United States treasury department and without deductions for losses sustained by the corporation in other fiscal or calendar years although such losses in other fiscal or calendar years may have been allowed to be deducted by the United States treasury department in a subsequent year shall not be allowed:

V. "Taxpayer" includes every manufacturing, mercantile, business or holding corporation subject to the tax imposed by this act.

Sec. 16. Rate. For the privilege of exercising its franchise in this state in a corporate or organized capacity, every domestic corporation and for the privilege of doing business in this state every foreign corporation, liable to tax under this act shall annually pay to this state a franchise tax to be measured by its net income to be computed in the manner hereinafter provided at the rate of 2% upon the basis of its net income as herein computed, for the next preceding fiscal or calendar year.

Sec. 17. Basis on business within the state. If the entire business of the corporation be transacted within the state, the tax imposed shall be based upon the entire net income of such corporation for such fiscal or calendar year. If the entire business of the corporation be not transacted within the state and its gross income derived from business done both within and without the state, the determination of its net income shall be based upon the business done within the state and for the purpose of computing such net income the assessor shall adopt such recommendations and regulations for the allocation of net income as will fairly and justly reflect the net income of that portion of the business done within the state.

Sec. 18. Computation of income. Each corporation liable for the tax imposed under the provisions of this act shall compute its net income in the manner that such net income is reported to the United States treasury department, and the report and such net income shall be presumably the same as the net income which such corporation is required to report to the United States treasury department. To such income there shall be added:

I. All dividends on shares of stock received by the corporation during the income year. In case of dividends received from corporations liable to tax under the provisions of this act, a portion of such dividends may be excluded from the computation of net income under such regulations as may be issued in accordance with the provisions of section 17.

II. All interest received on bonds and other evidence of indebtedness

except that there shall not be included in net income interest on bonds or other evidence of indebtedness issued by the United States or by the state of Maine or by any political subdivision of the state of Maine;

III. Such net income shall not, however, be decreased by any exemptions allowed by the United States treasury department.

Sec. 19. Deductions. In computing net income there shall be allowed as deductions from gross income all deductions allowed by the United States treasury department except losses incurred by the corporation in other fiscal or calendar years.

Sec. 20. Computation of gains and losses. I. For the purpose of ascertaining gain or loss from the sale or other disposition of property real, personal or mixed, the basis shall be in case of property acquired before January 1, 1931, the fair market price or value of such property as of that date if such price or value exceeds the original cost, and in all other cases the cost thereof; provided that in the case of property included in the last preceding annual inventory for the purpose of allocating net income, such inventory value shall be taken in lieu of cost or market value. The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of stock or securities of the corporation owned by it, and the gain or loss shall be computed accordingly.

II. When property is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of such cash to the amount of its fair market value, provided a market exists in which all the property received can be disposed of at the time of exchange, for a reasonably certain and definite price in cash; otherwise such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

III. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor and no gain or loss shall be deemed to arise therefrom.

IV. When, in connection with the reorganization, merger or consolidation of a corporation, a taxpayer receives, in place of stock or securities owned by it, new stock or securities, the basis of computing the gain or loss if any shall be, in case the stock or securities owned were acquired before January 1, 1931, the fair market price or value thereof as of that date, if such price or value exceeds the original cost, and in all other cases the cost thereof.

Sec. 21. Consolidation. When a corporation taxable hereunder shall

acquire either directly, indirectly or by merger or consolidation the major portion of the actively employed assets of the franchises of another corporation or of corporations exercising a franchise or doing any business in this state during any year, or shall merge or consolidate another corporation, it shall file a report within 60 days and include therein a statement showing its own net income and the consolidated net income of all such corporations for the preceding calendar or fiscal year to the extent that all such income has not been used or included in measuring the franchise tax to this state.

Sec. 22. Form of returns. Returns and reports required by this act shall be in such form as the assessor may from time to time prescribe and shall be filed at his main office or at any branch office which he may establish, within 30 days of the date that any corporation taxable hereunder should have filed a return with the United States treasury department. Every such return or report shall be verified by oath of an officer of the corporation.

Sec. 23. Details of returns. Each corporation taxable under this act as well as foreign mercantile, manufacturing or business corporations having officers, agents or representatives within the state shall, within 30 days after making its report of net income to the United States treasury department for any fiscal year or calendar year, transmit to the assessor a report in the form prescribed by the assessor specifying:

I. The name and location of the principal place of business of such corporation, the state under the laws of which organized, and the date of organization; the amount of issued capital stock and the kind of business transacted; the total par value of bonds and other evidences of indebtedness issued by the United States or by the state of Maine or by any political subdivision of the state of Maine owned by the corporation; if the corporation have a fiscal year, the date on which its fiscal year terminates;

II. The amount of its entire net income for its preceding fiscal or the preceding calendar year as provided in subdivision IV of section 15, which shall be presumed to be the entire net income which the corporation was required to report to the United States treasury department for such year, plus the amounts set forth in section 18. When the corporation shall claim that the return made by it to the United States treasury department was inaccurate, the amount claimed by it to be net income and the basis of such claim shall be specified. Losses sustained by the corporation in other fiscal or calendar years whether deducted by the United States or not, shall not be deductible, and such losses sustained in prior years, if allowed and deducted by the United States shall be specified;

III. The amount claimed as deductions under section 19.

IV. The average monthly value for the fiscal or calendar year of its real property and tangible personal property within the state, and the average monthly value of all its real property and tangible personal property wherever located;

V. The average monthly value for the fiscal or calendar year of bills and accounts receivable arising from (a) personal property sold by the corporation manufactured by it within the state; (b) personal property owned by the corporation and not manufactured by it within the state but sold by it or its agents and located within the state at the time of the receipt of the order;

VI. The average total monthly value for the fiscal or calendar year of all bills and accounts receivable arising from the manufacture of personal property, or the sale of or trading in personal property by the corporation within and without the state;

VII. The average total value for the fiscal or calendar year of the stock of other corporations owned by the corporation, and the proportion of the average value of the stock of such other corporations liable to tax under this chapter, as allocated pursuant to section 17.

VIII. Such other facts as the assessor may require for the purpose of making any computation required by this chapter;

IX. Any corporation taxable hereunder may omit from its report the statements required by subdivisions IV, V, and VI of this section by incorporating in its report a consent to be taxed, such tax to be measured by its entire net income;

X. The assessor may permit or require any corporation owning or controlling, directly or indirectly, substantially all of the capital stock of another corporation or of other corporations, to make a consolidated report showing the combined net income, such assets of the corporation or corporations as are required for the purpose of this chapter and such information as the assessor may require; but excluding intercorporate stockholding and intercorporate accounts;

XI. If it shall appear to the assessor that the segregation of assets shown by any report made under this section does not properly reflect the corporate activity or business done in this state, because of the character of the business of the corporation and the character and location of its assets, the assessor is authorized and empowered to equably adjust the tax upon the basis of the corporate activity or the business done within and without the state rather than upon capital or assets employed.

Sec. 24. Penalty. A corporation which fails to make any return or report required by this act shall be liable to a penalty of 25% of the tax, to be

added thereto and assessed and collected in the manner provided for the assessment and collection of taxes under this act, or in civil action to be brought in the superior court held within and for the county of Kennebec by the assessor ; and an officer of any such corporation who makes a fraudulent return or statement with intent to defeat or evade the payment of the taxes prescribed by this act, shall be liable to a penalty of not more than \$1000.

Sec. 25. Exemptions. The following corporations shall not be deemed to be mercantile, manufacturing, or business corporations within the meaning of this act, and shall be exempt from the taxes imposed :

I. Corporations organized under the National Banking Act ;

II. Mutual savings banks, savings banks and trust companies, trust companies, and building and loan associations ;

III. Railroad, express, telephone, telegraph, steamboat, trolley or electric railway corporations, sleeping and parlour car and dining car companies, insurance, surety and guaranty companies, mutual or otherwise ;

IV. Life, fire and marine insurance corporations, and mutual life, fire and marine insurance companies ;

V. Cemetery corporations and associations, labor, agricultural or horticultural organizations, fraternal beneficiary societies, no part of the net earnings of which inures to the benefit of any private stockholder or individual member ;

VI. Sanitary corporations and corporations organized for religious charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member ;

VII. Business organizations, chambers of commerce or boards of trade not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual member ;

VIII. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare ;

IX. Clubs organized and operated exclusively for pleasure and recreation and other non-profit purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual member ;

X. Farmers' or other mutual hail, cyclone, fire or life insurance companies, mutual water companies, mutual cooperative telephone companies or similar organizations of a purely local character, the income of which companies consists solely of assessments, dues and fees collected from the members for the sole purpose of meeting the expenses of the company ;

XI. Farmers', fruit-growers, fishermen and like organizations organized and operated as cooperative sales agents for the purpose of marketing produce of members and turning back to such members the proceeds of sales, less all necessary selling expenses, on the basis of quantity of produce furnished by each member.

Sec. 26. Rules and regulations. The assessor shall be charged with the duty of administering and enforcing all provisions of this act, and with the approval of the governor is authorized and empowered to adopt, prescribe and from time to time alter and amend and to enforce reasonable rules, orders and regulations for the purpose of carrying out the provisions thereof. The assessor shall have authority to inquire into the management of the business of all taxpayers, subject to the provisions of this act, and may require by order or subpoena, the production at any time and place he may designate, of any books, papers, accounts or other information necessary to the carrying out the provisions thereof. All reports and returns shall be upon standard forms adopted by the assessor, with no more detailed information relating to the taxpayers business than is necessary to enable the assessor to administer fully the provisions of this act.

Sec. 27. Construction. Nothing in this act shall be construed to repeal the present annual corporation license taxes, nor as repealing any of the provisions of existing law, relating to the payment of taxes, licenses and fees.

MISCELLANEOUS PROVISIONS COMMON TO INCOME AND FRANCHISE TAXES

Sec. 28. Additional return. When the assessor is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return, or a supplementary return under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this act. When from a supplementary return or otherwise, the assessor finds that any items of income, taxable under this act, have been omitted from the original return, he may require the items so omitted to be disclosed to him under oath by the taxpayer, and added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of this act. The assessor may proceed under the provisions of section 33, whether or not he requires a return or a supplementary return under this section.

Sec. 29. Computation of tax; penalty. I. As soon as practicable after the return is filed, the assessor shall examine it and compute the tax, and the amount so computed by him shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the assessor within 10 days after notice of the amount shall be mailed by him.

II. When the return is made in good faith and the under statement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such under statement, but interest shall be added to the amount of the deficiency at the rate of $\frac{1}{2}$ of 1% for each month or fraction of a month.

III. When the understatement is found to be due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added interest at the rate of 1% per month or fraction of a month, to the amount of such difference.

IV. When the understatement is false or fraudulent, with intent to evade the tax, the tax on additional income discovered to be taxable shall be doubled and an additional 1% per month or fraction of a month shall be added.

V. The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

Sec. 30. Time of payment. I. One-quarter of the amount of the tax payable, as the same shall appear from the face of the return, shall be paid to the assessor at the office where the return is filed at the time fixed by law for filing the return and the balance shall be payable in equal installments on June, September and December 15 following; or if the taxpayer so elects he may pay the entire tax at the time of filing the return. If the time for filing the return shall be extended, interest at the rate of 6% per annum on the first quarterly payment from the time when the return was originally required to be filed to the time of initial payment shall be added and paid.

II. All taxes payable under this act may be paid in equal quarterly instalments. The first quarterly instalment shall be paid at the time of filing of the return and within 30 days of the date that the corporation should have filed a return with the United States treasury department. When the taxpayer so elects he may pay the entire tax at the time of filing the return. If the time for filing the return should be extended, interest at the rate of 6% per year on the first quarterly payment from the time when the return was originally required to be filed to the time of initial payment shall be added and paid.

III. The tax may be paid with uncertified check, during such time and under such regulations as the assessor shall prescribe, but if a check so re-

ceived is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Sec. 31. Assessment of additional tax; limitation. When the assessor discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, he may, at any time within 2 years after the time when the return was due, assess the same and give notice to the taxpayer of such assessment, and such taxpayer shall thereupon have an opportunity within 30 days, to confer with the assessor as to the proposed assessment. The limitation of 2 years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. After the expiration of 30 days from such notification, the assessor shall assess the income of such taxpayer or any portion thereof which he finds has not theretofore been assessed and shall give notice to the taxpayer so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within 10 days from the date of such notice. The provisions of this act with respect to revision and appeal shall apply to a tax so assessed. No additional tax amounting to less than \$1 shall be assessed.

Sec. 32. Warrant. When a tax imposed by this act or a portion of such tax is not paid within 60 days after the same becomes due, the assessor shall issue a warrant under his hand and 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 taxpayer in the amount prescribed for the levy and sale of property for the non-payment of town taxes, 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 assessor and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. Provided, however, that such taxpayer shall have the same right to redeem such property as is prescribed by law.

Sec. 33. Tax a debt to the state. Each 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, to be recovered in an action of contract on this statute.

Sec. 34. Action for collection; venue. Action may be brought by the attorney-general, at the instance of the assessor, in the name of the state, to recover the amount of taxes, penalties and interest due under this act, provided such action is brought within 6 years after the same are due.

Such action shall be returnable in the county where the taxpayer resides, if a resident of the state; and if a non-resident, the action shall be returnable in the county Kennebec.

Sec. 35. Failure to make return; penalty. I. When a taxpayer, without intent to evade any tax imposed by this act, shall fail to file a return of income or pay a tax, if one is due, at the time required by or under the provisions hereof, but shall voluntarily file a correct return of income 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 \$1 and an additional 1% for each month or fraction of a month during which the tax remains unpaid.

II. When any taxpayer, with intent to evade the payment of a tax, fails for a period of 60 days, to file a return of income or to pay a tax, if one is due, the assessor may add to the tax actually found to be due a penalty not to exceed 25% of such tax, such increased amount to be further increased by the addition of 1% for each month or fraction thereof from the time the tax was originally due to the date of payment.

III. The assessor shall have power, upon making record of his reasons therefor, to waive or reduce any additional taxes or interest provided herein.

IV. When a taxpayer fails to file a return within 60 days of the time prescribed by this act, a judge of the superior court, upon petition of the assessor, shall issue a citation requiring such person to file a return. The order of notice upon petition shall be returnable not later than 20 days after filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes issued under the provisions of this section shall be issued from the clerk's office in the county where the taxpayer resides, and, except as aforesaid, shall be returnable as the court shall order.

V. A person who, without fraudulent intent, fails to pay any tax or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, shall be punished by a fine of not more than \$100.

VI. A person, or officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this act or any lawful requirement of the assessor thereunder, shall fail to pay any tax or make, sign or verify any

VII. The attorney-general shall have power, with the consent of the

assessor, to compromise any penalty for which he is authorized to bring action. The penalties provided by subdivisions V and VI of this section shall be additional to all other penalties herein provided.

VIII. The certificate of the assessor 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.

IX. When a taxpayer, who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the assessor of his delinquency, refuses or neglects within 20 days after such notice to file a proper return, or files a fraudulent return, the assessor shall determine the income of such taxpayer according to his best information and belief and may increase the amount so determined by a penalty not to exceed 50% of such amount. He may in his discretion allow further time for the filing of a return in such case. No assessment shall be made under this act unless made within 2 years from the date on which a correct return should have been filed.

Sec. 36. Failure to make return; hearing. The assessor may for good cause shown extend the time within which a taxpayer is required to file a return or report. When a return or report is not made as herein required, the assessor is authorized to make an estimate of the net income of such taxpayer and of the amount of tax due under this act, from any information in his possession. He may examine or cause to be examined, in case of failure by the taxpayer to make a return or report, or in case the return or report is unsatisfactory to him, the books and records of such taxpayer. For the purpose of making such examination the assessor or his duly appointed deputy may examine witnesses under oath and take such testimony as may be necessary, and the cost of such examination shall be added to the taxes and penalties provided herein.

Sec. 37. Revision of assessments; hearing. A taxpayer may apply to the assessor for a revision of the tax assessed against him at any time within 2 years from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The assessor shall grant a hearing thereon and if, upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and adjust the computation of the tax accordingly. The assessor shall notify the taxpayer of his determination and the state shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to

be due in the manner provided in section 29. When the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return or, having previously filed an incorrect return, has failed, after notice, to file a proper return, the assessor shall add to the tax 50% of the amount for which the taxpayer is found to be properly assessed.

Sec. 38. Appeal. The determination of the assessor upon any application made by a taxpayer for revision of any tax assessed under the provisions of this act may be reviewed by the superior court within and for the county of Kennebec, or the superior court in and for the county in which the taxpayer resides, if a resident of this state on petition filed by the taxpayer against the assessor. The petition shall be brought within 90 days after receipt by the taxpayer or his agent of written notice by the assessor of his determination given as provided in section 37, and shall be brought to the next term of the superior court if there is time for notice; if not, to the succeeding term of such court and shall be served on the assessor at least 12 days before the return term of court. The citation attached to the petition shall be signed by the county clerk. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found to be entitled may be granted and any taxes, interest or penalties paid, found by the court to be illegally assessed, shall be ordered refunded to the taxpayer with interest at 6% per year from the time of payment, with costs, and judgment entered accordingly.

Sec. 39. Procedure. The assessor, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, shall have power to examine or cause to be examined by an agent or representative designated by him for that purpose, any books, papers, records or memoranda of the taxpayer or any person or corporation in the state bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, at any place in the county where such person resides, and may take testimony and require proof material for his information, with power to administer oath to such person.

Sec. 40. Powers. Such officers as the assessor may designate shall have power to administer oaths or to take acknowledgment in respect of any return or report required by this act or the rules and regulations of the assessor.

Sec. 41. Publication of statistics. The assessor shall prepare and publish annually statistics reasonably available with respect to the operation of this act, including amounts collected, classification of taxpayers, income and exemptions, and such facts as are deemed pertinent and valuable.

Sec. 42. Secrecy of records; exceptions. I. Except in accordance with proper judicial order, or as otherwise provided by law, the assessor, a deputy, agent, clerk or other officer or employee shall not divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required hereunder. Nothing herein shall be construed 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 his duly authorized representative, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed. Reports and returns shall be preserved for 3 years and thereafter until the assessor orders them destroyed.

II. A person who violates any of the provisions of the foregoing paragraph of this section shall be punished by a fine of not more than \$1000 or imprisoned not more than 1 year, or by both such fine and imprisonment; and if the offender is an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office for a period of 5 years thereafter.

III. Notwithstanding the provisions of this section, the assessor may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing an income tax upon the incomes of individuals or corporations taxable under the provisions of this act, or the authorized representative of either such officer, to inspect the income tax returns of any such individual or corporation, or may furnish to such officer or his authorized representative an abstract of the return of income of such taxpayer; but such permission shall be granted or such information furnished to such officer or his representative, 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 income tax law.

Sec. 43. Rules and regulations. The assessor may, from time to time, with the approval of the governor, make such rules and regulations, not inconsistent with the provisions of this act, as he may deem necessary to enforce the same.

Sec. 44. Tax exclusive. All intangible personal property, the income of which is taxable under the provisions of this act, shall not be subject to any other form or method of taxation.

Sec. 45. Construction. When a clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by a court of competent jurisdic-

tion 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. 46. Fiduciary's account. I. No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge thereof finds, that all taxes imposed by the provisions of this act upon such fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond deposit or otherwise. The certificate of the assessor and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of such certificate.

II. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the assessor may, on behalf of the state agree upon the amount of taxes at any time due or to become due from such fiduciaries under provisions of this act, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

Sec. 47. Revenue to reduce property tax. The revenue provided by this act shall be applied to reduce the present property tax by allowing each city, town and plantation an annual rebate on taxes received from them by the state, said rebate to be that proportion of said taxes received which total revenue received by the state under this act bears to the total revenue received by the state under the present property tax system.

Sec. 48. Validating clause. If any clause, sentence, paragraph or part of this title 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 title, 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. 49. When this title to take effect. The tax hereby imposed shall be first levied, collected and paid upon and with respect to incomes received during the calendar year 1938.

Sec. 50. Name. This act shall be known and may be cited as the "Income and Franchise Tax Act."