

MAINE STATE LEGISLATURE

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

Legislative Document

No. 455

H. P. 759

House of Representatives, February 2, 1951.

Referred to Committee on Taxation. Sent up for concurrence and 1250 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Bubar of Blaine.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Imposing a Gross Income Tax.

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

R. S., c. 14, §§ 244-272, additional. Chapter 14 of the revised statutes is hereby amended by adding thereto 29 new sections, to be numbered 244 to 272, inclusive, to read as follows:

'Gross Income Tax

Sec. 244. Definitions. As used in sections 244 to 272, inclusive, the following words and phrases shall have the following meanings:

I. The term "person" or the term "company," herein used interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation or any other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

II. There is hereby created in the bureau of taxation a gross income tax division to which the administration and enforcement of the provisions of sections 244 to 272, inclusive, is hereby assigned, which is hereinafter sometimes referred to as the "division." Such gross income tax division is hereby designated as an agency and instrumentality of this state and shall be and be taken as being a legal entity acting solely in the execution of the sovereign power of the state by and through the state tax assessor, and the director, deputies, agents and employees provided by law and authorized by the state tax assessor to administer this law in his stead and under his direction, control and authority.

III. The word "treasurer" means the treasurer of the state of Maine.

IV. The word "director" means that individual designated by the state tax assessor to act as the chief administrative officer of the division.

V. The term "tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year if and when permission is obtained from the department to use the taxpayer's fiscal year as the tax period in lieu of the calendar year.

VI. The term "tax period" means the calendar year, the taxpayer's fiscal year, any of the quarterly periods of either the calendar or fiscal year, or any other period which the department is given the power to declare under sections 244 to 272, inclusive.

VII. The word "taxpayer" means any person liable for any tax hereunder.

VIII. Except as hereinafter otherwise expressly provided, the term "receipts," as applied to a taxpayer, shall mean the gross income in cash, notes, credits and other property which is received by the taxpayer or is received by a 3rd person for his benefit.

IX. Except as hereinafter expressly provided, the terms "receive" or "received," or other forms thereof, as applied to a taxpayer, shall mean the actual coming into possession of, or the crediting to, the taxpayer of gross income as hereinafter defined, or the payment of his expenses, debts or other obligations by a 3rd party for his direct benefit.

X. The term "retail merchant" means and includes only a person regularly and occupationally engaged in purchasing tangible personal property and selling the same at retail at a fixed and established place of business.

XI. The term "selling at retail" means and includes only a transaction by a "retail merchant" by which the ownership of tangible personal

property is transferred, conditionally or otherwise, for a consideration, when such transfer is made in the ordinary course of the transferer's regularly conducted business and at a fixed and established place of business, and is acquired by the transferee for any other purposes than those designated by subsection I of section 246.

XII. The term "withholding agent" means any person, and includes all individuals, corporations, associations, firms, companies and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, agents, fiduciaries, employers, the state of Maine, 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, dividends, rent, salaries, wages, premiums, annuities, compensations, principals, remunerations, emoluments, and all fixed or determinable gross income taxable hereunder.

XIII. The term "gross income," except as hereinafter otherwise expressly provided, means the gross receipts of the taxpayer received as compensation for personal services, including but not in limitation thereof, wages, bonuses, pensions, salaries, fees, commissions, gratuities, including the value of living expenses and rental of quarters furnished to the taxpayer and the gross receipts of the taxpayer received from trades, businesses or commerce, including admission fees or charges, and the gross receipts received from the sale, transfer or exchange of property, tangible or intangible, real or personal, including the sale of capital assets, or from the assignment or sale of rights, all receipts received from the performance of contracts, all receipts received as prizes and premiums, all receipts received from insurance, all amounts received as alimony, damages or judgments, and all receipts received by reason of the investment of capital, including but not in limitation thereof, interest, discounts, rentals, royalties, dividends, fees, commissions and receipts received from the surrender, sale, transfer, exchange, redemption of, or distribution upon, stock of corporations or associations, and all other receipts of any kind or character received from any source whatsoever, and without any deductions on account of the return of capital invested, the cost of the property sold, the cost of materials used, labor cost, interest, discount, or commissions paid or credited, or any other expense whatsoever paid or credited, and without any deductions on account of losses, and without any other deductions of any kind or character. That the term "gross income" shall not include cash discounts allowed and taken on sales; goods, wares or merchandise,

or the value thereof, returned by customers when the sale price is refunded either in cash or by credit; nor the receipt of borrowed money, nor the receipt of the repayment thereof, including the receipts from the issuance of bonds or from the redemption thereof; nor judgments for income not taxable under sections 244 to 272, inclusive; nor amounts received as withdrawal of deposits so far as they constitute the principal thereof; nor the amounts received by the taxpayer as outright gifts, devises or bequests, but only so far as such amounts represent the corpus of such gifts, devises or bequests; nor the receipt of capital by a corporation, partnership, firm or joint venture, from sale of stock or shares in such corporation, partnership, firm, or joint venture, or contributions to the capital thereof, but proceeds accruing, or proceeding from subsequent transactions in the stock of such corporation or organizations, or in the interest or shares of the members of any organization shall be included in gross income as defined herein. The term "gross income" shall not include the gross receipts represented by the value of real or tangible personal property received in reciprocal exchange for real or tangible personal property of like kind by and between the owners thereof, to the extent of the value of the property or the interest therein of which title is surrendered; nor the gross receipts represented by the value of stock of a corporation or association received in a reciprocal exchange by and between the owners thereof, including the issuing corporations or association, for stock in the same corporation or association to the extent of the value of such stock or the interest therein of which title is surrendered; nor the gross receipts represented by the value of bonds or similar securities issued by any corporation or association, received in a reciprocal exchange by and between the owners thereof, including the issuing corporation or association, for bonds or similar securities issued by the same corporation or association, to the extent of the value of such bonds or similar securities or the interest therein of which title is surrendered; nor the gross receipts represented by the value of stocks, bonds, or other securities received in a reciprocal exchange by and between the owners thereof for other stocks, bonds, or other securities or the interest therein of which title is surrendered, where such exchange is made in the course of a consolidation, merger, or other reorganization, and the stocks, bonds, or other securities received in exchange are issued by one or more corporations or associations each of which is a party to such reorganization. The term "exchange" for the purpose of the foregoing proviso means and includes the transfer of title and ownership by means of a transaction involving the barter or swap of property acquired previously to the exchange, by and between the owners thereof,

with or without additional consideration. "Exchange" shall not be construed to mean or include any sale of property even though other property of any kind is purchased with the proceeds of such sale, nor shall it be construed to mean or include any barter or swap of property where there are more than 2 parties to the transaction, nor shall the term include any transaction where the property exchanged is acquired by one party to the transaction as a result of negotiation or arrangement with the other party with intent to effectuate an exchange of the property so acquired. "Like kind" as used herein shall mean and include only property of the same class and kind, and shall have no reference to the grade or quality of such property. "Gross income" shall not include any amount received as payment of the principal amount of a note taken in lieu of cash if either the face value of such note has been included in taxable gross income at the time of acceptance. The face amount of a promissory note or retail installment contract, except so much thereof as represents insurance premiums or finance charges derived from either a sale of tangible personal property in the usual course of business of a retail merchant, or the performance of a contract involving the sale or the furnishing of tangible personal property together with labor or services related thereto, or the maintenance and repair of automobiles, trucks, tractors, trailers, farm machinery or parts thereof, shall be included in gross income and returned under the applicable classification of section 246 hereof; and any amount received in payment of, or from the sale of, such promissory note or retail installment contract shall not be included in gross income, but so much of said note or retail installment contract as represents a finance charge as defined above shall be included in gross income if any when collected. In case of consignment sales "gross income" shall include the gross receipts from the sale of goods sold on consignment and the tax shall be paid thereon by the consignee. With respect to individuals resident in this state and corporations incorporated under the laws of this state authorized to do and doing business in any other state and foreign country, the term "gross income" shall not include gross receipts received from sources outside the state in cases where such gross receipts are received from a trade or business situated and regularly carried on at a legal situs outside the state, or from activities incident thereto, including the disposal of capital assets or other properties which had been theretofore acquired or used in carrying on such trade or business. It is not the intention by the foregoing language to exclude from the definition of "gross income" any receipts of a taxpayer received as interest or dividends, or from sales, or other receipts received from investments, which investments were acquired and dis-

posed of other than in connection with the business in which such taxpayer is regularly engaged, nor shall this exclusion be construed as applying to salaries, wages, bonuses, commissions, or other personal remuneration of any kind or character received by any taxpayer.

XIV. In case of banks, trust companies, building and loan associations, brokers, dealers in securities, finance companies, dealers in commercial paper, and persons engaged in the business of lending money or credit, the term "gross income" shall be deemed to mean gross earnings, but only in respect to that part of the total gross income of such persons which is derived from the businesses and activities enumerated in this subsection.

XV. In case of insurance carriers, "gross income" shall not include any part of gross income as defined in subsection XIII of section 244 which becomes or is used to maintain a reserve or other policy liability, but only to the extent to which such reserve or other policy liability is required by the laws of this state or the rulings of the duly authorized supervisory officials of the state, and in the case of domestic insurance carriers shall not include such premium income as is derived from business conducted outside this state on which such domestic insurance carrier pays a premium tax of 1% or more. Receipts from the sale of, and earnings on, tangible and intangible property which constitutes part of the reserve or other policy liability which receipts are to continue as a part of such reserve or other policy liability shall be construed for the purpose of this subsection as gross income which becomes or is used to maintain a reserve or other policy liability.

XVI. In case of domestic casualty and fire insurance carriers, the term "gross income" shall be deemed to mean the gross earnings derived as premiums, interest, rents and dividends, and the gross earnings from the sales of assets computed each year, in the business conducted by such carrier, but only so much of such gross earnings as does not become, or is not used to maintain a reserve or other policy liability, and only to the extent to which such reserve is required by the laws of this state, or the rulings of the duly authorized supervisory officials. The term "such gross earnings as does not become or is not used to maintain a reserve or other policy liability" is defined to be that percentage which is the ratio that the average of all reserves bears to the average of all admitted assets of such domestic casualty or fire insurance carrier for each year. The term "gross income" shall not include such premium income as is derived from business conducted outside this state on which such

domestic casualty or fire insurance carrier pays a premium tax of 1% or more.

Sec. 245. Levy of tax; date. There is hereby imposed a tax upon the receipt of gross income, measured by the amount or volume of gross income and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the receipt of the entire gross income of all persons resident and domiciled in the state of Maine, except as herein otherwise provided; and upon the receipt of gross income derived from activities or businesses or any other source within the state, of all persons who are not residents of the state, and shall be in addition to all other taxes now or hereafter imposed with respect to particular privileges, occupations, and activities. Said tax shall apply to, and shall be levied and collected upon, the receipt of all gross income received on or after the 1st day of January, 1950, with such exceptions and limitations as may be hereinafter provided.

Sec. 246. Rates of taxation; classification. The tax upon the receipt of gross income hereby provided for, shall be measured by the amount or volume or such gross income and shall be imposed at the following rates:

I. With respect to that part of the gross income of every person which is received from wholesale sales, except as hereinafter provided in subsection V of this section, the tax shall be equal to $\frac{1}{4}\%$ of such part of the gross income. The term "wholesale sales" means and includes only the following: sales of any tangible personal property, except capital assets of the seller, to a purchaser who purchases the same for the purpose of reselling it in the form in which it is sold to him; sales of any tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, repairing, mining, agriculture, or horticulture; sales of any tangible personal property which is to be incorporated by the purchaser as a material or an integral part into tangible property produced by such purchaser in the business of manufacturing, assembling, constructing, refining, or processing; receipts received from the business of industrial processing, enameling, plating or servicing of any tangible personal property which is to be sold by the person for whom such processing, enameling, plating or servicing is done, either as a complete article or incorporated as a material, or as an integral or component part of tangible property produced for sale by such person in the business of manufacturing, assembling, constructing, refining or processing; sale of drugs, medical and

dental preparations, and similar materials to be directly consumed in professional use by doctors, hospitals, embalmers, and tonsorial parlors; sales of tangible personal property to be directly consumed by the purchaser in the business of industrial cleaning; and sales of any tangible personal property to be directly consumed by the purchaser directly in the business of rendering public utility service. No sale to a division, unit, or department of government shall be deemed to be included within this definition. Price or quantity shall not be considered in the application of this definition. It shall be immaterial in the application of this definition whether sales are made from stock or upon order. In the application of this definition it shall be immaterial whether or not the seller is the manufacturer or producer of the property sold. The term "consumed" as used herein shall refer only to the immediate dissipation or expenditure by combustion, use, or application, and shall not mean or include, the obsolescence, discarding, disuse, depreciation, damage, wear, or breakage, of tools, dies, equipment, rolling stock or its accessories, machinery, or furnishings.

II. With respect to that part of the gross income of every person which is received from display advertising, the tax shall be equal to $\frac{1}{4}\%$ of such part of the gross income. The term "display advertising," as used herein, shall not be construed to include any sale or rental of tangible property nor any personal or professional service in connection with such advertising. The term "display advertising" shall include outdoor poster and painted display advertising.

III. With respect to that part of the gross income of every person who is a retail merchant as defined in this law which is received from selling at retail, the tax shall be equal to $\frac{1}{2}\%$ of such part of the gross income.

IV. With respect to that part of the gross income of every person which is received from the business of dry cleaning and laundering, the tax shall be equal to $\frac{1}{2}\%$ of such part of the gross income.

V. With respect to that part of the gross income of every person received from producing, transmitting, furnishing, wholesaling, and retailing, electrical energy; or producing, transporting, furnishing, wholesaling, and retailing artificial gas, natural gas, or mixtures of artificial and natural gas, operating a steam and/or electric railway, street car line, motor vehicle, steam or motor boat, or any other vehicle for the transportation of freight, express, and passengers for hire; operating a pipe line for the transportation of any commodity for hire; operating any telephone and telegraph line; operating any water or sewerage system;

or operating any other utility not expressly provided for in this section, the tax shall be equal to 1% of such part of the gross income.

VI. With respect to that part of the gross income of every person received from operating any bank, trust company, building and loan association, insurance and casualty company, finance company, small loan company, or any other business of a similar nature, including all others mentioned in subsection XIV of section 244, the tax shall be equal to 1% of such part of the gross income.

VII. With respect to that part of the gross income of every person which is received from any source not enumerated in subsections I to VI, inclusive, including, but not in limitation of the foregoing, gross income from professional services, personal services, or services of any character whatsoever, sales of real estate, rentals, all funds received for the performance of contracts, all funds received from the investment of capital, all receipts from retail sales and all receipts received from any source whatsoever, the tax shall be equal to 1% of such part of the gross income. The term "retail sales" shall mean any sale of any property not included within the definitions of "wholesale sales" and "selling at retail."

Sec. 247. Persons engaged in different businesses; rate. Any person receiving gross income taxable at different rates under the provisions of sections 244 to 272, inclusive, shall be subject to taxation upon his entire gross income at the highest rate applicable to any part of such gross income unless he shall segregate the parts of his gross income taxable at different rates upon his records and in the returns which he files pursuant to the provisions hereof. Such segregation shall be subject to the review of the state tax assessor as hereinafter provided.

Sec. 248. Deduction.

I. In computing the amount of tax imposed under the provisions of sections 244 to 272, inclusive, for any year, there shall be deducted by any taxpayer who is a retail merchant as defined herein, an amount of \$3,000 from that part of his income derived from selling at retail, as herein defined. Each taxpayer who is a retail merchant selling at retail for any fractional part of a tax year shall be entitled to a deduction of that part of \$3,000 which bears the same proportion to that amount which the period of time such taxpayer was a retail merchant receiving income from selling at retail bears to an entire year. Where quarterly returns are filed, a proportionate part of the deduction provided for in this subsection may be deducted on each such quarterly return. In computing

such period of time, a fraction of a month shall be disregarded unless such fraction is more than half a month, in which case it shall be taken as a whole month; provided, however, that each such retail merchant shall be entitled to a deduction of not less than an amount of \$1,000 per year upon his entire income, but not in addition to the deduction from income derived from selling at retail.

II. In computing the amount of tax imposed under the provisions of sections 244 to 272, inclusive, for any year, there shall be deducted from the gross income of any taxpayer not provided for in subsection I an amount of \$1,000. Each such taxpayer who is taxable hereunder upon gross income for any fractional part of the tax year shall be entitled to a deduction of that part of \$1,000 which bears the same proportion to that amount which the period of time during which the taxpayer is subject to tax bears to an entire year. In computing such period of time, a fraction of a month shall be disregarded unless such fraction is more than a half a month, in which case it shall be taken as a whole month. Where quarterly returns are filed, a proportionate part of the deduction provided for in this subsection may be claimed and allowed on each such quarterly return.

Sec. 249. Exemptions. There shall be excepted from the gross income taxable hereunder:

I. So much of such gross income as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries, but only to the extent to which this state is prohibited from taxing such gross income by the constitution of the United States of America. There shall also be excepted from such gross income, salaries, pensions, and other emoluments paid by the United States of America, and interest or other earnings paid upon bonds or other securities issued by the United States of America, but only to the extent that this state is prohibited from imposing a tax upon such salaries, pensions, emoluments, interest, and earnings by the constitution of the United States of America.

II. Taxes received or collected by the taxpayer as agent for the state and the United States of America. No person shall be considered as an agent for the state and the United States of America within the meaning of this subsection unless he has been explicitly designated as a collecting agent in the statute under the terms of which the tax is imposed.

III. So much of such gross income as is derived from sales to the Unit-

ed States government, but only to the extent to which the state is prohibited from taxing such gross income by the constitution of the United States of America.

IV. Amounts received under insurance policies and contracts paid by reason of the death of the insured. This exception shall not apply to interest or earnings paid by the insurer on amounts held for the beneficiaries.

V. Amounts received, under life insurance, endowment or annuity contracts, either during the term, or at maturity, or upon surrender of the contract, but in no case in excess of the total amount paid to the insurer upon such contracts.

VI. Amounts received under health, or disability insurance contracts, but in no case in excess of the total amount paid to the insurer upon such contracts.

VII. Pensions paid from funds created wholly or in part by deductions, assessments or contributions paid into such funds by the taxpayer, but in no case in excess of the total amount of such deductions, assessments or contributions so paid.

VIII. Amounts received from insurance companies as property damage, but only to the extent that such amounts are actually used for replacements.

IX. Amounts received by institutions, trusts, groups and bodies organized and operated exclusively for religious, charitable, scientific, fraternal, educational, social and civic purposes and not for private benefit, as contributions, tuition fees, initiation fees, matriculation fees, membership fees, and earnings on, or receipts from, sales of intangible property owned by them. Gross income received by churches, labor unions, fraternal benefit societies, orders, unions or associations incorporated, licensed, and operating under laws of this state, applicable to fraternal beneficiary associations, monasteries, convents, hospitals, and schools which are a part of the public school system of the state or are regularly maintained as parochial schools by recognized religious denominations, state and other accredited colleges and universities, or any corporation organized and operated solely for the benefit of any of the same, none of the foregoing being organized or operated for private benefit, shall be exempt from taxation under the provisions of this law. It is not the intention by the foregoing language to exclude from taxable gross income, any fees, dues, or assessments that represent premium payments on in-

insurance policies written by insurance companies which are included in subsections XV and XVI of section 244. It is not the intention by the foregoing language to exclude any gross income from taxation under this subsection except as is specifically set out herein.

X. All amounts received by insurance companies which pay the state a tax of more than 1% upon premiums, as provided by the laws of this state.

XI. All amounts received, by reason of the provisions of any public law of this state and the congress of the United States, as benefits, allotments and allowances, by any persons who have served, or are now serving, or may hereafter serve as a member of the armed forces of the United States in World War No. II, and by all persons who have been honorably discharged from the armed forces of the United States in World War No. II, or any other prior war in which the United States has heretofore been engaged, and the wives, widows and children of such persons, who are residents of the state of Maine.

XII. All amounts of retailers' excise taxes now or hereafter imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant from the buyer as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority.

Sec. 250. Partnerships; joint ventures; pools; returns.

I. Partnerships, joint ventures and pools shall be subject to the tax provided for herein, and shall make quarterly and annual returns to the state tax assessor and pay the tax thereon, as provided in section 253. Only one deduction as provided in section 248 may be taken on each such return, regardless of the number of partners or participants. Such returns shall show the aliquot share of each partner or participant in such total gross income of the partnership, joint venture or pool, after making the deduction provided for in section 248. If the tax imposed hereunder upon the receipt of gross income by the partnership, joint venture or pool has been paid by such partnership, joint venture or pool, as herein provided, the amounts received by the partners or participants as their respective distributive shares of the income of such partnership, joint venture or pool will be exempt from gross income tax when received by them. Each partner or participant shall be personally responsible for filing the returns herein provided for, and for the payment of the tax with respect thereto, and each shall be subject to all penalties prescribed here-

in for failure to file a return and pay the tax; but a return executed by one partner or participant shall be sufficient for the purposes of this section.

II. In case of the death of a partner, the surviving partner or partners shall, within 60 days thereafter, execute and file a return reflecting the gross income of the partnership and the aliquot shares of all the partners during the period from the close of the last period for which a partnership return has been filed to the date of the death of such partner, and shall pay the tax thereon, as provided in subsection I. The decedent's aliquot share of the partnership's gross income as shown on such return shall, if the tax has been paid on the receipt of the partnership income reflected therein, as provided in subsection I, be exempt from gross income tax when distributed to the estate of such decedent, except as otherwise provided in section 251.

Sec. 251. Fiduciaries returns.

I. Except as hereinafter expressly provided, the gross income of a decedent's estate shall be computed in the same manner and on the same basis as in the case of an individual, and any tax found to be due from the estate shall be assessed against and paid by the executor, administrator or other fiduciary. Every executor, administrator or other fiduciary of such an estate shall file gross income tax returns, as provided in section 253, in all cases where the decedent, if living, would have been required to file such returns. The first return of an executor, administrator or other fiduciary shall be filed in the form and manner and within the time that a return would have been filed by the decedent had he survived. In such return shall be included all gross income received by the decedent during that portion of the year preceding the death of such decedent, including the value of all personal accounts receivable due such decedent, and his aliquot share of the value of accounts receivable due to any partnership, joint venture and pool of which he may have been a member, which became a part of the corpus of the estate of the decedent. Such fiduciary shall also file a return for the estate covering the period from the date of the death of the decedent to the close of the current taxable period, and returns for subsequent periods. Returns of executors, administrators and other fiduciaries shall be filed in the form and within the time that returns of income are required from individuals and other taxpayers. In such returns shall be included all gross income of the estate of the decedent during the period covered by the return. The same

exemption shall be allowed in the returns made by executors, administrators, and other fiduciaries as is allowed under section 248.

II. Guardians shall make separate returns of gross income of each ward under their guardianship under the same provisions as apply to individuals and other taxpayers. Such gross income shall be computed in the same manner as gross income of other persons, and shall be subject to the same deduction as provided in section 248 to which each ward would have been entitled had he made the return himself.

III. Trustees of trust estates, created by will, by contract, by declaration of trust, or by implication of law, shall make returns covering all gross income received by the trust in accordance with such provisions as apply to individuals and other taxpayers. Only one deduction as provided in section 248 may be taken on such return, regardless of the number of beneficiaries of the trust.

IV. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property and business of any person, shall make returns for such person in the same manner and form as such person would be required to make under the provisions of sections 244 to 272, inclusive, if such person had control of the property and business, and shall also make returns of all unreported income from such property and business for any unreported period. Any tax due on the basis of a return made by a receiver, trustee or assignee, shall be collected from the person making the return in the same manner as if collected from the person of whose property and business he has custody and control.

V. Commissioners appointed by courts for the sale of real estate shall make return of the entire gross income received from such sale in the same form and manner as other persons. Only one deduction as provided in section 248 shall be taken upon such return regardless of the number of persons having an interest in such real estate.

VI. The taxes imposed upon the receipt of the gross income referred to in the foregoing subsections I to IV, inclusive, shall be a lien upon the portion of the trust estate or interest therein from which such gross income is received, and such taxes shall be paid by the fiduciary. The taxes imposed upon the receipt of gross income in the case of the sale of real estate by a commissioner as provided in subsection V shall be paid by such commissioner. If such tax has been paid by the fiduciary, or by the commissioner, as the case may be, the amounts received by heirs, beneficiaries and distributees, as their distributive shares of such gross income, will be exempt from gross income tax when received by them;

but this exemption shall not apply to payment of claims of creditors or amounts distributed to stockholders in distribution or upon dissolution. Any such taxes found to be due and unpaid after the executor, administrator, commissioner for the sale of real estate or other fiduciary, is discharged, shall be assessed against and paid by the beneficiaries or distributees in the same ratio that their interest in the estate, trust or property sold by a commissioner bears to the total estate, trust or property so sold.

VII. A resident of Maine who receives gross income from a non-resident fiduciary shall be taxed upon such income the same as though it had been received by such resident without the intervention of a fiduciary, unless such non-resident fiduciary shall have paid this tax upon such income; and a resident fiduciary receiving gross income for a non-resident beneficiary shall make a return of such gross income and pay the tax thereon before distribution.

VIII. No final report or account of any executor, administrator or other fiduciary, or of any commissioner for the sale of real estate, or other officer acting under the authority and supervision of any court, shall be allowed or approved by the court unless such report or account shows, and the court finds, that all taxes imposed by sections 244 to 272, inclusive, have been paid, and that all taxes which may become due hereunder are secured by bond, deposit or otherwise. A certificate from the state tax assessor shall be conclusive as to the payment of the tax. Any liability for the tax hereunder shall constitute a preferred claim, and shall be prior to all other claims except judicial costs and the costs of administration.

IX. All stockholders who shall receive distribution of the assets of a corporation, joint stock association or other organization in which they hold stock, shall be liable, to the extent of the assets so received by them, for the proportionate part of the unpaid taxes imposed hereunder owned by such organization in which they are, or have been, stockholders, which their respective stock holdings bear to the total outstanding stock of the organization prior to its dissolution. Such amount for which any such distributee is liable, and the amount of the liability of any fiduciary under this act, shall be assessed against such distributee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in tax imposed by this act, as hereinafter provided.

Sec. 252. Corporations; returns.

I. Under regulations prescribed by the department, corporations which

are affiliated as provided herein shall have the privilege of making a consolidated return, as hereinafter provided. Corporations will be deemed to be affiliated within the meaning of this section if at least 95% of the voting stock of one corporation, exclusive of directors' qualifying shares, shall be owned by the other corporation. Every corporation affiliated with another corporation, as defined above, shall be deemed to be affiliated with every corporation which is affiliated with such other corporation. All corporations thus affiliated will be deemed to constitute an affiliated group. In case an election is made to file a consolidated return, such return shall include only the gross income of such members of the affiliated group as are incorporated in the state or duly authorized to do business therein. The affiliated group will be allowed only one exemption upon a consolidated return, as provided in section 248. In such consolidated return there may be eliminated from the gross income only that portion which is received from sales of property between such members as are incorporated in the state or duly authorized to do business therein, and also interest, rentals and dividends paid by one such corporate member to another. No such sales made, or other income earned, outside the state may be eliminated under this section; provided, further, that gross receipts of any member of the affiliated group which are received in distribution in connection with the dissolution of any other member of the group shall not be permitted to be eliminated. Each and every member of any affiliated group which is incorporated in the state of Maine or duly authorized to do business therein shall be jointly and severally liable for any tax imposed hereunder upon the group and each individual corporate member thereof. An affiliated group must elect at the time of filing its first annual return under sections 244 to 272, inclusive, whether or not it will file a consolidated return or whether each member of the affiliated group shall file separate returns. Thereafter all returns will be required to be filed upon the same basis used in the return above mentioned, unless, in accordance with regulations of the state tax assessor, permission is granted to change the method of making returns from a consolidated to an individual basis or from an individual to a consolidated basis. The state tax assessor shall make such regulations as are deemed necessary or advisable to govern consolidated returns, and all consolidated returns filed in accordance herewith shall be deemed to have been filed under, and to be subject to, the terms and conditions of, such regulations. The first return of an affiliated group shall be made by any member of the group which is incorporated in the state or duly authorized to do business therein. Subsequent returns of the affiliated group shall be made by the member making the first return for the group,

unless the state tax assessor grants permission to some other member to make such returns.

II. Under regulations prescribed by the state tax assessor, all businesses whose gross income is received at 2 or more business locations within the state may be required to file, with their quarterly and annual returns, information returns, showing the allocation of such incomes to the locations at which such incomes were received.

Sec. 235. Gross income tax; returns, quarterly; annual returns; extension.

I. The taxes levied hereunder shall be due and payable in quarterly installments on or before the 31st day of January, the 30th day of April, the 31st day of July, and the 31st day of October in each year, for the period ending on the last day of the preceding month. The taxpayer shall make out a return in the form required by subsection III on or before the 30th day of April, and the 31st day of July and October showing his gross income and the amount of tax for which he is liable for the quarter ending on the last day of the preceding month and shall transmit the same, together with remittance for the amount of the tax, to the office of the state tax assessor. Every taxpayer shall, if his gross income for a taxable year exceeds the amount of \$1,000 whether or not he is liable for any tax hereunder, make out a return in the form required by subsection III on or before the 31st day of January. Such return shall show the total amount of his gross income for the year ending on the 31st day of the preceding December, and the amount of tax, if any, for which he is liable, and shall be transmitted, together with remittance for the amount of the tax, to the office of the state tax assessor. Such annual return, as provided herein, shall include all gross income received by the taxpayer in the taxable year, including the 4th quarterly period, and no separate return for such 4th quarterly period shall be required. From the amount of tax computed on such annual return, the tax previously paid on quarterly returns within the said taxable year shall be deducted. All returns herein provided for shall be signed by the taxpayer or his duly authorized agent. When the state tax assessor has granted permission to any taxpayer to file returns and pay tax upon the basis of a fiscal year differing from the twelve month calendar year, the due dates of the taxpayer's quarterly and annual returns shall be those prescribed by the state tax assessor but shall conform, as nearly as may be, to the dates prescribed in this section for the filing of such returns on a calendar year basis. Any person who does not file a return may be required to execute

and file with the state tax assessor a statement under oath that he did not receive, during any tax period, taxable gross income in excess of \$1,000 for such tax period. Notwithstanding any of the provisions of sections 244 to 272, inclusive, members of the armed forces of the United States, including the army, navy, marine corps, coast guard and merchant marine, shall be exempted from the payment of such tax with respect to the compensation received for military or naval service from and after December 31, 1941, while in active service in the present war. Every such member when making his return shall show that he was a member of the armed forces of the United States, and he shall give the name and number of the military or naval unit of which he was a member. In case of the death of any such member of any such armed forces on or before such date, such tax upon income other than compensation received for military or naval service shall be wholly forgiven and waived, and the same shall not be a lien upon the estate of such person, and no return with respect thereto need be filed.

II. When the total tax for which any person is liable under sections 244 to 272, inclusive, does not exceed the sum of \$10 in any quarter year, he shall not be required to make a quarterly return for that quarter, but an annual return and remittance shall be required as provided in this section.

III. The quarterly and annual returns shall be made upon forms to be prescribed by the state tax assessor; but the state tax assessor or any of his agents shall not require any taxpayer to show on his return the corporate name or title of any stock, or the name of the obligor of any other security from which, or by reason of which, the taxpayer derives gross income taxable under the provisions of sections 244 to 272, inclusive.

IV. When good cause is shown by a taxpayer upon his application to the state tax assessor on or before the final due date for filing such return as set out herein, the state tax assessor may extend the time for making any return required under the provisions of sections 244 to 272, inclusive, but the time for filing any such return shall not be extended for a longer period than 30 days. If, however, the director finds that it would work undue hardship upon the taxpayer to file a return within 30 days after the regular due date for filing such return, an additional extension of 60 days may be granted. Interest at the rate of 1% per month shall be assessed and collected upon the tax due from the due date for filing the return.

V. If the division finds that a taxpayer designs quickly to depart from the state or to remove his property therefrom, or to conceal himself or

his property therein, or to do any other act tending to jeopardize, prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings be brought without delay, the state tax assessor may, at any time, declare the tax period of such taxpayer at an end, and may make an immediate assessment of the amount of tax found to be due, together with interest and penalties provided for by sections 244 to 272, inclusive, and without the statutory notice required by subsection VII of section 254, and notify the taxpayer thereof, and simultaneously demand immediate payment of the amount due. If such payment be not made on demand, the state tax assessor shall immediately issue a warrant to the sheriff of the county in the state commanding him to immediately levy upon and sell the real and personal property of the person owing said tax, or may, in his discretion, accept a bond from the taxpayer to insure the payment of the tax computed, until the tax legally due shall be determined. Such bond shall be with sureties satisfactory to the state tax assessor, and shall be in any amount deemed necessary, but shall not be more than double the amount of the tax computed.

Sec. 254. Incorrect returns; excessive payments; deficiency.

I. As soon as practicable after the return is filed, the director shall examine it; if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed.

II. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be credited against any subsequent tax due in that year; and if upon examination and audit of the annual return and the books and records of the taxpayer, it is found, through the recomputation of the total tax for that year, that a balance of excess payment or payments remains, such balance shall be credited or refunded to the taxpayer by a voucher approved by the state tax assessor and issued by the state controller. The controller shall thereupon issue his warrant on the treasurer, which warrant shall be payable out of any funds in the state treasury not otherwise appropriated. Any amount recovered by suit by any taxpayer as provided in section 257 shall be refunded in like manner, but the refund shall be accompanied by a copy of the order or decree of the court. Any refund paid under the terms hereof shall bear interest at the rate of 3% per annum from the date of overpayment until the date the refund was allowed.

III. If the amount already paid is less than the amount which should have been paid, the difference, to the extent not covered by any credits under sections 244 to 272, inclusive, together with interest thereon at the

rate of 1% per month from the time the tax was due, shall be paid upon notice and demand by the state tax assessor.

IV. If any part or all the deficiency is due to negligence or intentional disregard of authorized rules and regulations, but without intent to defraud, there shall be added as a penalty 10% of the total amount of the deficiency in the tax, and interest in such case shall be collected at the rate of 1% per month on the amount of such deficiency in the tax from the time it was due, which interest and penalty shall become due and payable upon notice and demand by the state tax assessor.

V. If any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added as a penalty 50% of the total amount of the deficiency in the tax, and in such case the whole amount of tax unpaid, including penalty added, shall become due and payable upon notice and demand by the state tax assessor, and an additional 1% per month of the amount of such deficiency in the tax shall be added from the date it was due until paid.

VI. If any taxpayer fails to file a return or to pay the tax within the time prescribed, the state tax assessor shall add to the tax of such person 10% thereof as a penalty; provided, however, that such penalty shall in no case be less than \$2. If any person fails to file a return as required by subsection I of section 253 in cases where his gross income is \$1,000 or more, even though no tax be due, a specific penalty of \$2 shall be assessed. If, however, a return is filed or the tax is paid within 30 days after the date specified for filing the return, and it is shown by affirmative evidence satisfactory to the state tax assessor that the failure to file such return or to pay such tax within the time specified was due to a reasonable cause, such penalty may be waived.

VII. If any taxpayer fails to make any return required the state tax assessor shall give written notice by registered mail to such taxpayer to make such return within 20 days from the date of such notice, and if such taxpayer shall fail or refuse to make such return as he may be required to make within such time, then such return shall be made by the director from the best information available, and the tax computed thereon, and such return shall be prima facie correct for the purposes of sections 244 to 272, inclusive. To the tax computed on such return shall be added 50% of such tax as penalty, together with interest on such tax at the rate of 1% per month from the time such tax was due. A copy of the return shall be sent by registered mail to the taxpayer, together with a demand that the payment of the tax, penalty, and interest be made within 10 days

from the receipt of such notice. Failure to make payment within such time shall subject the taxpayer to the provisions of section 256.

Sec. 255. Improper assessment; procedure; statute of limitation.

I. If the director discovers from the examination of any return, or otherwise, that the gross income of any taxpayer, or any portion thereof, has not been properly assessed, the state tax assessor may at any time within 3 years after the time when the annual return covering such gross income was filed, issue to the taxpayer a notice of proposed assessment, by registered mail, and such taxpayer shall thereupon have an opportunity within 30 days after the mailing of such notice, to present orally or in writing to the state tax assessor or his authorized agents, his objections to the proposed assessment. If no protest or objection is made by the taxpayer within the said 30 days, or if, after hearing, his protests and objections or any part thereof are denied, the state tax assessor shall assess the gross income tax of such taxpayer, or any portion thereof which has not theretofore been properly assessed, and shall make demand on such taxpayer for the amount of the tax and interest and penalties, if any, so assessed, and the amount thereof shall be payable within 10 days from the date of mailing such demand. An annual return filed on or before the last day for filing an annual return shall be considered as having been filed on such last day. The limitation of 3 years on the assessment of such tax shall not apply to the assessment of tax with respect to fraudulent returns. The provisions of sections 244 to 272, inclusive, with respect to revision and appeal shall also apply to any tax assessed under the provisions of this section.

II. Where before the expiration of the time prescribed in subsection I for the assessment of the tax, both the state tax assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

Sec. 256. Failure to pay tax; remedies; receivers.

I. If any tax imposed, or any proportion of such tax be not paid within 30 days after the same is found to be due, the state tax assessor shall 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 owing said tax, found within his county, for the payment of the amount thereof, with damages to the amount of 10% of the tax, in addition to the penalties imposed for failure to make a re-

turn, and in addition to the penalties imposed under section 254, and interest, and costs of executing the warrant, and to return such warrant to the bureau of taxation and pay to it the money collected by virtue thereof, by a time to be therein specified, not more than 60 days from the date of the warrant. The sheriff shall, within 5 days after the receipt of the warrant, file a copy thereof with the clerk of the superior court of his county, and thereupon the clerk shall enter in the judgment record, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in the appropriate columns, the amount of the tax, or portion thereof, and damages, for which the warrant is issued, and the day when such copy is filed; and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property, including choses in action except negotiable instruments not past due, of the person against whom it is issued in the same manner as a judgment duly enrolled in the office of such clerk. The sheriff thereupon shall levy upon any property of the taxpayer, including negotiable instruments, in all respects with like effect, and in the manner prescribed by law in respect to executions issued against property upon judgments of attachment proceedings of a court of record, and the remedies by garnishment and proceedings supplementary shall apply. Such sheriff shall levy on choses in action by serving notice of such levy upon the debtor of such taxpayer and any payment made to the sheriff by such debtor thereafter upon such chose in action shall constitute a discharge of such chose in action to the extent of such payment. Such debtor is hereby indemnified against the claims and demands of any taxpayer for amounts so paid or for damages arising from such payment. Such officers shall be entitled to the same fees, to be collected in the same manner, as is now provided by law for like services. The sheriff shall also be entitled to retain for his services the amount of damages set forth in the warrant and as prescribed herein, but only when the full amount of tax and penalties set forth in the warrant has been collected by him and transmitted to the state tax assessor. In every instance in which the sheriff shall return any warrant unsatisfied, the sheriff shall attach to his return an inventory or schedule sworn to by the taxpayer of all the property, real or personal, of the taxpayer, describing the real estate by metes and bounds, and the personal property by separate items, specifically noting thereon all incumbrances; or in lieu thereof a statement by the taxpayer under oath that he possesses no property whatever. If, within the time prescribed in the warrant, the sheriff shall fail to file either such schedule, such statement of the taxpayer, or a statement sworn to by the sheriff that he has made a demand upon the taxpayer to make such

schedule or statement and that such demand was refused, the sheriff shall forfeit to the state for each such failure the sum of \$20. It shall be the duty of the taxpayer to make such verified inventory, schedule or statement, upon the demand of the sheriff, and it shall be unlawful for any taxpayer to refuse so to do. Any person refusing so to make and provide such inventory, schedule or statement shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$20 nor more than \$50, or by imprisonment for not more than 6 months or by both such fine and imprisonment. Should any inventory or schedule disclose any property upon which the sheriff might have made a levy and sale to satisfy, or partially satisfy, any warrant, the failure of the sheriff to make such levy or sale shall constitute misfeasance in office, and shall subject the sheriff to liability upon his official bond, to the state of Maine, in an amount equal to the amount which might have been collected upon the said warrant had such levy and/or sale been made. Such liability upon the part of the sheriff shall constitute a debt due to the state of Maine, and may be recovered in any suit instituted by the attorney general in the name of the state for that purpose. The liability for any tax, interest, penalties and damages imposed by sections 244 to 277, inclusive, shall not be subject to any of the provisions of the exemption laws of the state of Maine for the relief of debtors.

II. A tax due and unpaid under the provisions of sections 244 to 272, inclusive, shall constitute a debt due the state, and may be collected by action at law, or other appropriate judicial proceedings, which remedy shall be in addition to all other existing remedies; and the same shall be collected, together with an additional 10% of the amount of the tax and penalties imposed for failure to make a return, or making a fraudulent return, and the costs of collection if paid within 30 days after the date said tax was due, and an additional 2% of the amount of the tax for each succeeding 30 days or fraction thereof elapsing before the tax shall have been paid. The additional 2% penalty shall not be applied until a 10 day notice of delinquency shall have been sent to the taxpayer.

III. Any person against whom a tax shall be assessed as herein provided shall be restrained and enjoined upon the order of the state tax assessor, by proper proceedings instituted in the name of the state, brought by the attorney general, from engaging or continuing in business, until the taxes shall have been paid, and until such person shall have complied with the provisions of sections 244 to 272, inclusive, and the attorney general shall prosecute violations of criminal provisions of said sections, upon the request of the state tax assessor.

IV. If any tax assessed under the provisions of sections 244 to 272, inclusive, or any portion thereof, be not paid within 120 days after the same is found to be due, a receiver may be appointed by the superior court of the county in which such taxpayer resides, or any justice thereof in vacation, in a proceeding requesting such appointment, instituted against the said taxpayer in the name of the state, brought by the attorney general at the request of the state tax assessor; the court shall appoint a receiver when it finds that the taxpayer has not paid the tax, or amount due, imposed by sections 244 to 272, inclusive, within 120 days after the same is found to be due, and that the tax, or any portion thereof is unpaid and delinquent. Such cause for the appointment of a receiver shall be in addition to all other causes or grounds provided by law for the appointment of receivers, and shall be in addition to all other methods for the enforcement of said sections. Each such receiver shall give bond and be sworn as provided for by law, and shall have power, under the control of the court, or the justice thereof in vacation, to bring and defend actions, to take and keep possession of the property of the taxpayer, to receive all funds, and collect any debts owing to the taxpayer, in the receiver's name, and generally to do such acts respecting the property as the court or justice thereof shall authorize, and shall have all of the powers granted to, and shall be subject to all of the duties of, receivers under the laws of this state. In all proceedings hereinafter instituted under the provisions of this section, in which a receiver may be appointed or refused, the party aggrieved may, within 10 days thereafter, appeal from the decision of the court to the supreme judicial court, without awaiting the final determination of such proceedings; and in cases where a receiver has been appointed, upon the appellant filing an appeal bond with sufficient surety in such sum as may have been required of such receiver, conditioned upon the due prosecution of such appeal and the payment of all costs or damages that may accrue to any officer or person by reason thereof, the authority of such receiver shall be suspended until the final determination of such appeal.

V. It is expressly provided that the foregoing remedies shall be cumulative and shall be in addition to all other existing remedies, and that no action taken by the state tax assessor, the attorney general or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

Sec. 257. Petition for hearing upon assessment; tax improperly paid; refund; limitation of actions; appeal enjoining collection of tax prohibited.

I. If any person considers that he has paid to the state tax assessor for any year an amount which is in excess of the amount legally due from him for that year under the provisions of sections 244 to 272, inclusive, he may apply to the state tax assessor, by petition in writing, at any time within 3 years after the payment for the annual period for which such alleged overpayment has been made, for a correction of the amount so paid by him to the state, and for a refund of the amount which he claims has been illegally collected and paid. In such petition, he shall set forth the amount which he claims should be refunded, and the reasons for such claim. The state tax assessor shall promptly consider such petition, and may grant such refund, in whole or in part, or may wholly deny the same. If denied in whole or in part, the petitioner shall be forthwith notified of such action and of the grounds for such denial. The state tax assessor may, in his discretion, grant the petitioner a further hearing with respect to such petition. Any person improperly charged with any tax provided for under the terms of sections 244 to 272, inclusive, and required to pay the same, may recover any amount thus improperly collected, together with interest, in a civil action or suit against the state tax assessor in the superior court of the county of his residence or business location and if he has no such residence or business location, then in the superior court in and for the county of Kennebec. The state hereby consents to such suits in said courts and no others and said courts are hereby granted exclusive jurisdiction of said suits. No court shall entertain such a suit, unless the taxpayer shall show that he has filed a petition for refund with the department, as hereinabove provided, within 1 year prior to the institution of the action. No such suit shall be entertained until the expiration of 6 months from the time of filing such petition for refund with the state tax assessor, unless in the meantime, the state tax assessor shall have notified the petitioner, in writing, of the denial of such petition. Any such petition shall be subject to the provisions of subsection II of section 254. In every such action, a copy of the complaint shall be served upon the state tax assessor, with the summons, which summons shall be so served at least 30 days before the return date thereof. It shall not be necessary for any taxpayer to protest against the payment of the tax in order to maintain such suit. In any suit to recover taxes paid, or to collect taxes, imposed under the provisions of sections 244 to 272, inclusive, the court shall adjudge costs to such extent and in such manner as may be deemed equitable.

II. Either party to such suit shall have the right to appeal, as now provided by law in civil cases. In the event a final judgment is rendered in

favor of the taxpayer in a suit to recover illegal taxes, then it shall be the duty of the state controller, upon receipt of a certified copy of such final judgment, to issue a warrant directed to the treasurer of state in favor of such taxpayer, to pay such judgment, interest and costs. It shall be the duty of the treasurer of state to honor such warrant and pay such judgment out of any funds in the state treasury not otherwise appropriated.

III. It shall be the duty of the attorney general to represent the state tax assessor and the state in all legal matters or litigation, either criminal or civil, relating to the enforcement, construction, application and administration of the provisions of sections 244 to 272, inclusive.

IV. No injunction to restrain or delay the collection of any tax claimed to be due under the provisions of sections 244 to 272, inclusive, shall be issued by any court, but in all cases in which, for any reason, it be claimed that any such tax about to be collected is wrongful or illegal in whole or in part, the remedy, except as otherwise expressly herein provided, shall be by payment and action to recover such tax as provided in this section.

Sec. 258. State tax assessor; authority, duties; town or city assessors, duties; unlawful acts; penalty. The state tax assessor is hereby authorized and required to prescribe that blanks for the listing of personal property for taxation, beginning with the blanks to be furnished to taxpayers in 1951, and thereafter, shall include an interrogatory in addition to those now prescribed by law to be answered and under oath. Such interrogatory shall be upon the proper blank form to be furnished by the city or town assessor, who shall also administer the oath, and shall be in the following form: "Did you pay any gross income tax to the state of Maine with respect to your gross income for the preceding calendar year?"

The city or town assessors are hereby mandated to obtain the answer to such interrogatory under oath. If any such assessor or deputy assessor shall fail or neglect to require the answer to such interrogatory under oath, he shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding \$20 for each case of such omission or neglect. The answers to such interrogatory shall be open to the inspection of any authorized agent of the state tax assessor.

Sec. 259. Information returns; by whom; filing date; extension. Every individual, partnership, corporation, joint stock company or association, whether or not exempt from taxation under the provisions of sections 244 to 272, inclusive, being a resident of, or having a place of business in, this

state, in whatever capacity acting, including banking institutions, lessees or mortgagors of real or personal property, commissioners for sale of property, fiduciaries, brokers, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of dividends or interest (other than interest coupons payable to bearer) of \$300 or more, or rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical income of more than \$1,000 paid, payable or credited during any year to any resident, and/or to any non-resident when such annual or periodical income received by such non-resident would be taxable under the provisions of sections 244 to 272, inclusive, shall make information returns thereof under oath to the state tax assessor, under such regulations and in such form and manner and to such extent as may be prescribed by him. Such returns shall be filed on or before January 31st of each year unless the state tax assessor shall extend the time for filing such returns.

Sec. 260. Withholding agents; duties; when liable.

I. For the calendar year 1951, and for each calendar year thereafter, each withholding agent shall deduct and withhold from all salaries, wages, commissions, gratuities, emoluments, prerequisites, and other fixed or determinable annual or periodical income of whatever kind and in whatever form paid or credited, earned by any taxpayer for personal service and the receipt of which is subject to tax under the provisions of sections 244 to 272, inclusive, 1% of the amount by which the amount of such compensation paid or credited, or to be paid or credited, in the calendar year by such withholding agent to such taxpayer, exceeds the amount of \$1,000; provided, however, that a withholding agent with whom a certificate under oath in such form as shall be prescribed by the state tax assessor, to the effect that the person entitled to such compensation is a resident of the state, and setting forth his residence address, shall be filed after the beginning of the calendar year and before the time when such withholding agent is required to make return and payment, as hereafter provided, need not deduct or withhold anything from the compensation or other gross income herein required to be withheld of the person filing such certificate. 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. Upon written notice and demand addressed to any withholding agent by the state tax assessor, such withholding agent shall, for each

calendar year or part thereof after the receipt of such demand, deduct and withhold from all interest, dividends and other fixed and determinable annual or periodical gross income not mentioned in subsection I, of whatever kind and in whatever form paid or credited, receivable by any taxpayer who shall not have filed the certificate mentioned in subsection I, and who shall have been named in the notice from the state tax assessor as specified above, and of which such withholding agent shall have control, receipt, custody, disposal or payment, 1% of the amount by which the amount of such gross income paid or credited, or to be paid or credited, in the calendar year, by such withholding agent to such taxpayer exceeds the amount of \$1,000.

III. Every withholding agent required to deduct and withhold any tax under subsection I or II shall make return thereof on forms prescribed by the state tax assessor on or before the 31st day of January in each year, and shall at the same time pay the tax thus withheld, to the state tax assessor. Every such withholding agent is hereby made liable for such tax, and is hereby indemnified against the claims and demands of any individual, corporation, partnership or other entity, for the amount of any payments made in accordance with the provisions of this section.

IV. Gross 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 person entitled to receive such gross income, but any amount of tax so withheld shall be credited against the amount of tax as computed in such return. Any amount withheld by such withholding agent and paid by him to the state tax assessor which is in excess of the total amount of tax, interest and penalties due from the taxpayer against whom withholding has been made, shall be refunded with interest to the taxpayer. If such refund shall be claimed by the taxpayer and shall not be allowed by the state tax assessor, then the taxpayer may institute suit for the recovery of any amount so withheld which he alleges to be due him. Such suit shall be governed by the provisions of section 257.

Sec. 261. Calendar year; fiscal year; accrual basis.

I. The assessment of taxes herein provided for, and the returns required therefor, shall be for the year ending on the 31st day of December. If the taxpayer in transacting his business, keeps the books reflecting the same on a basis other than the calendar year, he may, with the written consent of the state tax assessor and upon such conditions as the state tax assessor may prescribe, make his returns, both quarterly and an-

nally, and pay taxes on the basis of his accounting period, as shown by the method of keeping the books of his business.

II. The state tax assessor may grant to any taxpayer the privilege of reporting his gross receipts upon an accrual basis and shall establish rules and regulations therefor not inconsistent with the provisions of sections 244 to 272, inclusive. Such persons shall not be required to pay tax upon cash discounts allowed upon sales and deducted from the purchase price.

Sec. 262. Taxes additional. The tax imposed by sections 244 to 272, inclusive, shall be in addition to all licenses and taxes imposed by law as a condition precedent to engaging in any business taxable thereunder, except as in sections 244 to 272, inclusive, otherwise specifically provided. No municipality shall, however, be authorized to levy any tax by virtue of the provisions of said sections.

Sec. 263. Remittances, how made. All remittances of taxes imposed by sections 244 to 272, inclusive, shall be made to the state tax assessor by bank draft, check, cashier's check, money order or money, and the state tax assessor shall issue his receipts therefor to the taxpayer, and shall deposit all money received in any bank or banks in this state qualified as a state depository. No remittance other than cash shall be a final discharge of liability for the tax hereby imposed unless and until it has been paid in cash to the state.

Sec. 264. Taxes collected; disposition. The total amount received from taxes levied under the provisions of sections 244 to 272, inclusive, shall be paid by the state tax assessor to the treasurer of state daily and credited to the general fund.

Sec. 265. Department records. The state tax assessor shall keep full and accurate records of all money received and how disbursed; and shall preserve, for a period of 3 years, all returns filed with him under the provisions of sections 244 to 272, inclusive.

Sec. 266. Returns; information confidential; violation; penalty. Unless in accordance with a judicial order, or as herein provided, the state tax assessor, his counsel, agents, clerks, stenographers or other employees, shall not divulge the gross income, or the amount of tax paid by any person, or any other information disclosed by the reports filed under the provisions of sections 244 to 272, inclusive, except to members and employees of the bureau of taxation, or to the governor, or to the attorney general or any other legal representative of the state in any action in respect to the

amount of tax due under the provisions of said sections, or to any duly authorized officer of the United States. Any violation of the provisions of this section shall be followed forthwith by the dismissal of the offending officer or employee of the state from his office or employment, and in addition, the offender shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than \$100 nor more than \$500, and by imprisonment for not less than 10 days nor more than 30 days.

Sec. 267. Secretary of state, duties. The secretary of state shall withhold the issuance of any certificate of voluntary dissolution of any corporation organized under the laws of this state, or any certificate of withdrawal of any corporation organized under the laws of another state and admitted to do business in this state, until the receipt of a notice from the state tax assessor to the effect that the tax levied under the provisions of sections 244 to 272, inclusive, against any such corporation has been paid, or until he shall be notified by the state tax assessor that such corporation is not subject to taxation hereunder.

Sec. 268. Taxpayers records; examination by state tax assessor; unlawful acts; penalty.

I. It shall be the duty of every person subject to taxation hereunder to keep such books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of sections 244 to 272, inclusive. It shall be the duty of every such person to keep and preserve such records for a period of 3 years, and all such records shall be open for examination at any time, by the state tax assessor or his duly authorized agents. An person violating any of the provisions of this subsection shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500.

II. It shall be unlawful for any person to make false entries in his books with intent to defraud the state or evade the payment of the tax, or any part thereof, or to keep more than one set of books, with like intent. It shall also be unlawful for the president, vice president, secretary, treasurer or other officer or employee of any company or association, or for any partner or employee of any partnership to make, cause to be made, or permit to be made any false entries in the books of such company, association, or partnership, as the case may be, with the intent to avoid the payment of any tax imposed hereunder, or to keep or permit to be kept more than one set of books for such company or association, or partnership, with like intent. Any person violating any of the provisions of this subsection shall be guilty of a misdemeanor, and on conviction

thereof shall be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for not exceeding 6 months, or by both such fine and imprisonment, at the discretion of the court or jury trying the case, within the limitations aforesaid.

Sec. 269. Unlawful acts; penalty.

I. It shall be unlawful for any person to fail or refuse to make any return required to be made under the provisions of sections 244 to 272, inclusive, or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by sections 244 to 272, inclusive; or for the president, vice president, secretary, treasurer or other officer or employee of any company or association, or any partner or employee of any partnership, to make or cause to be made or permit to be made for any company, association or partnership, as the case may be, any false return, or any false statement in any return required by said sections, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record or other data by the state tax assessor or his duly authorized agents, as required hereunder; or to fail or refuse to permit the inspection or appraisal of any property by the state tax assessor or his duly authorized agents, or to refuse to offer testimony or produce any record as required. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for not exceeding 6 months, or by both such fine and imprisonment, at the discretion of the court or jury trying the case, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent to defraud the state or to evade the payment of the tax imposed hereunder shall be guilty of the offense of perjury and, on conviction thereof, shall be punished in the manner provided by law. Any company or association for which a false return, or a return containing a false statement as aforesaid, shall be made, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$1,000. No officer or employee of the state shall be civilly or criminally liable for causing any criminal or civil prosecution provided for under the provisions of sections 244 to 272, inclusive.

II. The prosecution of any person or persons guilty of having violated any of the penal provisions hereof may be instituted by the filing of affidavit or indictment in the same manner as other criminal cases are

commenced, and the attorney general shall have concurrent jurisdiction with the county attorneys in instituting and prosecuting such actions. The attorney general or the county attorneys shall be allowed at all times to appear before the grand jury for the purpose of reporting any violations of the provisions of sections 244 to 272, inclusive, or for the purpose of rendering legal advice with respect thereto when required, or for the purpose of interrogating witnesses before the grand jury. When any affidavit charging any person with a violation of any of the penal provisions of said sections has been made as provided for by law, either the attorney general or the county attorneys shall approve the same by endorsement, using the words "approved by me" and by signing the same as attorney general or county attorney.

Sec. 270. Administration of act; director; may decline to prosecute.

I. The administration of the gross income tax is vested in and shall be exercised by the state tax assessor except as otherwise herein provided. Such administration shall be under the supervision of the director, who shall be appointed by the state tax assessor, subject to the provisions of the personnel law.

II. The state tax assessor, subject to the provisions of the personnel law, shall appoint a chief deputy director and such other deputies as the administration of such division may require. The chief deputy director and the other deputies shall receive such salary as shall be fixed by the personnel law. The state tax assessor, the director and all deputies shall be reimbursed for all expenses incurred incident to the proper performance of the duties of the office.

III. The state tax assessor, subject to the provisions of the personnel law, may appoint, as needed, such agents, clerks, stenographers and other employees as may be necessary to efficiently administer said division, who shall serve under him, shall perform such duties as may be required and are hereby authorized to act for the division as the director may prescribe and as provided herein.

IV. All notices, summons, warrants, waivers, demands, and other written documents except as otherwise provided in section 271, shall be signed by the state tax assessor, the director or his chief deputy, and when so signed shall be regarded as the official acts of the state tax assessor.

V. In case of violation of the provisions of sections 244 to 272, inclusive, the state tax assessor may decline to prosecute for the first offense, if,

in the judgment of the state tax assessor, such violation is not wilful or flagrant.

Sec. 271. Rules promulgated by state tax assessor; copies to be furnished to taxpayers; forms.

I. The state tax assessor shall from time to time promulgate in the manner provided by law such rules and regulations not inconsistent with the provisions of sections 244 to 272, inclusive, for making returns and for the ascertainment, assessment and collection of the tax imposed hereunder, as he may deem necessary and desirable. Such regulations may also prescribe the qualifications of persons permitted to represent taxpayers before the bureau of taxation in connection with any taxes imposed under the terms of said sections, and may provide for the admission or exclusion of such persons.

II. Upon request, the division shall furnish any taxpayer with a copy of such rules and regulations.

III. All forms necessary and proper for the enforcement of sections 244 to 272, inclusive, shall be prescribed, printed and furnished by the bureau of taxation.

Sec. 272. Appraisal of property; examination of taxpayer's records; subpoenas; disobedient witnesses. The state assessor or his authorized agents, are hereby authorized to appraise any property when it is necessary to determine the value of such property in connection with the enforcement of the provisions of sections 244 to 272, inclusive. The state tax assessor or his authorized agents may examine any books, papers, records, or other data bearing upon the correctness of any return, or for the purpose of making a return, as required hereunder, where none has been made, and may by the issuance of a subpoena require the attendance of the taxpayer or any other person and take his testimony with respect to any such matter, and may require any such person to produce any books or records specified in such subpoena. The state tax assessor or his authorized agents shall have power to administer oaths to any such person. The state tax assessor is further empowered, by his authorized agents, to examine the books or records of any broker or other person handling funds for the credit of, or acting as agent for, any person subject to taxation hereunder. If any person called as a witness by a subpoena, issued by the state tax assessor and served upon him by the sheriff of the county of which such person is a resident, or wherein is located the principal office of such person or wherein such records are located or kept, shall fail to obey such subpoena to appear

before the state tax assessor or his authorized agent, or shall refuse to testify or to answer any question, or to produce any book, record or other data when required so to do, such failure or refusal shall be reported to the attorney general, who may thereupon institute proceedings by the filing of a petition in the name of the state, on the relation of the state tax assessor, in the superior court of the county where such witness resides, or wherein such records are located or kept, to compel the obedience of such witness. Such petition shall set forth the facts and circumstances of the demand for, and refusal or failure to permit the examination or copying of such records of the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Said court, upon the filing and docketing of such petition shall thereupon promptly issue an order to the defendant named in such petition, to produce forthwith in such court or at a place in such county designated in such order, for the examination or copying by the state tax assessor or his duly appointed agents, of the records, books or documents so described, and to testify concerning the matters described in such petition. Unless such defendant shall appear in said court upon a date specified in such order, which date shall be not more than 10 days from the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver, or order the defendant to deliver, to the state tax assessor or his agents, for examination or copying, records, books and documents so described in said petition and so produced in such court, and shall order said defendant to appear in answer to the subpoena and to testify. Any person, or any officer, member, or agent thereof who shall willfully disobey such order of the court after the same shall have been served upon him, shall be guilty of indirect contempt of such court from which such order shall have issued, and may be adjudged in contempt of said court and punished therefor as provided by law. Officers who serve subpoena or orders of court, and witnesses attending, shall receive like compensation as is provided by law with respect to the trial of other civil causes, such compensation to be paid from the appropriation for the administration of the gross income tax.'

Referendum. The aldermen of cities, the selectmen of towns and the assessors of the several plantations of 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, at the next general or special state-wide election held

on the 2nd Monday in September, to give in their votes upon the acceptance or rejection of the foregoing act, and the question shall be: "Shall 'An Act Imposing a Gross Income Tax' passed by the 95th legislature be accepted?"

And the inhabitants of said cities, towns and plantations shall indicate by a cross or check mark placed within a square upon their ballots their opinion of the same, those in favor of said act voting "Yes" and those opposed to said act voting "No" and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings, and return 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 said act, the governor shall forthwith make known the fact by his proclamation, and the act shall thereupon become effective as of the date of said proclamation.

Secretary of state shall prepare ballots. 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.