

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1252**

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H. P. 1596

House of Representatives, March 6, 1947.

Transmitted by the revisor of statutes pursuant to joint order

Referred to the Committee on Taxation, sent up for concurrence and 2,000 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Elliott of Corinth.

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-SEVEN

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**AN ACT Imposing a Personal Income Tax and a Sales and Use Tax to  
Raise Additional Revenue and Equalize the Tax Burden.**

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

**Sec. 1.** R. S., c. 14, §§ 244-285, additional. Chapter 14 of the revised statutes, as amended, is hereby further amended by adding thereto new sections to be numbered 244 to 285, inclusive, to read as follows:

**'PERSONAL INCOME TAX.**

**Sec. 244.** Imposition of income tax; rates.

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

**A.** Upon a taxable net income of not more than \$1,000, 1%.

**B.** Upon a taxable net income of over \$1,000, but not more than \$3,000, 1% on the first \$1,000, and 2% on the next \$2,000, or fraction thereof.

**C.** Upon a taxable net income of over \$3,000, but not more than

\$6,000, 1% on the first \$1,000, and 2% on the next \$2,000, and 3% on the next \$3,000, or fraction thereof.

D. Upon a taxable net income of over \$6,000, but not more than \$10,000, 1% on the first \$1,000, 2% on the next \$2,000, 3% on the next \$3,000, and 4% on the next \$4,000, or fraction thereof.

E. Upon a taxable net income of over \$10,000, but not more than \$15,000, 1% on the first \$1,000, 2% on the next \$2,000, 3% on the next \$3,000, 4% on the next \$4,000, and 5% on the next \$5,000, or fraction thereof.

F. Upon a taxable net income of over \$15,000, 1% on the first \$1,000, 2% on the next \$2,000, 3% on the next \$3,000, 4% on the next \$4,000, 5% on the next \$5,000 and 6% on all over \$15,000.

II. 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 subsection I of this section, upon and with respect to the net income as defined in sections 244 to 285, inclusive, derived from all property owned and from every business, trade, profession, employment or occupation carried on in this state by such nonresident, except as provided in subsection III of section 246.

III. The taxes imposed hereby shall first be levied, collected and paid in the year 1949 except as otherwise provided in section 270, upon and with respect to the taxable income for the calendar year 1948.

Sec. 245. Person, net income, taxable net income, defined.

I. The term "person" shall not include corporations.

II. The term "net income" means the gross income of a taxpayer less the deductions allowed by section 247.

III. The term "taxable net income" means the net income less the personal credits allowed by section 249.

Sec. 246. Gross income defined. The term "gross income" includes:

I. Gains, profits and income derived from salaries, wages or compensation for personal service, or 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, royalties, dividends, including dividends paid in stock, whether of the corporation issuing

it or otherwise, 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 or statutory officer of this state, taking office after the time of the taking effect of sections 244 to 285, inclusive, shall be included in gross income and all acts fixing the compensation of such constitutional or statutory officers of this state are hereby amended accordingly.

II. The term "gross income" does not include the following items, which shall be exempt from taxation under the provisions of sections 244 to 285, inclusive:

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; except that interest paid on sums held by the insurer shall be included as gross income;

B. The amount received by the insured as a return of premium or premiums paid by the insured 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 such income, the tax on which is prohibited by congressional enactments;

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. Any pension, allotment, or allowance, including disability or dependency compensation, paid to a veteran or a veteran's legal dependents by reason of service in the military forces of the United States;

G. 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;

H. 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;

I. 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;

J. Income from whatever source derived which was earned or accrued or was payable before January 1st, 1948 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, 1948;

K. Amounts received from a corporation in cancellation, retirement or redemption of its stocks, bonds or other obligations 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, 1948 and is paid on account of stocks, bonds or other obligations entitled to participate in earnings and profits on dissolution or liquidation of the corporation.

III. In the case of taxpayers other than residents, gross income includes only the gross income subject to the jurisdiction of the state.

Sec. 247. Deductions. In computing net income there shall be allowed as deductions:

I. 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 the provisions of sections 244 to 285, inclusive, including a reasonable allowance of the 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 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, except when reimbursed.

II. 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 sections 244 to 285, inclusive, and

B. On indebtedness incurred or continued in connection with the purchasing or carrying of an annuity.

III. Taxes imposed by the authority of this state, or any county, school district, municipality or other taxing subdivision of this state, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; and not including inheritance, estate or income taxes of this state.

IV. 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 the section shall be the same as is provided in sections 263 and 264 for determining the gain or loss from the sale, exchange or other disposition of property.

V. 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, 1948 no more than its fair market value on that date shall be deducted. A worthless debt arising since January 1st, 1948 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 the provisions of sections 244 to 285, inclusive.

VI. A reasonable allowance for the exhaustion, wear and tear of property, the income of which is required to be included in gross income under the provisions of sections 244 to 285, inclusive, including a reasonable allowance for obsolescence.

VII. An allowance for depletion and for depreciation of improvements in the case of mines and other natural deposits, and timber, to be determined in accordance with the provisions of subsection V of section 262.

VIII. Expenses paid during the tax year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or any dependent; provided that such deduction shall include only such expenses as exceed 5% of the taxpayer's total net income as computed without benefit of this section.

IX. Contributions or gifts made within the taxable year verified under rules and regulations prescribed by the state tax assessor 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 of 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 earning 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 section 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.

X. 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 subject to the jurisdiction of the state taxable under the provisions of sections 244 to 285, inclusive, to a nonresident taxpayer, and the proper apportionment and allocation of the deductions with respect to sources of income subject to the jurisdiction of the state or not so subject shall be determined under rules and regulations to be prescribed by the state tax assessor.

Sec. 248. Items not deductible. 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 or in making good the exhaustion thereof for which an allowance is or has been made; or

IV. 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. 249. Personal credits. The amount of net income shown in any return under the provisions of sections 244 to 285, inclusive, shall be diminished before computation of the tax imposed by subsection I of section 244 by the following amounts:

I. In the case of a single person, \$500;

II. In the case of a head of a family, or a married person living with husband or wife, \$1,000;

III. In the case of a person who is supporting one or more dependents (other than husband or wife), if such dependents are under 18 years of age or are incapable of self-support, \$500 for each dependent.

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. 250. 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 state tax assessor 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. 251. Estates and trusts.

I. The taxes imposed by sections 244 to 285, inclusive, shall apply to the income of estates or of any kind of property held in trust.

II. The taxes shall be computed and paid upon the net income of the estate or trust by the fiduciary, 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 subsection III of section 246 for individuals other than residents.

Sec. 252. Taxpayers' returns.

I. Every person who received during the year a taxable net income of \$500 or over, if single, or \$1,000 or over if married, must report the same in the manner and form herein provided to the state tax assessor whether notified to do so or not, and shall be subject to the same penalties for failure to report as those who receive notice, provided, however, that nothing contained in this section shall preclude the state tax assessor from requiring any person to file an income tax return when in the judgment of the state tax assessor a return should be filed.

II. Married persons living together as husband and wife for more than 6 months in the taxable year may make separate returns or join in a single joint return. The tax shall be computed on the combined taxable income. On written request, a separate statement or tax bill shall be issued to husband and wife.

III. 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.

IV. Every nonresident subject to the tax imposed by sections 244 to 285, inclusive, and having a net income for the taxable year of \$500 or

over, or a gross income for the taxable year of \$1,000 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 said sections. A taxpayer other than a resident shall not be entitled to the deductions authorized by section 247 unless he shall make under oath a complete return of his gross income both within and without the state.

Sec. 253. Simplified returns permitted.

I. A taxpayer whose gross income for a tax year is less than \$5,000, and is derived entirely from wages as defined in paragraph D of subsection II of section 270, dividends, or interest, and whose gross income from sources other than wages does not exceed \$100, may make a return on such withholding statement received from his employer as may be prescribed by the state tax assessor. A taxpayer in making such return shall compute his tax in accordance with the following tax table, but such taxpayer shall not be entitled to make any deductions as provided by subsections II to IX, inclusive, of section 247:

If total income is		And the number of persons are as shown							
at least	but less than	1	2	3	4	5	6	7	8
\$600	\$700	\$1	0	0	0	0	0	0	0
700	800	2	0	0	0	0	0	0	0
800	900	3	0	0	0	0	0	0	0
900	1,000	3	0	0	0	0	0	0	0
1,000	1,100	4	0	0	0	0	0	0	0
1,100	1,200	5	0	0	0	0	0	0	0
1,200	1,300	6	\$1	0	0	0	0	0	0
1,300	1,400	7	2	0	0	0	0	0	0
1,400	1,500	8	3	0	0	0	0	0	0
1,500	1,600	9	4	0	0	0	0	0	0
1,600	1,700	9	5	0	0	0	0	0	0
1,700	1,800	10	5	0	0	0	0	0	0
1,800	1,850	11	6	\$1	0	0	0	0	0
1,850	1,900	12	6	2	0	0	0	0	0
1,900	1,950	13	7	3	0	0	0	0	0
1,950	2,000	14	7	3	0	0	0	0	0
2,000	2,050	15	8	3	0	0	0	0	0
2,050	2,100	16	8	3	0	0	0	0	0
2,100	2,150	17	8	3	0	0	0	0	0

If total income is		And the number of persons are as shown							
at	but less	1	2	3	4	5	6	7	8
least	than	Your tax is							
2,150	2,200	18	9	4	0	0	0	0	0
2,200	2,250	19	9	4	0	0	0	0	0
2,250	2,300	20	10	5	0	0	0	0	0
2,300	2,350	20	10	5	0	0	0	0	0
2,350	2,400	21	11	6	\$1	0	0	0	0
2,400	2,450	22	12	6	1	0	0	0	0
2,450	2,500	23	13	7	2	0	0	0	0
2,500	2,550	24	14	7	2	0	0	0	0
2,550	2,600	25	15	7	2	0	0	0	0
2,600	2,650	26	16	8	3	0	0	0	0
2,650	2,700	27	17	8	3	0	0	0	0
2,700	2,750	27	17	9	4	0	0	0	0
2,750	2,800	28	18	9	4	0	0	0	0
2,800	2,850	29	19	10	5	0	0	0	0
2,850	2,900	30	20	10	5	0	0	0	0
2,900	2,950	31	21	11	5	0	0	0	0
2,950	3,000	32	22	12	6	0	0	0	0
3,000	3,050	33	23	13	6	\$1	0	0	0
3,050	3,100	33	24	14	7	2	0	0	0
3,100	3,150	34	24	14	7	2	0	0	0
3,150	3,200	35	25	15	8	3	0	0	0
3,200	3,250	36	26	16	8	3	0	0	0
3,250	3,300	37	27	17	8	3	0	0	0
3,300	3,350	38	28	18	9	3	0	0	0
3,350	3,400	39	29	19	9	4	0	0	0
3,400	3,450	40	30	19	10	5	0	0	0
3,450	3,500	40	30	20	10	5	0	0	0
3,500	3,550	41	31	21	11	6	0	0	0
3,550	3,600	42	32	22	12	6	\$1	0	0
3,600	3,650	43	33	23	13	7	2	0	0
3,650	3,700	44	34	24	14	7	2	0	0
3,700	3,750	45	35	25	15	7	2	0	0
3,750	3,800	46	36	26	16	8	3	0	0
3,800	3,850	47	37	27	17	8	3	0	0
3,850	3,900	47	37	27	17	9	4	0	0
3,900	3,950	48	38	28	18	9	4	0	0
3,950	4,000	49	39	29	19	10	5	0	0
4,000	4,050	50	40	30	20	10	5	0	0

If total income is		And the number of persons are as shown							
at least	but less than	1	2	3	4	5	6	7	8
		Your tax is							
4,050	4,100	51	41	31	21	11	5	0	0
4,100	4,150	53	42	32	22	12	6	\$1	0
4,150	4,200	54	43	33	23	13	6	1	0
4,200	4,250	55	44	34	24	14	7	2	0
4,250	4,300	57	44	34	24	14	7	2	0
4,300	4,350	58	45	35	25	15	8	3	0
4,350	4,400	59	46	36	26	16	8	3	0
4,400	4,450	60	47	37	27	17	8	3	0
4,450	4,500	62	48	38	28	18	9	4	0
4,500	4,550	63	49	39	29	19	9	4	0
4,550	4,600	64	50	40	30	20	10	5	0
4,600	4,650	66	51	40	30	20	10	5	0
4,650	4,700	67	52	41	31	21	11	6	\$1
4,700	4,750	68	53	42	32	22	12	6	1
4,750	4,800	70	55	43	33	23	13	6	2
4,800	4,850	71	56	44	34	24	14	7	2
4,850	4,900	72	57	45	35	25	15	7	2
4,900	4,950	74	59	46	36	26	16	8	3
4,950	5,000	75	60	47	37	27	17	8	3

II. A taxpayer whose gross income for a tax year, except for the deductions permitted by subsection I of section 247 is less than \$5,000, may elect to make a short form return in such form as the state tax assessor shall prescribe. The taxpayer in making such return shall compute the tax in accordance with the tax table set forth in subsection I of this section, but such taxpayer shall not be entitled to make any deductions as provided by subsections II to IX, inclusive, of section 247.

III. A taxpayer whose gross income for a tax year, except for the deductions permitted by subsection I of section 247 is \$5,000 or over, may elect to enter a standard deduction of \$500 in his return, in lieu of the deductions which are provided for by subsections II to IX, inclusive, of section 247.

Sec. 254. Returns in case of changed residence. If a taxpayer during the taxable year changes his status from that of a resident to that of non-resident, or from that of nonresident to that of resident, he shall file 2 returns, once 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 frac-

tion 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 the provisions of this section.

Sec. 255. Time and place of filing returns. Returns of income by individuals shall be made to the state tax assessor on or before the 15th day of April of each year. The state tax assessor 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 state tax assessor may deem necessary for the proper enforcement of sections 244 to 285, inclusive. There shall be annexed to the return the signed statement 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 state tax assessor upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

Sec. 256. Time of payment. The total amount of tax imposed by sections 244 to 285, inclusive, shall be due on the date fixed in section 255 for filing returns. The taxpayer may elect to pay the tax in 2 equal instalments in which case the 1st instalment shall be paid on the date fixed for the filing of returns, the 2nd instalment shall be paid on the 15th day of the 6th month after such date. If any instalment 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 state tax assessor. The provisions of this section shall not apply to taxes withheld under the provisions of section 270.

Sec. 257. 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.

Sec. 258. Credit for taxes in case of nonresidents.

I. 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 the provisions of sections 244 to 285, inclusive, the state tax assessor shall credit the amount of tax payable by him under said sections 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 said sections 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 income of residents of this state.

II. 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 the 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.

III. No credit shall be allowed against the amount of the tax on any income taxable under the provisions of sections 244 to 285, inclusive, which is exempt from taxation under the laws of such other state or country.

Sec. 259. Contract to assume income tax illegal. It shall be unlawful for any person to agree to contract directly or indirectly to pay or assume the burden of any income tax payable by any taxpayer under the provisions of sections 244 to 285, inclusive. Any such contract or agreement shall be null and void and shall not be enforced or given effect by any court.

Sec. 260. Definitions. As used in sections 244 to 285, inclusive, and unless otherwise required by the context:

I. The word "taxpayer" includes any person, trust, estate, fiduciary, partnership, or unincorporated association, subject on its own account or for the account of another, to a tax imposed by sections 244 to 285, inclusive.

II. 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.

III. 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.

IV. 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 provisions of sections 244 to 285, inclusive. The words "fiscal year" mean an accounting period of 12 months, ending on any day of any month other than December 31st.

V. 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 of property for the benefit of another.

VI. 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 the provisions of sections 244 to 285, inclusive. 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 said section.

VII. The word "dividend" means any distribution made by a corporation to its shareholders or members, not a distribution of capital, whether in cash or in other property or in stock of the corporation, not including dividends paid or credited to policyholders by insurance companies, but an accumulation of income or profits shall not be regarded as capital.

VIII. 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.

IX. The words "foreign country" or "foreign government" means 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.

X. The words "withholding agent" include all individuals, partnerships, associations or corporations in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any 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 the provisions of sections 244 to 285, inclusive.

Sec. 261. Tax a debt. Every tax imposed by sections 244 to 285, inclusive, together with 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. 262. Computation of net income.

I. 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 sections 244 to 285, inclusive, 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 state tax assessor shall give permission to change such method under rules and regulations to be prescribed by him.

II. 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 state tax assessor does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in sections 244 to 285, inclusive, 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.

III. 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 state tax assessor, be computed on the basis of such new accounting period, subject to the provisions of sections 263 and 264.

IV. A taxpayer who in the course of his trade or business regularly sells or otherwise disposes of real or personal property on the instalment plan may report as income therefrom in any taxable year that proportion of the instalment 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 \$1,000, 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 subsection. As used in this subsection 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.

V. In the case of mines, other natural deposits, 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, 1948 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, that in the case of mines or other natural deposits discovered by the taxpayer on or after January 1st, 1948, 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, 1948, 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.

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

Sec. 263. 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:

I. In the case of property acquired on and after January 1st, 1948, the cost thereof, or the inventory value if the inventory is made in accordance with the provisions of sections 244 to 285, inclusive.

II. In the case of property acquired prior to January 1st, 1948, and disposed of thereafter, the basis shall be the cost thereof or the value thereof on January 1st, 1948, whichever is greater.

III. In the case of property acquired by gift or by transfer in trust after December 31st, 1947, 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, 1948, the basis shall be the value at the date of gift or the value on January 1st, 1948, whichever is greater.

IV. 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 subsections I and II of this section, except that the word "cost" as used in said subsections 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 subsections I or II of this section, except that the word "cost" as used in said subsections 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 pro-

vided in subsections I or II of this section, except that the word "cost" as used in said subsections 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.

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

A. proper adjustment shall be made for any expenditure, receipt, loss or other item properly chargeable to capital account, and

B. the bases 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 the provisions of sections 244 to 285, inclusive; 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 subsection V of section 262. In addition, if the property was acquired before January 1st, 1948, the basis (if other than the fair market value as of January 1st, 1948) 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, 1948.

VI. 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.

VII. 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, 1948.

VIII. If a taxpayer in any year after the calendar year of 1947 sustains a net loss, as defined in subsections I to VII, such loss may be offset against the net income of the subsequent year, and if not completely offset by the net income of such year, the remainder of such loss may be offset against the net income of the following year, but not beyond that time.

Sec. 264. Exchange of property. Upon the sale or exchange of property in trade or business the entire amount of the gain or loss determined under the provisions of section 263 shall be recognized except as hereinafter provided in this section.

I. If, any exchange of shares upon the reorganization of one or more corporations or of one or more partnerships, associations or trusts, the beneficial interest in which is represented by transferable shares, the new shares received in exchange for the shares surrendered represent the same interest in the same assets, no gain or loss shall be deemed to accrue from the transaction until a sale or further exchange of some new shares is made.

II. No gain or loss shall be recognized in cases where the state tax assessor shall deem it impractical to attempt presently the determination of any gain or loss and shall have provided by rule or regulation for non-recognition of postponement of the determination until further disposition of the property received.

III. 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 2 or more persons this subsection 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.

IV. 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 compulsory 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 state tax assessor, 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.

V. 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.

VI. If an exchange would be within the provisions of subsections I, II or III 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 sums of such money and the fair market value of such other property.

VII. If an exchange would be within the provisions of subsections I, II or III 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.

VIII. 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 transferor 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 or 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.

**IX. 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. 265. 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 purpose of sections 244 to 285, inclusive, 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 by the corporation.

**Sec. 266. Inventory.** Whenever in the opinion of the state tax 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 state tax 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.

**Sec. 267. 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 the provisions of sections 244 to 285, inclusive, 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. 268. Fiduciary returns.**

**I. 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 the provisions of sections 244 to 285, inclusive, 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.**

**II. Under such regulations as the state tax assessor may prescribe, a return by 1 or 2 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.

III. Fiduciaries required to make returns under the provisions of sections 244 to 285, inclusive, shall be subject to all of the provisions herein which apply to taxpayers.

Sec. 269. Returns when accounting period changed.

I. If a taxpayer, with the approval of the state tax assessor, 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.

II. In all 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. 270. Withholding and payment at the source.

I. For the calendar year 1948 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 the provisions of sections 244 to 285, inclusive, and amounting to \$500 or more, shall deduct and withhold therefrom the following amounts: 1% of the first \$1,000 or less, 2% of the next \$2,000 or less, 3% of the next \$3,000 or less, 4% of the next \$4,000 or less, 5% of the next \$5,000 or less, and 6% of all amounts over \$15,000 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 the provisions of section 249 as shown by a certificate filed with the withholding agent in form to be prescribed by the state tax assessor 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 the provisions of section 258, sufficient to offset all taxes imposed by sections 244 to 285, inclusive, in which case the state tax assessor may by regulation, relieve residents of such state from being required to make any return under sections 244 to 285, inclusive, and may prescribe a form of certificate of exemption to be filed by residents of such state with withholding agents. The state tax assessor may, by regulation, require withholding agents to forward to him at stated times any of the certificates mentioned in this subsection.

## II.

A. It shall be the responsibility of every employer, acting as a withholding agent, to withhold from all wages, except as provided in section 270, paid to residents of this state, on or after January 1, 1947, regardless of when the wages were earned, an amount determined by withholding schedules which shall be prepared by the state tax assessor and which shall be based on the taxes imposed herein.

B. An employer is any person or organization for whom an individual performs any service as an employee. The term "employer" includes an individual, corporation, partnership, trust, estate, joint-stock company, association, syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. It includes organizations which are themselves exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the state of Maine and political subdivisions thereof.

C. An employee is any individual who performs services subject to the legal right of the employer to control both the method and the result of the services.

If the relationship of employer and employee actually exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. The measurement, method, or designation of compensation is immaterial.



D. For the purpose of withholding income tax at the source, the term "wages" means all remuneration, whether in cash or goods, except as enumerated in paragraph E of this section, paid by an employer to an employee for services performed. For this purpose, the word "wages" shall cover all types of employee compensation, including payments commonly called wages, salaries, fees, bonuses, commissions, and retired pay.

Wages paid in any form other than money shall be measured by the fair market value of the merchandise, stocks, bonds, room or board, or other consideration given the employee in payment for his services. If living quarters or meals are furnished to an employee for the convenience of the employer, then the value of the room and board is not wages.

Amounts paid for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding.

E. Payments which are exempt from withholding consist of remuneration paid:

1. For agricultural labor,
2. For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority,
3. For casual labor not in the course of the employer's trade or business,
4. For services performed as a minister of the gospel, or,
5. As fees (but not salaries) to a public official.

If  $\frac{1}{2}$  or more of the employee's time in the employ of a particular person in a pay-roll period is spent in performing services the remuneration for which constitutes wages subject to withholding, then all amounts paid the employee for services performed in that pay-roll period are deemed to be wages subject to withholding. If less than  $\frac{1}{2}$  of the time is spent in performing services the remuneration for which constitutes wages, subject to withholding then none of the amount paid is deemed to be wages subject to withholding.

F. The state tax assessor shall prepare and make available to withholding agents, schedules based on the taxes imposed herein.

III. Every withholding agent required to deduct and withhold any tax under subsections I and II of this section shall make returns thereof upon the basis of each calendar year on such forms and at such times

throughout the year as the state tax assessor shall prescribe, and shall include therein such information as the state tax assessor shall require. The state tax assessor shall fix such times for the making of such returns and the payment of the amounts withheld as in his judgment is necessary to insure payment of such amounts. Such returns may, in the discretion of the state tax assessor, be consolidated with the returns required by section 271. 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.

IV. Income upon which any tax is required to be withheld at the source under the provisions of 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.

V. If any tax required under the provisions of this section to be deducted and withheld is paid by the recipient of the income, it shall not be so 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. 271. 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 the provisions of sections 244 to 285, inclusive, shall report the same to the state tax assessor under such regulation and in such form and manner and to such extent as may be prescribed by him.

Sec. 272. Audit of returns; protests and additional taxes.

I. As soon as practical after a return is filed under the provisions of sections 244 to 285, inclusive, the state tax assessor shall examine it and assess the tax.

II. If the state tax assessor determines that there is a deficiency in respect of the tax assessed under the provisions of sections 244 to 285, inclusive, or that any taxpayer has failed to make return, the state tax

assessor 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 heard at the office of the state tax assessor in Augusta, or in his discretion at some place in the county where the taxpayer resides.

III. 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 state tax assessor 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 state tax assessor 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. If the taxpayer shall have failed to file a return, the state tax assessor is authorized to make an estimate of the taxable income of such taxpayer from any information in his possession and to assess the tax on the basis of such estimate.

IV. If the understatement is due to negligence on the part of the taxpayer but without intent to defraud, or if after notice a taxpayer who has failed to file a return continues in default for 20 days, there shall be added to the amount of the deficiency 5% thereof or in the case of failure to file a return 5% of the assessment, as the case may be, 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 subsection, the interest provided for in this subsection shall in all cases be computed from the date the tax was originally due to the date of payment.

V. The state tax assessor, for the purpose of ascertaining the correctness of any 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 required to make 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.

VI. The state tax assessor may in writing and under his official seal appoint assistants for the purpose of examination. Every assistant 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 state tax assessor. The state tax assessor shall, therefrom, or from any other data which shall be satisfactory to him, determine and assess the tax due the state.

Sec. 273. Limitation of time of assessments; jeopardy assessments.

I. No additional tax shall be assessed against any taxpayer until after the state tax assessor 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.

Salaries, wages, fees, and other compensation paid to an employee or officer need not be reported if they are less than \$400, and interest, dividends, rents, royalties and payments of any kind to others than employees need not be reported if they are less than \$100.

II. If, however, the state tax assessor 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.

III. 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 state tax assessor

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 state tax assessor 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 state tax assessor 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 271, 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 state tax assessor.

IV. The amount of tax due under any return or report required by sections 244 to 285, inclusive, shall be determined and assessed by the state tax assessor within 3 months after the return was due unless the taxpayer shall in writing consent to an extension of time except, that

A. in 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 state tax assessor as provided in sections 244 to 285, inclusive, the tax may be determined and assessed within 60 days after a final determination by the court.

Sec. 274. Refunds and credits.

I. The taxpayer, at any time within 2 months after the payment of any original or additional tax assessed against him, may file with the state tax assessor a claim for refund under oath stating the grounds therefor, and in such form as the state tax assessor 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 state tax assessor or after certiorari proceedings have been begun as provided in the next section.

II. If, upon examination of such claim for refund it shall be determined by the state tax assessor 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 the provisions of sections 244 to 285, inclusive, and any balance thereof

shall be immediately refunded to the taxpayer. If the state tax assessor 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.

III. Where no questions of fact or law are involved and it appears from the records of the state tax assessor 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 state tax assessor 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 subsection.

IV. Refunds shall be made by the treasurer of state out of the proceeds of the tax retained by him as provided in sections 244 to 285, inclusive, and only upon a certificate of the state tax assessor approved by the state controller.

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

VI. Except as provided in subsections II and III of this section 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 subsection I of this section.

Sec. 275. Review of determination of state tax assessor.

I. The taxpayer may cause the final determination of the tax to be reviewed in the following cases:

A. A determination by the state tax assessor after protest filed confirming in whole or in part a tax assessed under the provisions of sections 244 to 285, inclusive;

B. A determination by the state tax assessor after protest filed that there is a deficiency of tax owing by the taxpayer as provided in section 272;

C. A determination by the state tax assessor after protest filed confirming in whole or in part a jeopardy assessment made by him under the provisions of section 273;

D. A determination by the state tax assessor rejecting in whole or in part a claim for refund filed under the provisions of section 274;

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

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

III. Any taxpayer, after protest filed and before final determination of liability, may at his option, pay the deficiency of tax claimed by the state tax assessor. In the event that it is finally determined by the state tax assessor, or on review of his determination, that any part of the original or additional tax was paid 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. 276. Penalties.

I. If any taxpayer, or withholding agent without intent to evade any tax imposed by sections 244 to 285, inclusive, 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 said sections, 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.

II. If any taxpayer or withholding agents 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 sections 244 to 285, inclusive, 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.

III. Any person and any officer of a corporation filing or causing to be filed any return, certificate, affidavit or statement required or authorized by sections 244 to 285, inclusive, which is wilfully false shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

IV. The state tax assessor shall have the power to compromise any penalty and additional interest chargeable against the taxpayer in accordance with the provisions of subsections I and II 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 subsections I and II and to extend the time for payment of such assessment in any case where due application has been made for a revision and or adjustment of the same under the provisions of sections 244 to 285, inclusive, to not later than 30 days after the service of the notice of a determination thereon.

V. If any individual, or any officer or employee of any partnership, association or corporation, with intent to evade any tax or any requirement of sections 244 to 285, inclusive, or any lawful requirement of the state tax assessor 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 said sections, 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 \$1,000, 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 \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, at the discretion of the court.

VI. The attorney-general shall have the power, with the consent of the state tax assessor, to compromise any penalty for which he is authorized to bring action under the provisions of subsection V of this section. The penalty provided by subsection V of this section shall be in addition to all other penalties in sections 244 to 285, inclusive, provided.

VII. The failure to do any act required by or under the provisions of sections 244 to 285, inclusive, shall be deemed an act committed in part



at the office of the state tax assessor in Augusta. The certificate of the state tax assessor to the effect that a tax had 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 said sections, 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. 277. Proceedings to recover tax.**

I. Whenever any person shall fail to pay any tax or penalty imposed by sections 244 to 285, inclusive, as herein provided, the attorney-general shall, upon the request of the state tax assessor, bring an action to enforce payment of the same. The proceeds of a judgment in such action shall be paid to the state tax assessor.

II. As an additional or alternative remedy, the state tax assessor may issue a warrant 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 state tax assessor 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 state tax assessor a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the tax imposed by sections 244 to 285, inclusive, 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 state tax assessor 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.

III. The state tax assessor shall also have for the collection of taxes and penalties assessed under the provisions of sections 244 to 285, inclusive, all the remedies provided by chapter 81 of the revised statutes, as amended, for the collection of taxes on personal property by collectors of taxes in incorporated places.

Sec. 278. Districts; branch offices; rules and regulations; oath.

I. The state tax assessor shall administer and enforce the taxes herein imposed; he may for this purpose divide the state into districts, in each of which a branch office may be maintained; he may, subject to the provisions of the personnel law, appoint such agents, assistants, and clerical employees as may be necessary for the purpose of collecting such taxes, interest, and penalties.

Withholding agents and taxpayers shall pay all taxes, interest and penalties imposed herein to the state tax assessor in the form of remittances payable to the treasurer of state, and the state tax assessor shall turn over such receipts to the treasurer of state daily.

II. The state tax assessor is hereby authorized to make such rules and regulations, and to require such facts and information to be reported, as he may deem reasonable to enforce the provisions of sections 244 to 285, inclusive.

III. The state tax assessor and each assistant or other agent thereunto duly authorized 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 sections 244 to 285, inclusive, or the rules and regulations of the state tax assessor.

Sec. 279. Lien of tax. All taxes, penalties and interest imposed under the provisions of sections 244 to 285, inclusive, 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 277 until the same is paid in full. But the lien of each such tax or additional tax imposed under the provisions of sections 244 to 285, inclusive, 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. 280. Release from tax lien. The state tax assessor 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 the provisions of sections 244 to 285, inclusive, provided payment be made to the state tax assessor of such a sum as the state tax assessor shall deem adequate consideration for such release, or deposit be made of such security or such bond be filed as the state tax assessor 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 information as the state tax assessor may require. Such release shall be given under the seal of the state tax assessor and may be recorded in any office in which conveyances of real estate are entitled to be recorded.

Sec. 281. Preservation of reports. All reports required to be filed under the provisions of sections 244 to 285, inclusive, shall be preserved for 5 years, and thereafter until they shall be destroyed by order of the state tax assessor.

Sec. 282. Secrecy required of officials; penalty for violation.

I. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the state tax assessor, 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 the provisions of sections 244 to 285, inclusive. 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 state tax assessor in an action or proceeding under the provisions of sections 244 to 285, inclusive, to which he is a party, or on behalf of any party to any action or proceeding under the provisions of said sections when the reports of 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 rep-

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 sections 244 to 285, inclusive.

II. Any offense against subsection I of this section shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, 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.

III. Notwithstanding the provisions of this section, the state tax assessor 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 the provisions of sections 244 to 285, inclusive, 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 statute or other provision 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 sections 244 to 285, inclusive.

Sec. 283. Elimination of state property tax. In the event that sections 244 to 285, inclusive, become effective January 1, 1948 for the purpose of collecting taxes as levied herein, there shall be no state property tax levied for the year 1948.

Sec. 284. Validating provisions. If any clause, sentence, paragraph or part of sections 244 to 285, inclusive, 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 said sections, 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. 285. When §§ 244-285 to take effect; proceeds; appropriation.**

I. The provisions of sections 244 to 285, inclusive, shall take effect as provided by law, except that the tax hereby imposed shall be first levied, collected and paid upon and with respect to incomes received during the calendar year 1948.

II. The proceeds derived from this tax shall be credited to the general fund and all receipts in excess of basic general fund appropriations shall be used to further reduce the property tax levies in Maine cities and towns.

III. There is hereby appropriated for expenditure by the state tax assessor in carrying out the provisions herein a sum not to exceed 4% of the gross revenues received during the first 12 months that this personal income tax is in effect and a sum not to exceed 2½% during the subsequent period.

**Sec. 2. R. S., c. 14, § 110, amended.** The 1st sentence of section 110 of chapter 14 of the revised statutes, as amended by section 6 of chapter 42 of the public laws of 1945, is hereby further amended to read as follows:

'Every corporation, person or association operating any railroad in the state under lease or otherwise shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of exercising its franchises and the franchises of its leased roads in the state, which, with the tax provided for in section 4 of chapter 81, is in place of all taxes upon such railroad, its property ~~and stock.~~'

**Sec. 3. R. S., c. 14, § 121, amended.** The 1st paragraph of section 121 of chapter 14 of the revised statutes, as amended by section 14 of chapter 42 of the public laws of 1945, is hereby further amended to read as follows:

'Every corporation, association or person operating in whole or in part a telephone or telegraph line within the state for tolls or other compensation shall pay to the state tax assessor, for the use of the state, an annual excise tax for the privilege of conducting such business within the state which tax, with the tax provided for in section 126, is in place of all taxes upon the property of such corporation, association or person employed in such business ~~and of all taxes upon the shares of the capital stock of any such corporation.~~'

**Sec. 4. R. S., c. 14, § 126, amended.** Section 126 of chapter 14 of the revised statutes is hereby amended to read as follows:

**'Sec. 126. Tax to be in lieu of all taxes.** The excise tax collected under the provisions of the 6 preceding sections shall be in lieu of all taxes upon any corporation therein designated, ~~upon its shares of capital stock~~ and its property; provided, however, that the land and buildings thereon owned by such corporation, association, or person shall be taxed in the municipality in which the same are situated. The assessment of taxes on such land and buildings shall be legal, whether assessed as resident or nonresident property.'

**Sec. 5. R. S., c. 14, §§ 142-144-A, 145-147-A, 152-154-A, 156-158-A, repealed.** Sections 142 to 144, inclusive, and section 144-A, as enacted by section 23 of chapter 42 of the public laws of 1945; sections 145 to 147, inclusive, and section 147-A, as enacted by section 26 of chapter 42 of the public laws of 1945; sections 152 to 154, inclusive, and section 154-A, as enacted by section 29 of chapter 42 of the public laws of 1945; and sections 156 to 158, inclusive, and section 158-A, as enacted by section 33 of the public laws of 1945, of chapter 14 of the revised statutes, are hereby repealed.

**Sec. 6. R. S., c. 14, § 155, amended.** Section 155 of chapter 14 of the revised statutes, as amended by section 30 of chapter 42 of the public laws of 1945, is hereby further amended to read as follows:

**'Sec. 155. Proceedings in case of failure to make returns and pay tax; authority of state tax assessor to examine books.** If any corporation, company, association or person fails to make the returns required by sections 118, 120 and 128, the state tax assessor shall make an assessment of a state tax upon such corporation, company, association or person on such valuation, or on such gross receipts thereof, as the case may be, as he thinks just, with such evidence as he may obtain, and such assessment shall be final. The state tax assessor or his duly authorized agent shall have access to the books of any corporation, company, association or person required to make returns under the provisions of sections 118 and 128, to ascertain if the required returns are correctly made. If any corporation, company, association, or person fails to pay the taxes required or imposed by sections 110, 117, 121 and 127, the state tax assessor shall forthwith commence an action of debt, in the name of the state, for the recovery of the same with interest at the rate of 10% a year. In addition to other remedies for the collection of state taxes upon any corporation, such taxes with interest at the rate of 10% a year may be recovered by an action of debt in the name of the state.'

**Sec. 7. R. S., c. 81, § 5, amended.** Section 5 of chapter 81 of the revised statutes is hereby amended to read as follows :

**'Sec. 5. Personal estate taxable.** Personal estate for the purposes of taxation ~~includes all~~ shall include **only tangible, physical** goods, chattels, ~~moneys~~ and effects, wheresoever they are; ~~and all vessels, at home or abroad; all obligations for money or other property; money at interest and debts due the persons to be taxed more than they are owing; all public stocks and securities; all shares in moneyed and other corporations within or without the state, except as otherwise provided by law; all annuities payable to the person to be taxed when the capital of such annuity is not taxed in this state; and all other property included in the last preceding state valuation for the purposes of taxation.'~~

**Sec. 8. R. S., c. 81, § 6, sub-§§ II, XIV, repealed.** Subsections II and XIV of section 6 of chapter 81 of the revised statutes are hereby repealed.

**Sec. 9. R. S., c. 81, § 6, sub-§ XI, amended.** Subsection XI of section 6 of chapter 81 of the revised statutes is hereby amended to read as follows :

**'XI.** The aqueducts, pipes, and conduits of any corporation supplying a town with water are exempt from taxation, when such town takes water therefrom for the extinguishment of fires without charge; but this exemption does not include therein ~~the capital stock of such corporation~~ any reservoir or grounds occupied for the same, or any property, real or personal, owned by such company or corporation, other than as hereinabove enumerated.'

**Sec. 10. R. S., c. 81, § 13, sub-§ III, amended.** Subsection III of section 13 of chapter 81 of the revised statutes is hereby amended to read as follows :

**'III.** Machinery employed in any branch of manufacture, goods manufactured or unmanufactured, and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed; ~~and in assessing stockholders for their shares in any such corporation, their proportional part of the assessed value of such machinery, goods, and real estate shall be deducted from the value of such shares.'~~

**Sec. 11. R. S., c. 81, § 13, sub-§ XI, repealed.** Subsection XI of section 13 of chapter 81 of the revised statutes is hereby repealed.

**Sec. 12. R. S., c. 81, § 14, repealed.** Section 14 of chapter 81 of the revised statutes is hereby repealed.

**Sec. 13. R. S., c. 81, § 17, amended.** Section 17 of chapter 81 of the revised statutes is hereby amended to read as follows :

**'Sec. 17. Stock of companies invested in other stock, how to be taxed.** When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank or other corporation in the state, for the security of the public, such investments shall not be liable to taxation ~~except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of said company.~~

**Sec. 14. R. S., c. 81, § 18, repealed.** Section 18 of chapter 81 of the revised statutes is hereby repealed.

**Sec. 15. R. S., c. 81, § 19, amended.** Section 19 of chapter 81 of the revised statutes is hereby amended to read as follows :

**'Sec. 19. Mortgaged personal property; loan secured by deed taxable to grantee.** When personal property is mortgaged or pledged, it shall, for purposes of taxation, be deemed the property of the party who has it in possession, and it may be distrained for the tax thereon. ~~Money or personal~~ **Personal** property, loaned or passed into the hands or possession of another, by any person residing in the state, secured by an absolute deed of real estate, shall be taxed to the grantee, as in case of a mortgage, although the land is taxed to the grantor or other person in possession.'

**Sec. 16. R. S., c. 81, §§ 24, 25, amended.** Sections 24 and 25 of chapter 81 of the revised statutes are hereby amended to read as follows :

**'Sec. 24. Property of manufacturing, mining, and smelting corporations, and of stock raising corporations, how taxed.** The buildings, lands, and other property of manufacturing, mining, and smelting corporations, not exempt from taxation, and all stock used in factories shall be taxed to the corporation, or to the person having possession of its property or stock, in the town or place where the buildings and lands are situated and where the property is kept, or where the stock is manufactured; and the buildings and lands and other property of agricultural and stock raising corporations shall be taxed to the corporation, or to the person having possession of its property, in the town where the buildings and lands are situated and where the personal property is kept; and there shall be a lien for 1 year on such property and stock for payment of such tax; and it may be sold for pay-



ment thereof as in other cases; ~~and shares of the capital stock of such corporations shall not be taxed to their owners.~~

**Sec. 25. Property of corporations organized for dealing in real estate, where taxed; lien.** The buildings, lands and all other property, real and personal, ~~including all reserve funds, accumulations, and undivided profits~~ of corporations organized for the purpose of buying, selling and leasing real estate shall be taxed to the corporation or the persons having possession of such property, in the place where such land and other property are situated, and there shall be a lien for 1 year on such property for the payment of such tax, and the same may be sold for payment thereof as in other cases; ~~and shares of the capital stock of such corporations shall not be taxed to the owners thereof.~~

**Sec. 17. R. S., c. 14, §§ 286-360, additional.** Chapter 14 of the revised statutes, as amended, is hereby further amended by adding thereto new sections to be numbered 286 to 360, inclusive, to read as follows:

### ‘Sales and Use Tax

#### General Provisions and Definitions

**Sec. 286. Title.** Sections 286 to 360, inclusive, shall be known and may be cited as the “Sales and Use Tax Law.”

**Sec. 287. Definitions.** Except where the context otherwise requires, the following definitions shall govern the construction of sections 286 to 360, inclusive:

I. “Sales tax” means the tax imposed by sections 288 to 297, inclusive.

II. “Use tax” means the tax imposed by sections 298 to 310, inclusive.

III. “Person” includes any individual, firm, copartnership, joint venture, association, club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any county, city, town or other political subdivision of the state, or any other group or combination acting as a unit.

IV. “Sale” shall mean and include:

A. Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or any means whatsoever, of tangible personal property for a consideration;

B. The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;

C. The furnishing, preparing, or serving for a consideration of food, meals, or drinks;

D. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

E. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication.

V. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property.

The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

VI. "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

VII. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

VIII. "Storage" and "Use" do not include the keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

IX. "Purchase" means and includes:

A. Any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration;

B. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

C. A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or for any publication.

## X.

A. "Sale price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold;
2. The cost of materials used, labor or service cost, interest charged, losses, or any other expenses;
3. The cost of transportation of the property prior to its purchase;

B. The total amount for which the property is sold includes all of the following:

1. Any services that are a part of the sale;
2. Any amount for which credit is given to the purchaser by the seller.

C. "Sales price" does not include any of the following:

1. Cash discounts allowed and taken on sales;
2. The amount charged for property returned by customers upon rescission of the contract of sale when the entire amount charged therefor is refunded either in cash or credit, and when the property is returned within 90 days from the date of purchase;
3. The amount charged for labor or services rendered in installing or applying the property sold;
4. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer;
5. Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

## XI.

A. "Receipts" mean the total amount of the sale or lease or rental

price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules and regulations as the state tax assessor may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property;

2. The cost of the materials used, labor or service cost, interest paid, losses, or any other expense;

3. The cost of transportation of the property prior to its sale to the purchaser;

B. The total amount of the sale or lease or rental price includes all of the following:

1. Any services that are a part of the sale;

2. All receipts, cash, credits, and property of any kind;

3. Any amount for which credit is allowed by the seller to the purchaser.

C. "Receipts" do not include any of the following:

1. Cash discounts allowed and taken on sales;

2. Sale price of property returned by customers upon rescission of the contract of sale when the full sale price is refunded either in cash or credit, and when the property is returned within 90 days from the date of sale;

3. The price received for labor or services used in installing or applying the property sold;

4. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer;

5. Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

For purposes of the sales tax, if the retailers establish to the satisfaction of the state tax assessor that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

XII. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

XIII. "Seller" includes every person engaged in the business of selling tangible personal property the receipts from the retail sale of which are required to be included in the measure of the sales tax.

XIV. "Retailer" includes:

A. Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others;

B. Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

When the state tax assessor determines that it is necessary for the efficient administration of the provisions of sections 286 to 360, inclusive, to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers the state tax assessor may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of sections 286 to 360, inclusive.

XV. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

XVI. "Purchaser" means any person who purchases property receipts from which are taxable under the provisions of sections 286 to 360, inclusive.

### Sales Tax

Sec. 288. Imposition and rate of sales tax. There shall be paid a tax of 2% upon the amount of the receipts of any retailer from every sale of tangible personal property sold at retail in this state on or after January 1, 1948.

Sec. 289. Establishment of bracket system and schedule. The state tax assessor shall by regulation prescribe a bracket system and schedule of the amounts to be collected from the purchaser in respect to any receipt upon which a tax is imposed by the provisions of sections 286 to 360, inclusive, so as to eliminate fractions of 1 cent and so that the aggregate collection of taxes by a retailer shall, as far as practicable, equal 2% of the total receipts from the sales and services of such retailer upon which a tax is imposed by sections 286 to 360, inclusive. Such bracket system and schedule may provide that no tax need be collected from the purchaser upon receipts below a stated sum and may be amended from time to time so as to accomplish the purposes herein set forth.

Sec. 290. Collection of tax. Upon each taxable sale the tax to be collected shall be stated and charged separately from the sale price and shown separately on any record thereof, at the time when the sale is made or evidence of sale issued or employed by the retailer and shall be paid by the purchaser to the retailer as trustee for and on account of the state, and the retailer shall be liable for the collection thereof and for the tax. The retailer shall be personally liable for the tax collected or required to be collected under the provisions of sections 286 to 360, inclusive, and the retailer shall have the same rights in respect to collecting the tax from the purchaser, or in respect to non-payment of the tax by the purchaser, as if the tax were a part of the purchase price of the property or service and payable at the time of the sale.

Sec. 291. Unlawful advertising. It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor and shall be punished as hereinafter provided.

Sec. 292. Registration and certificates of authority. Every person desiring to engage in or conduct business as a seller within this state shall file with the state tax assessor a certificate of registration in a form pre-

scribed by the state tax assessor. The state tax assessor shall within 5 days after such registration issue a certificate of authority empowering such applicant to collect the tax from the purchaser and duplicates thereof for each additional place of business of such applicant. Each certificate or duplicate shall state the place of business to which it is applicable. Such certificates of authority shall be prominently displayed in the places of business of the seller. Such certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the state tax assessor upon the seller's ceasing to do business at the place named.

Sec. 293. Registration fee. At the time of filing the certificate of registration, the applicant shall pay to the state tax assessor a registration fee of \$1 for each certificate of authority.

Sec. 294. Presumption of taxability; resale certificate. For the purpose of the proper administration of the provisions of sections 286 to 360, inclusive, and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Sec. 295. Effect of certificate. The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the certificate of authority provided for in section 292 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 296. Form of certificate. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the certificate of authority issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax assessor may prescribe.

Sec. 297. Liability of purchaser. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property

is first used by him, and the cost of the property to him shall be deemed the receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his receipts the amount of the rental charged rather than the cost of the property to him.

#### Use Tax

Sec. 298. Imposition and rate of use tax. An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer on or after January 1, 1948, for storage use or other consumption in this state at the rate of 2% of the sales price of the property.

Sec. 299. Liability for tax. Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the state tax assessor, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of sections 298 to 310, inclusive, relating to the use tax, regarded as a retailer maintaining a place of business in this state, given to the purchaser pursuant to section 300 hereof, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Sec. 300. Collection by retailer. Every retailer maintaining a place of business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under the provisions of sections 311 to 313, inclusive, shall, at the time of making the sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax assessor.

Sec. 301. Tax as debt. The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

Sec. 302. Unlawful advertising. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed



by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

Sec. 303. Separate statement of tax. The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

Sec. 304. Unlawful acts. Any person violating sections 300, 302 or 303 is guilty of a misdemeanor and shall be punished as hereinafter provided.

Sec. 305. Registration of retailers. Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the board and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and such other information as the board may require.

Sec. 306. Presumption of purchase for use; resale certificate. For the purpose of the proper administration of the provisions of sections 286 to 360, inclusive, and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Sec. 307. Effect of certificate. The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the certificate of authority provided for by section 292 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

Sec. 308. Form of certificate. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the certificate of authority issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax assessor may prescribe.

Sec. 309. Liability of purchaser. If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

Sec. 310. Presumption of purchase from retailer. It shall be further presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer on or after January 1, 1948, for storage, use or other consumption in this state.

### Exemptions

Sec. 311. General exemptions. There are exempted from the taxes imposed by sections 286 to 360, inclusive:

I. Exemptions by constitutional provisions. The storage, use or other consumption in this state of tangible personal property the receipts from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

II. Vessels. There are exempted from the taxes imposed by the provisions of sections 286 to 360, inclusive, the receipts from sales of vessels of more than 1,000 tons burden by the builders thereof and the storage, use or other consumption in this state of any ship of more than 1,000 tons burden which is purchased in this state from the builders and with respect to which the use tax would, if the ship had been purchased outside this state or in interstate commerce, be inoperative because prohibited under the constitution or the laws of the United States or the constitution of this state.

III. Motor vehicle fuel. There are exempted from the taxes imposed by the provisions of sections 286 to 360, inclusive, the receipts from the distributions of and the storage, use or other consumption in this state of motor vehicle fuel the distributions of which in this state are subject to the taxes imposed by chapter 14.

IV Sales of liquor. There are exempted from the taxes imposed by

sections 286 to 360, inclusive, the receipts from the sale of spirituous or vinous liquors sold in stores operated by the state liquor commission.

V. Publications. There are exempted from the taxes imposed by sections 286 to 360, inclusive, the receipts from the sale of, and the storage, use or other consumption in this state of, tangible personable property which becomes an ingredient or component part of any publication regularly issued at average intervals not exceeding 3 months and any such publication.

VI. Meals. There are exempted from the taxes imposed by the provisions of sections 286 to 360, inclusive, the receipts from the sale of, and the storage, use or other consumption in this state of, meals served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school, and meals served by employers or employee organizations to the employees engaged in work upon a particular project or undertaking.

VII. Containers. There are exempted from the taxes imposed by sections 286 to 360, inclusive, the receipts from sales of and the storage, use or other consumption in this state of:

A. Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

B. Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by sections 286 to 360, inclusive.

C. Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

As used herein the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "non-returnable containers."

VIII. Farm supplies; quasi-municipal and public service corporations; manufacturers. There are exempted from the taxes imposed by sections 286 to 360, inclusive, the receipts from the sale of, and the storage, use or other consumption in this state of:

A. Seed, feed, fertilizer and farm machinery and implements;

B. Tangible personal property delivered to, purchased or used by, any quasi-municipal or public service corporations subject to the jurisdiction of the public utilities commission or the interstate commerce

commission, provided that such tangible personal property is used exclusively in performing the public service required of it by law; and

C. Tangible personal property delivered to, purchased or used by, any manufacturing or mining concern and used or consumed directly in the manufacturing or mining process or installed as a permanent part of the plant and property essential to the manufacturing or mining process.

Sec. 312. Exemptions from sales tax. There are exempted from the computation of the amount of the sales tax the receipts from the sale of any tangible personal property to:

- I. The United States, its unincorporated agencies and instrumentalities;
- II. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

Sec. 313. Exemptions from use tax.

I. Sales tax applicable. The storage, use or other consumption in this state of property, the receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

II. Property purchased from United States. The storage, use or other consumption in this state of property purchased from any unincorporated agency or instrumentality of the United States, except:

A. Any property reported to the Surplus Property Board of the United States as surplus property by any owning agency; and

B. Any property including in any contractor inventory, is exempted from the use tax.

“Surplus property,” “owning agency,” and “contractor inventory” as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the “Surplus Property Act of 1944.”

#### Returns, Payment and Determinations

Sec. 314. Due date. The taxes imposed by sections 286 to 360, inclusive, are due and payable to the state tax assessor quarterly on or before the 20th day of the month next succeeding each quarterly period.

Sec. 315. Return. On or before the 20th day of the month following each quarterly period of 3 months, a return for the preceding quarterly

period shall be filed with the state tax assessor in such form as the state tax assessor may prescribe.

For the purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

Sec. 316. Contents of return. For purposes of the sales tax the return shall show the receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and such other information as the state tax assessor deems necessary for the proper administration of sections 286 to 360, inclusive.

Sec. 317. Filing return. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the state tax assessor and he shall pay over such receipts to the treasurer of state daily. Each seller who files his return and makes remittance as required by sections 286 to 360, inclusive, shall be allowed and may deduct from the remittance required under the provisions of this section an amount equal to 3% of the amount of tax due as compensation for expense incurred in collecting the tax.

Sec. 318. Return periods. The state tax assessor, if he deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of business of the seller, retailer or purchaser as the case may be, or for other than quarterly periods.

Sec. 319. Rentals or leases. For the purposes of the sales tax receipts from rentals or leases of tangible personal property shall be reported and the tax paid in accordance with such rules and regulations as the state tax assessor may prescribe.

Sec. 320. Extension of time. The state tax assessor for good cause may extend for not to exceed 1 month the time for making any return or paying any amount required to be paid under the provisions of sections 286 to 360, inclusive. The extension may be granted at any time provided a request therefor is filed with the state tax assessor within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

Sec. 321. Deficiency determination. If the state tax assessor is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

Sec. 322. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the 20th day after the close of the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

Sec. 323. Offsets. In making a determination the state tax assessor may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in section 343.

Sec. 324. Ten per cent penalty. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of sections 286 to 360, inclusive, or authorized rules and regulations, a penalty of 10% of the amount of the determination shall be added thereto.

Sec. 325. Twenty-five percent penalty. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the provisions of sections 286 to 360, inclusive, or authorized rules and regulations, a penalty of 25% of the amount of the determination shall be added thereto.

Sec. 326. Notice of determination. The state tax assessor shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination. The notice may be served personally or by registered mail and shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the state tax assessor. In case of service by mail of any notice required by the provisions of sections 286 to 360, inclusive, the service is complete at the time of deposit in the United States post office.

Sec. 327. Limitations; deficiency determinations. Except in the case of fraud, intent to evade the provisions of sections 286 to 360, inclusive, or authorized rules and regulations, failure to make a return, or claim for additional amount pursuant to section 339, every notice of a deficiency determination shall be mailed within 3 years after the 20th day of the calendar month following the quarterly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires the later.

The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to sections 326, 333, and 335 and to the 1st paragraph of this section. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to sections 326, 333 and 335 and to the 1st paragraph of this section.

Sec. 328. Waiver. If before the expiration of the time prescribed in section 327 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Sec. 329. Determination; failure to file return. If any person fails to make a return, the state tax assessor shall make an estimate of the amount of the receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the state tax assessor's possession or may come in his possession. Upon the basis of this estimate the state tax assessor shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10% thereof. One or more determinations may be made for one or for more than one period.

Sec. 330. Offsets. In making a determination the state tax assessor may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in section 343.

Sec. 331. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the 20th day after the close of the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

Sec. 332. Penalties. If the failure of any person to file a return is due to fraud or an intent to evade the provisions of sections 286 to 360, inclusive, or rules and regulations, a penalty of 25% of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10% penalty provided in section 329.

Sec. 333. Notice of determination. Promptly after making his determination the state tax assessor shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 334. Jeopardy determination. If the state tax assessor believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax re-



quired to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

Sec. 335. Interest and penalty. If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and the interest provided in section 343 shall attach to the amount of the tax or the amount of the tax required to be collected.

Sec. 336. Petition for redetermination; security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to section 337. He shall, however, file the petition for redetermination with the state tax assessor within 10 days after the service upon him of notice of the determination. The person shall also within the 10-day period deposit with the state tax assessor such security as it may deem necessary to insure compliance with sections 286 to 360, inclusive. The security may be sold by the board in the manner prescribed by section 347.

Sec. 337. Petition for redetermination. Any person against whom a determination is made under the provisions of sections 314 to 336, inclusive, or any person directly interested may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

Sec. 338. Oral hearing. If a petition for redetermination is filed within the 30-day period, the state tax assessor shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The state tax assessor may continue the hearing from time to time as may be necessary.

Sec. 339. Decrease or increase of determination. The state tax assessor may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the state tax assessor at or before the hearing.

Sec. 340. Finality date of order or decision. The order or decision of the state tax assessor upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

Sec. 341. Due date of determination; penalty. All determinations made by the state tax assessor under the provisions of sections 314 to 346, inclusive, are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10% of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

Sec. 342. Service of notice. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Sec. 343. Interest and penalties. Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the state tax assessor under the provisions of sections 314 to 346, inclusive, within the time required shall pay a penalty of 10% of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of  $\frac{1}{2}$  of 1% per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

Sec. 344. Credits and refunds. If the state tax assessor determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the state tax assessor shall set forth that fact in the records of the state tax assessor and shall certify to the treasurer of state the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited on any amounts then due and payable from the person under the provisions of sections 286 to 360, inclusive, and the balance shall be refunded to the person, or his successors, administrators or executors.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor shall be credited or refunded by the state to the purchaser.

Sec. 345. Claim; limitation period. No refund shall be allowed unless a claim therefor is filed with the board within 3 years from the 20th day after the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under the provisions of sections 314 to 346, inclusive, within 6 months after the determinations become final, or within 6 months from the date of overpayment, whichever period expires the later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit

is filed with the state tax assessor within such period, or unless the credit relates to a period for which a waiver is given pursuant to section 328.

Sec. 346. Appeals. Any taxpayer aggrieved because of any determination of the state tax assessor under the provisions of sections 286 to 360, inclusive, may, within 30 days after notice of the final determination has been mailed to him by the state tax assessor appeal to the superior court in the county of Kennebec or the superior court in the county where the taxpayer resides. Any taxpayer desiring to appeal from any such determination shall furnish a bond or recognizance to the state of Maine with sureties to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. The appeal shall be returnable at the same time and service and return shall be made in the same manner as is provided for civil actions in the superior court.

#### Collection of Tax

Sec. 347. Security for tax. The state tax assessor, whenever he deems it necessary to insure compliance with the provisions of sections 286 to 360, inclusive, may require any person subject thereto to deposit with him such security as the state tax assessor may determine. The amount of the security shall be fixed by the state tax assessor but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the state tax assessor deems proper, or \$10,000, whichever amount is the lesser. The amount of the security may be increased or decreased by the state tax assessor subject to the limitations herein provided. The state tax assessor may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the state tax assessor. Security in the form of a bearer bond issued by the United States or the state of Maine which has a prevailing market price may, however, be sold by the state tax assessor at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

Sec. 348. Proceedings to recover tax.

I. Whenever any person shall fail to pay any tax or penalty imposed by sections 286 to 360, inclusive, as herein provided, the attorney-general

shall, upon the request of the state tax assessor, bring an action to enforce payment of the same. The proceeds of a judgment in such action shall be paid to the state tax assessor.

II. As an additional or alternative remedy, the state tax assessor 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 state tax assessor 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 state tax assessor a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the tax imposed by sections 286 to 360, inclusive, 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 state tax assessor 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.

III. The state tax assessor shall also have for the collection of taxes and penalties assessed under the provisions of sections 286 to 360, inclusive, all the remedies provided by chapter 81 of the revised statutes, as amended, for the collection of taxes on personal property by collectors of taxes in incorporated places.

Sec. 349. Withholding by purchaser. If any retailer liable for any amount under the provisions of sections 286 to 360, inclusive, sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the state tax assessor showing that it has been paid or a certificate stating that no amount is due.

Sec. 350. Liability of purchaser; release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, the state tax assessor shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the state tax assessor of the amount that must be paid as a condition of issuing the certificate. Failure of the state tax assessor to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final whichever event occurs the later.

#### Administration

Sec. 351. Enforcement by state tax assessor; rules and regulations. The state tax assessor shall enforce the provisions of sections 286 to 360, inclusive, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of said sections. The state tax assessor may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Sec. 352. Employees and representatives of state tax assessor. The state tax assessor may employ, subject to the provisions of the personnel law, accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of sections 286 to 360, inclusive, and may designate representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by said sections or other laws of this state upon the state tax assessor.

Sec. 353. Records. Every seller, every retailer, and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the state tax assessor may require.

**Sec. 354. Examination of records.** The state tax assessor or any person authorized in writing by it may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

**Sec. 355. Reports relative to use tax liability.** In administration of the use tax the state tax assessor may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. The reports shall be filed when the state tax assessor requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the state tax assessor may require.

**Sec. 356. Divulging of information forbidden.** It is unlawful for the state tax assessor or any person having an administrative duty under the provisions of sections 286 to 360, inclusive, to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

**Sec. 357. Criminal penalties.**

**I.** Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the state tax assessor, or who renders a false or fraudulent return, is guilty of a misdemeanor and subject to a fine of not more than \$500 for each offense.

II. Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor. He shall for each offense be punished by a fine of not less than \$300, nor more than \$5,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, in the discretion of the court.

Sec. 358. Disposition of proceeds. The proceeds derived from this tax shall be credited to the general fund and all receipts in excess of basic general fund appropriations shall be used to further reduce the property tax levies in cities and towns of this state.

Sec. 359. Expenses of collection. There is hereby appropriated for expenditures by the state tax assessor in carrying out the provisions of sections 286 to 360, inclusive, a sum not to exceed 4% of gross revenue received during the first 12 months of the effectiveness of said sections and a sum not to exceed 2½% thereafter.

Sec. 360. Elimination of state property tax. In the event that sections 286 to 360, inclusive, become effective January 1, 1948 for the purpose of collecting taxes as levied herein, there shall be no state property tax levied for the year 1948.'

Sec. 18. Referendum. This act shall be submitted for approval or rejection to the duly qualified voters of the state of Maine at a state-wide election to be held on the 2nd Monday of September, 1947. The municipal officers of the cities, towns and plantations in this state are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives to give in their votes upon this act, and the question shall be: "Shall the act providing for a sales tax and an income tax and a reduction in the property tax, as submitted by the 93rd legislature to the people, be accepted?" and the inhabitants of said cities, towns and plantations shall vote by ballot on said question, those in favor of the act expressing it by making a cross within the square opposite the word "Yes" upon the ballots and those opposed to the act by making a cross within the square opposite the word "No" upon their ballots, and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall count the same, and if it shall appear

that a majority of the inhabitants voting on the question are in favor of the act, the governor shall forthwith make known the fact by his proclamation and thereupon this act shall become law. The secretary of state shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing act, accompanied by a copy thereof.