

CHAPTER 178.

[H. B. 593.]

REVENUE ACT AMENDMENTS.

AN ACT relating to revenue and taxation; amending sections 4, 5, 6, 7, 8(a), 11, 15(a), 17, 25, 32, 33, 37, 82, 84, 86, 88, 92, 93, 187 and 211 of chapter 180, Laws of 1935, as amended by chapter 191, Laws of 1937, chapter 227, Laws of 1937, chapter 9, Laws of 1939, and chapter 225, Laws of 1939, (sections 8370-4, 8370-5, 8370-6, 8370-7, 8370-8(a), 8370-11, 8370-15(a), 8370-17, 8370-25, 8370-32, 8370-33, 8370-37, 8370-82, 8370-84, 8370-86, 8370-88, 8370-92, 8370-93, 8370-187 and 8370-211, Remington's Revised Statutes); renumbering section 8(a) and section 15(a) of said chapter 180, Laws of 1935, as amended; repealing sections 213, 214, 215, and 216 of chapter 180, Laws of 1935, (sections 8370-213, 8370-214, 8370-215 and 8370-216, Remington's Revised Statutes); and adding new sections thereto to be designated as sections 9(a), 11(a), 19(a) and 34(a) of said chapter 180, Laws of 1935, as amended, and declaring that this act shall take effect May 1, 1941.

Be it enacted by the Legislature of the State of Washington:

Amendments.

SECTION 1. Section 4, chapter 180, Laws of 1935, as amended by section 1, chapter 225, Laws of 1939, (section 8370-4, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Business tax.

Section 4. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be, as follows:

Measured by gross business.

Persons included.

Extractors.

(a) Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products extracted for sale or commercial use, multiplied by the rate of one-quarter of one per cent;

Rate.

The measure of the tax is the value of the products so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state;

(b) Upon every person engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-quarter of one per cent; Manufacturer.
Rate.

The measure of the tax is the value of the products so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state;

(c) Upon every person engaging within this state in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of one-quarter of one per cent; Retail merchant.
Rate.

(d) Upon every person engaging within this state in the business of buying wheat, oats, corn and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax herein imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one per cent; Wholesale grain.
Rate.

(e) Upon every person except persons taxable under sub-section (d) above engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one per cent; Wholesalers.
Rate.

(f) Upon every person engaging within this state in the business of printing and of publishing newspapers, periodicals or magazines; as to such Printing.

persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one-quarter of one per cent;

Rate.

Others.

(g) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in sub-sections (a), (b), (c), (d), (e) and (f) above; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of one-half of one per cent. This sub-section includes, among others, and without limiting the scope hereof, persons engaged in the following businesses (whether or not title to materials used in the performance of such businesses passes to another by accession, confusion or other than by outright sale): repairing, personal, business, professional, mechanical and educational service businesses, [() except educational institutions which are not operated for profit and which are privately endowed to offer instruction in trade, industry and agriculture, []] abstract and title insurance, financial, brokerage, construction contracting and sub-contracting, advertising and hotel businesses.

Rate.

Amend-
ments.

SEC. 2. Section 5, chapter 180, Laws of 1935, as amended by section 2, chapter 225, Laws of 1939, (section 8370-5, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Definitions.

Section 5. For the purposes of this title, unless otherwise required by the context:

(a) The term "tax year" or "taxable year" shall mean either the calendar year, or the taxpayer's fiscal year when permission is obtained from the Tax Commission to use a fiscal year in lieu of the calendar year;

(b) The word "person" or word "company," herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, com-

pany, joint-stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, co-operative, fraternal, non-profit or otherwise and the United States or any instrumentality thereof provided a valid tax may be levied upon or collected therefrom under the provisions of this act;

Definitions.

(c) The word "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under sub-section (d) of this section. It includes conditional sale contracts, leases with option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It shall also be construed to include the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not;

(d) The term "sale at retail" or "retail sale" means every sale of tangible personal property other than a sale to one who purchases for the purpose of resale in the regular course of business or for the purpose of consuming the property purchased in the producing for sale a new article or substance, of which such property is an ingredient or component or a chemical used in processing same. The term "sale at retail" or "retail sale" shall be construed to include: (1) The production, fabrication or printing of tangible personal property for consumers thereof upon special order and shall also include the production, fabrication or printing of tangible personal property for consumers thereof who furnish either directly or indirectly the materials used in such work; (2) the installation, cleaning, decorating, beautifying, repairing or otherwise altering or improving the real or personal property

Definitions.

of consumers or for consumers thereof. The terms shall not be construed to include sales of feed to persons producing for sale, milk, eggs, wool, fur, meat or other substances obtained from livestock, animals or poultry;

(e) The term "sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a sale at retail;

(f) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses;

(g) The term "gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes or any other expense whatsoever paid or accrued and without any deduction on account of losses;

(h) The term "value proceeding or accruing" means the consideration, whether money, credits, rights or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The Tax Commission may provide by regulation that

the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due;

Definitions.

(i) The word "extractor" means every person who, from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or commercial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber or other natural product, or takes, cultivates, or raises fish, shell fish or other sea or inland water foods or products; it does not include persons performing under contract the necessary labor or mechanical services for others;

(j) The word "manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or commercial use from his own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the Tax Commission shall prescribe equitable rules for determining tax liability;

(k) The term "to manufacture" embraces all activities of a commercial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful article of tangible personal property or substance of trade or commerce is produced and shall include the production or fabrication of special made or custom made articles;

(l) The term "commercial use" means the fol-

Definitions. lowing uses of products by the extractor or manufacturer thereof:

(1) Manufacturing of articles, substances or commodities from extracted products;

(2) Leasing or renting of extracted or manufactured products;

(3) Consigning, shipping or transferring extracted or manufactured products to another either without consideration or in the performance of contracts;

(4) Any other use of products extracted or manufactured on a commercial scale under such rules and regulations as the Tax Commission shall prescribe;

(m) The word "business" includes all activities engaged in with the object of gain, benefit or advantage to the taxpayer or to another person or class, directly or indirectly;

(n) The term "engaging in business" means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business;

(o) The term "cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date;

(p) The term "tuition fee" shall be construed to include library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution: *Provided*, That the term "educational institution," as used herein, shall be construed to mean only those institutions created or generally accredited as such by the state and offer-

ing to students an educational program of a general academic nature but not including specialty schools, business colleges, trade schools or similar institutions;

Definitions.

(q) The word "successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor;

(r) The word "consumer" means any person who purchases, acquires, owns, holds or uses any article of tangible personal property other than for the purpose of resale in the regular course of business or for the purpose of consuming such property in producing for sale a new article or substance of which such property is an ingredient or component or chemical used in processing same. The word "consumer" includes persons engaged in the business of erecting buildings or improving real property of others, or in performing public improvement contracts and persons engaged in rendering personal and professional services;

(s) The term "in this state" or "within this state" as used herein includes all federal areas lying within the exterior boundaries of the State of Washington.

SEC. 3. Section 6, chapter 180, Laws of 1935, as amended by section 3, chapter 225, Laws of 1939, (section 8370-6, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amend-
ments.

Section 6. Every person engaging in activities which are within the purview of the provisions of

Persons
engaged in
two or more
activities.

Taxable
under each.

two or more paragraphs (a), (b), (c), (d), (e), (f) and (g) of section 4, shall be taxable under each paragraph applicable to the activities engaged in:

Proviso.

Provided, however, That persons taxable under paragraphs (a) or (b) of said section shall not be taxable under paragraph (e) of said section with respect to making sales at wholesale of products extracted or manufactured within this state by such persons: *And provided further,* That persons taxable under the provisions of paragraph (b) of section 4 upon manufacturing any food products for human consumption which are cooked, but which are not preserved by canning, bottling, or freezing, shall not be taxable under the provisions of paragraphs (c) or (e) of said section upon making wholesale or retail sales of such products.

Amend-
ments.

SEC. 4. Section 7, chapter 180, Laws of 1939, (section 8370-7, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Value
determined
by proceeds.

Section 7. The value of products extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such

Exceptions.

sale is at wholesale or at retail, except:

(a) Where such products are extracted or manufactured for commercial use;

(b) Where such products are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

Commission
to make
rules.

In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers. The Tax Commission shall prescribe uniform and equitable rules for the purpose of ascertaining such values.

SEC. 5. Section 8(a), chapter 180, Laws of 1935, as amended by section 4, chapter 225, Laws of 1939, (section 8370-8(a), Remington's Revised Statutes), shall be hereafter designated as section 8 of such chapter 180, Laws of 1935, as amended, and the same hereby is amended to read as follows:

Amendments.

Section 8. Any person rendering services and maintaining places of business both within and without this state shall, for the purpose of computing tax liability under this title, apportion to this state that portion of his gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of his total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

Persons doing business within and out of state.

Apportionment.

SEC. 6. Section 11, chapter 180, Laws of 1935, as amended by section 5, chapter 225, Laws of 1939, (section 8370-11, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

Section 11. The provisions of this title shall not apply to:

Exemptions.

(a) Any person engaging in any business activity whose value of products, gross proceeds of sales or gross income of the business is less than six hundred (\$600.00) dollars, for a bi-monthly period: *Provided, however,* That where one person engages in more than one business activity and the combined measures of tax applicable to such businesses equal or exceed six hundred (\$600.00) dollars, no exemption or deduction from the amount of tax is allowed by this provision: *Provided, further,* That any person claiming exemption under the provisions of this sub-section may be required to file returns as provided herein even though no tax may be due;

Limits of business.

Proviso.

(b) Any person in respect to a business activity

with respect to which tax liability is specifically imposed under the provisions of title V of this act;

Insurance
business.

Proviso.

(c) Any person in respect to insurance business upon which a tax based on gross premiums is paid to the State of Washington: *Provided, however,* That the provisions of this sub-section shall not exempt any person engaging in the business of representing any insurance company, whether as general or local agent or acting as broker for such companies: *And provided, further,* That the provisions of this sub-section shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor;

Wholesale
agricultural
products.

Exception.

(d) Any person in respect to the business of growing or cultivating for sale any agricultural or horticultural products, or crops, or breeding or raising any fowl, animals or livestock for sale or for the milk, eggs, wool, fur or other substance obtainable therefrom, or in respect to the sale of such products at wholesale by the grower or producer thereof. This exemption does not apply to any person selling such products at retail; nor to any person purchasing and feeding or fattening livestock; nor to any person growing, raising or cultivating trees, shrubs, bushes, plants, bulbs, flowers and the like, either as forest, greenhouse or nursery products; nor to any association of persons whatever, whether mutual, cooperative or otherwise, engaging in any business activity with respect to which tax liability is imposed under the provisions of this title;

Athletic
contests.

(e) Any person in respect to the business of conducting boxing contests and sparring and/or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Athletic Commission;

(f) Any person in respect to the business of con-

ducting race meets for the conduct of which a license must be secured from the Horse Racing Commission; Race meets.

(g) Any person in respect to his employment in the capacity of an employee or servant as distinguished from that of an independent contractor; Employees.

(h) Fraternal benefit societies, as defined in Rem. Rev. Stat., section 7259, fraternal fire insurance associations, as described in subdivision third of Rem. Rev. Stat., section 7131, and beneficiary corporations or societies organized under and existing by virtue of Rem. Rev. Stat., sections 3872 to 3883, inclusive, providing that such corporations or societies provide in their by-laws for the payment of death benefits, as set forth in Rem. Rev. Stat., section 3879; Fraternal societies.

(i) The gross income received by the United States or any instrumentality thereof, by the State of Washington or any municipal subdivision thereof or by any religious society, association or corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care or healing of human beings: *Provided*, That no exemption is granted where the income therefrom inures to the benefit of any physician, surgeon, stockholder or individual by virtue of ownership or control of such hospital, clinic, resort or other institution; Public medical care.

(j) Amounts derived from the lease, rental or sale of real estate: *Provided, however*, That nothing herein shall be construed to allow a deduction of amounts derived from engaging in any business wherein a mere license to use or enjoy real property is granted, or to allow a deduction of amounts received as commissions from the sale or rental of real estate; Rentals on real estate.

(k) National banks, state banks, trust companies, mutual savings banks, buildings and loan and savings and loan associations with respect to their Banks.

banking business, trust business or savings and loan business but not with respect to engaging in any other business taxable hereunder, even though such other business be conducted primarily for the purpose of liquidating the assets thereof;

Chick
hatcheries.

(l) Amounts derived by persons engaged in operating chick hatcheries from the production and sale of chicks and hatching eggs;

Others.

(m) Any person performing any activities with respect to which a tax is specifically imposed upon the gross operating income derived therefrom under the provisions of title XIII of this act.

Amend-
ments.

SEC. 7. Section 15(a), chapter 180, Laws of 1935, as amended by section 6, chapter 225, Laws of 1939, (section 8370-15(a), Remington's Revised Statutes), shall be hereafter designated as section 14(a) of said chapter 180, Laws of 1935, as amended, and the same hereby is amended to read as follows:

Tax on
public
contracts a
prior lien.

Section 14(a). The amount of all taxes, increases and penalties due or to become due from a contractor or his successors or assignees with respect to a public improvement contract shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, and the amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

Duty of
public
officers.

Any state, county or municipal officer charged with the duty of disbursing or authorizing the payment of public funds in respect to any public improvement contract shall, before making final payment of the retained percentage to any person performing any such contract or to any of his successors or assignees, require the person to secure from the Tax Commission a certificate that all taxes, increases

and penalties due from such person, and all taxes to become due with respect to such contract have been paid in full.

If within thirty (30) days after receipt of notice by the Tax Commission of the completion of the contract the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the Tax Commission may certify to the disbursing officer the amount of all taxes, increases and penalties due from such taxpayer together with the amount of all taxes to become due with respect to such contract and may request payment thereof to the Tax Commission in accordance with the priority provided by this section. The disbursing officer shall within ten (10) days after receipt of said certificate and request pay to the Tax Commission the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract and after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the Tax Commission the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the Tax Commission for the balance of all taxes, increases or penalties shown to be due by the certificate of the Tax Commission.

Commissioner to certify to disbursing official.

Claim to be settled before final settlement.

SEC. 8. Section 17, chapter 180, Laws of 1935, as amended by section 7, chapter 225, Laws of 1939, (section 8370-17, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

Section 17. For the purposes of this title, unless otherwise required by the context:

Definitions.

(a) The term "selling price" means the consideration, whether money, credits, rights, or other property, expressed in the terms of money, paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property

Definitions.

sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes or any other expenses whatsoever paid or accrued and without any deduction on account of losses;

(b) The term "seller" means every person making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principal;

(c) The word "buyer" and the word "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint-stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, municipal corporation, quasi-municipal corporation, the State of Washington, its departments, institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, the United States or any instrumentality thereof provided a valid tax may be levied upon or collected therefrom under the provisions of this title;

(d) The meaning attributed, in title II of this act, to the words and terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale sale," "business," "engaging in business," "cash discount," "successor," "in this state" and "within this state" shall apply equally in the provisions of this title.

Amendments.

SEC. 9. Section 25, chapter 180, Laws of 1935, as amended by section 12, chapter 225, Laws of 1939, (section 8370-25, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Installment sales.

Section 25. In the case of installment sales and leases with an option to purchase, the Commission, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or

amount of rental, as of the time the same fall due. Proviso.

In case the consideration for the lease with an option to purchase is not a bona fide consideration or does not represent a reasonable charge therefor, or if the agreement designated as a lease with an option to purchase is in fact not a true lease with an option to purchase, the Tax Commission shall issue equitable rules and regulations for the proper classification of such transaction.

The Tax Commission, by general regulation, may provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each bi-monthly period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. May pay on cash basis.

SEC. 9. (a) Section 32, chapter 180, Laws of 1935, as amended by section 15, chapter 225, Laws of 1939 (section 8370-32, Remington's Revised Statutes), is amended to read as follows: Amendments.

Section 32. The provisions of this title shall not apply: Exemption.

(a) In respect to the use of any article of tangible personal property brought into the State of Washington by a non-resident thereof for his or her use or enjoyment while temporarily within the state unless such property is used in conducting a non-transitory business activity within the state; Non-residents.

(b) In respect to the use of any article of tangible personal property if the sale thereof has already been subjected to tax under title III of this act and such tax has been paid by the purchaser; Tax paid only once.

(c) In respect to the use of any article of tangible personal property the sale of which is specifically taxable under title V of this act; Otherwise taxable.

(d) In respect to the use of rolling stock or aircraft or floating equipment of a common carrier, the

Interstate
commerce.

first use of which within the state is actual use in conducting interstate or foreign commerce;

Tax-free
items.

(e) In respect to the use of any article of tangible personal property which the state is prohibited from taxing under the constitution of the state or under the constitution or laws of the United States;

Motor fuel.

(f) In respect to the use of motor vehicle fuel taxable under chapter 58 of the Laws of 1933, section 5 (section 8370-5, Remington's Revised Statutes).

Amend-
ments.

SEC. 10. Section 33, chapter 180, Laws of 1935, as amended by section 16, chapter 225, Laws of 1939, (section 8370-33, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Retailer to
collect tax
from pur-
chaser.

Section 33. Every retailer maintaining a place of business within this state or a resident agent within this state and making sales of tangible personal property for use in this state not exempted under the provisions of section 32 of this title shall, at the time of making such sales, or if the use of the tangible personal property is not then taxable hereunder, at the time such use becomes taxable hereunder, collect the tax imposed by this act from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission.

Further
duties of
seller.

The tax required to be collected by this title shall be deemed to be held in trust by the retailer until paid to the Tax Commission and any retailer who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed in this act shall be guilty of misdemeanor and punished in the manner prescribed by law. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the Tax Commission in the

Penalty for
violation.

manner prescribed by this act, whether such failure be the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of such tax.

Personally liable.

Any retailer who refunds, remits or rebates to a purchaser either directly or indirectly and by whatsoever means, all or any part of the tax levied by this title, or makes in any form of advertising, verbal or otherwise, any statements which might infer that he is absorbing the tax or paying the tax for the purchaser by an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be guilty of a misdemeanor.

Not to refund to purchaser.

Penalty for violation.

SEC. 11. Chapter 180, Laws of 1935, be amended by adding thereto a new section following section 34 thereof to be designated as section 34(a) and to read as follows:

Amendment by addition.

Section 34(a). In the case of installment sales and leases with an option to purchase, the Commission, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

Provision for installment collection.

In case the consideration for the lease with an option to purchase is not a bona fide consideration or does not represent a reasonable charge therefor, or if the agreement designated as a lease with an option to purchase is in fact not a true lease with an option to purchase, the Tax Commission shall issue equitable rules and regulations for the proper classification of such transaction.

Commission to make rules.

The Tax Commission, by general regulation, may provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each bi-monthly period and pay the tax herein provided

May pay on cash basis.

upon such basis in lieu of reporting and paying the tax on all sales made during such period.

SEC. 11-(a). Section 36, chapter 180, Laws of 1935, as amended by section 19, chapter 225, Laws of 1939 (section 8370-36, Remington's Revised Statutes), is amended to read as follows:

Section 36. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. Such tax shall be equal to the gross operating revenue of the business, multiplied by the rate set out after the business, as follows:

Vetoed.

I. Railroad, express, railroad car, water distribution, light and power, telephone and telegraph businesses: Three per cent: *Provided, however,* That a common carrier railroad operating as a plant facility to the extent of eighty per cent or more of its business shall pay a tax of one-fourth of one per cent on such eighty per cent or more of its business and three per cent on all other business;

II. Gas distribution business: two per cent;

III. Urban transportation business: One-half of one per cent;

IV. Vessels under sixty-five (65) feet in length operating upon the waters within the State of Washington: One-half of one per cent;

V. Highway transportation and all public service businesses other than ones mentioned above: One and one-half per cent.

Amend-
ments.

SEC. 12. Section 37, chapter 180, Laws of 1935, as amended by section 20, chapter 225, Laws of 1939, (section 8370-37, Remington's Revised Statutes) be and the same hereby is amended to read as follows:

Section 37. For the purposes of this title, unless otherwise required by the context:

(a) The term "railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire: *Provided, however,* That it shall not include any business herein defined to be an urban transportation business; Definitions.

(b) The term "express business" means the business of carrying freight, merchandise or property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business;

(c) The term "railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business;

(d) The term "water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale;

(e) The term "light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale;

(f) The term "telephone business" means the business of operating or managing any telephone line or part of a telephone line and exchange or exchanges used in the conduct of the business of affording telephonic communication for hire. It includes cooperative or farmer line telephone companies or associations operating an exchange;

(g) The term "telegraph business" means the business of affording telegraphic communication for hire;

Definitions.

(h) The term "gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural;

(i) The term "highway transportation business" means the business of operating any motor propelled vehicle, as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined in chapter 111, Laws of 1921, page 338, section 1, and chapter 184, Laws of 1935, page 884, section 2 and amendments thereto, except motor vehicles operated exclusively within the corporate limits of any city or town;

(j) The term "urban transportation business" means:

(1) The business of operating any railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place primarily within any one city or town. The term shall also include any electric interurban railroad operated primarily for the purpose of transporting passengers: *Provided*, The distance between the terminals of such interurban railroad does not exceed fifty miles;

(2) The business of operating any motor propelled vehicle for public use in the conveyance of persons, operating within the limits of any city or town or within the limits of contiguous cities or towns. Included herein are such means of conveyance as busses, hotel busses, jitneys, sight-seeing busses, taxicabs or any other passenger motor vehicles operated for public hire, if operating entirely within the limits of any city or town, or contiguous cities or towns or within three miles of such limits;

(k) The term "public service business" means

any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared to be of a public service nature by the legislature of this state. It includes, among others, without limiting the scope hereof: airplane transportation, boom, dock, ferry, pipe line, public warehouse, toll bridge, toll logging road, water transportation and wharf businesses;

Definitions.

(l) The term "gross operating revenue" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses;

(m) The meaning attributed, in title II of this act, to the words or phrases: "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this title.

SEC. 13. Section 82, chapter 180, Laws of 1935, as amended by section 23, chapter 225, Laws of 1939, (section 8370-82, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

Section 82. From and after the first day of May, 1935, there is hereby levied, and there shall be collected as hereinafter provided in this title, a tax upon the sale, use, consumption, handling or distribution of all cigarettes, in an amount equal to one-tenth of one cent for each cigarette, unless the intended retail selling price for each cigarette shall be more than one cent, in which event, the tax shall

Tax on cigarettes.

be twenty per cent of such intended retail selling price.

Tax stamps
for packages.

(a) In order to enforce collection of the tax hereby levied, the Tax Commission is authorized and required to design and have printed stamps of such size and denominations as may be determined by the Commission, said stamps to be affixed on the smallest container or package that will be handled, sold, used, consumed or distributed, to permit the Commission to readily ascertain by inspection, whether or not such tax has been paid as provided in this title. Every person shall cause to be affixed on every package of cigarettes, as defined in this title, on which a tax is due, stamps of an amount equaling the tax due thereon before such person sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same;

Wholesaler
to affix
stamps.

(b) Every wholesaler in this state shall immediately, after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: *Provided, however,* That any wholesaler engaged in interstate business, who shall furnish surety bond in a sum satisfactory to the Commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this title. Said interstate stock shall be kept separate and apart from stamped stock. Every wholesaler shall, at the time of shipping or delivering any of the articles taxed herein, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable articles, and shall retain the same subject to the use and inspection of the Tax Commission;

Proviso.

Interstate
stock to be
kept separate.

Retailer to
affix stamps.

(c) Every retailer shall, except as to those articles on which the tax has been paid by the proper

affixing of stamps by a wholesaler, as herein provided, affix the stamps for the denomination and amount necessary to represent the tax on each individual package or container, the same to be done, in all cases, immediately upon receipt by the retailer of the unstamped articles: *Provided, however,* That any retailer engaged in interstate business, who shall furnish surety bond in a sum satisfactory to the Commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this title. Said interstate stock shall be kept separate and apart from stamped stock. Every retailer shall, at the time of shipping or delivering any of the articles taxed herein, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable articles, and shall retain the same subject to the use and inspection of the Tax Commission;

Proviso.

Interstate stock kept separate.

(d) Said stamps shall be affixed in such manner that they cannot be removed from the package or container without said stamp being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed;

Manner of affixing stamps.

(e) In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps shall be affixed securely on each individual package;

Individual packages.

(f) Wholesalers and retailers subject to the provisions of this title shall be allowed as compensation for their services in affixing the stamps herein required a sum equal to three (3) per cent of the face value of the stamps purchased by them;

Compensation for affixing stamps.

(g) It is the intent and purpose of this title to levy a tax on all of the articles taxed herein, sold, used, consumed, handled or distributed within this state and to collect the same from the person who

Intent of act.

First purchaser to pay.

first sells, uses, consumes, handles or distributes the same in the State of Washington. It is further the intent and purpose of this title that whenever any of the articles herein taxed are given away for advertising or any other purpose whatsoever, the same shall be taxed in the same manner as if they were sold, used, consumed, handled or distributed in this state.

Tax collected on advertising stock.

Commission to use stamping machines.

(h) The Tax Commission shall have authority to authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this title, and if the same be authorized, shall provide reasonable rules and regulations with respect to the use thereof.

Amendments.

SEC. 14. Section 84, chapter 180, Laws of 1935, as amended by section 24, chapter 225, Laws of 1939, (section 8370-84, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Wholesalers and retailers to keep records.

Section 84. It shall be the duty of every wholesaler or retailer subject to the provisions of this title to keep and preserve for a period of five years an accurate set of records, showing all transactions had with reference to the purchase and sale of any of the articles taxed herein and such persons shall keep also separately all invoices, and shall keep a record of all stamps purchased, and all such records and all such stock of taxable articles on hand shall be open to inspection at all reasonable times to the Tax Commission or its duly authorized agent: *Provided, however,* That all wholesalers shall within fifteen days after the first day of each month file with the Tax Commission a report of all drop shipment sales made by them to retailers within this state during the preceding month, which report shall show the name and address of the retailer to whom the cigarettes were sold and shall show the kind and quantity thereof and the date of delivery of the same.

Wholesalers to make monthly report.

SEC. 15. Section 86, chapter 180, Laws of 1935, (section 8370-86, Remington's Revised Statutes), be and the same hereby is amended to read as follows: Amend-
ments.

Section 86. Each of the following acts is hereby declared to be a gross misdemeanor and punishable as such: Penalty for
violations.

(a) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp provided for herein first being affixed;

(b) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(c) For any person other than the Tax Commission or its duly authorized agent to sell any stamps provided for herein, not affixed to any of the articles taxed herein whether the said stamps be genuine or counterfeit;

(d) To violate any of the provisions of this title;

(e) To violate any lawful rule or regulation made and published by the Tax Commission;

(f) To use any stamps more than once;

(g) To refuse to allow on demand of the Tax Commission, or any duly authorized agent thereof, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(h) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein taxed, unless the same shall have the proper stamps attached;

(i) For any person to make, use or present or exhibit to the Tax Commission, or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

Penalty for
violations.

(j) For any wholesaler or retailer or his agent or employees to fail to produce on demand of the Tax Commission all invoices of all the articles herein taxed and/or stamps bought by him or received in his place of business within five (5) years prior to said demand unless he can show by satisfactory proof that the non-production of said invoices was due to providential or other causes beyond his control;

(k) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein.

All agents, employees and others who aid, abet or otherwise participate in any way in the violation of the provisions of this title, or in any of the offenses herein described shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer violating the provisions of the title.

Amend-
ments.

SEC. 16. Section 88, chapter 180, Laws of 1935, (section 8370-88, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Articles not
stamped may
be seized.

Section 88. Any articles taxed herein found at any point within this state, which articles shall be held, owned, possessed or in the control of any person for a period of time longer than the time to affix the stamps and not having affixed to the packages or container as above defined the stamps as above provided, are hereby declared to be contraband goods, and the same may be seized by the Commission, or its duly authorized agent, or by any peace officer of the state, when directed by the Commission so to do, without a warrant, and said goods shall be offered by the Commission for sale at public auction to the highest bidder after due advertisement, but the Commission before delivering any of said goods so seized

Sold at public
auction.

shall require the person, to whom such articles are sold, to affix the proper amount of stamps as required by this title. The proceeds of sale of any goods sold hereunder shall be paid to the Tax Commission: *Provided*, That the cost of confiscation and sale shall be paid out of the proceeds derived from such sale before making said remittance: *Provided, further*, That any vending machine and any vehicle, not a common carrier, which may be used for the purpose of violating the provisions of this title shall likewise be subject to confiscation and sale in the same manner as above provided.

Proceeds of sale.

Proviso.

SEC. 17. Section 92, chapter 180, Laws of 1935, (section 8370-92, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

Section 92. The Tax Commission may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, upon condition that the seller in this state shall make affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The Tax Commission is hereby authorized to redeem any unused stamps purchased from it at the face value thereof less the affixing discount as provided in section 82 (f).

May refund for unsaleable goods.

Redeem unused stamps.

SEC. 18. Section 93, chapter 180, Laws of 1935, (section 8370-93, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

Certificate
for vending
machines.

Section 93. Every person in this state who sells any of the articles taxed herein by means of any vending machine of any kind or character shall be required before engaging in such business to apply to and obtain from the Tax Commission a certificate to engage in business as a retailer, and shall obtain a separate certificate for each machine used in vending or selling any of the articles taxed herein and each machine so used shall be considered a separate place of business. Such certificate shall be issued upon application in the same manner as provided in section 187 of title XVIII of this act. Any articles taxed herein vended by means of any such machine shall bear stamps as evidence that the tax herein imposed has been paid and the articles taxed herein contained in such machines shall be available for inspection by the Tax Commission or its duly authorized agents at all times.

Articles to
bear stamps.

Amend-
ments.

SEC. 19. Section 187, chapter 180, Laws of 1935, as amended by section 16, chapter 227, Laws of 1937, (section 8370-187, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Registration
certificate.

Section 187. If any person shall engage in any business or perform any act for which a tax is imposed by this act, he shall, whether taxable or not, under such rules and regulations as the Commission shall prescribe, apply for and obtain from the Commission, upon payment of a fee of one dollar, a registration certificate. Said registration certificate shall be personal and non-transferable and shall be valid as long as the taxpayer shall continue in business and pay the tax accrued to the state under the provisions of this act. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required, but, for such additional certificates no fee shall be required. Each certificate shall be num-

Fee.

Certificate
for each
place of
business.

bered and shall show the name, residence and place and character of business of the taxpayer and such other information as the Tax Commission shall deem necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the Tax Commission the existing certificate, and a new certificate will be issued for the new place of business free of charge. No person shall engage in any business taxable hereunder without being registered in compliance with the provisions of this section: *Provided, however,* The Tax Commission, by general regulation, may provide for the issuance of certificates of registration to temporary places of business without requiring the payment of any fee.

Certificate to be posted.

Proviso.

Each vending machine and each coin operated machine, except where used in conducting a public utility business, and each mechanical device, the operator of which is taxable under the provisions of title XIII hereof, shall be considered a separate place of business and a separate registration certificate shall be obtained for each such machine or device. The issuance of any such certificate for such machines or devices to any applicant therefor may be denied by the Tax Commission, if the Commission, after hearing, shall find that the conditions of the applicant's business or prior record as a taxpayer under this act place in jeopardy the collection of the tax imposed by this act. The Tax Commission may require that any applicant for a certificate of registration for any such machine or device furnish a proper surety bond sufficient to secure the payment of any tax imposed by this act. It shall be unlawful for any person to operate such machine or device or permit the same to be operated on his premises unless a certificate of registration has been obtained and is conspicuously displayed upon such machine or device or for any person to operate any such machine

Certificate for each vending machine.

Commission may deny certificate.

Conditions.

May require bond.

Penalty for violation.

or device under a forged certificate of registration or under a certificate of registration not issued for such machine or device or to the operator thereof or under a certificate of registration which has been revoked under the provisions of section 202, or for any person upon making application for a certificate of registration to fail or refuse to give any information requested by the Tax Commission or to give false information with intent to conceal the true name or address of the owner or operator of such machine. Any person violating the provisions of this paragraph shall be guilty of a misdemeanor. Any machine or device described herein which does not display a certificate of registration, as provided herein, or any such machine or device which displays a forged certificate of registration or a certificate of registration not issued for such machine or to the operator thereof or a certificate of registration revoked under the provisions of section 202, is hereby declared to be contraband goods and the same may be seized by the Tax Commission or its duly authorized agent, or by any peace officer of the state, when directed by the Commission so to do, without warrant, and said goods shall be offered for sale by the Tax Commission in the same manner as property distrained under warrant for the satisfaction of delinquent taxes as provided in section 202, and the proceeds from such sale shall be paid to the Tax Commission and credited to the account of miscellaneous revenue: *Provided*, That the costs of the confiscation and sale shall be paid out of the proceeds before making the remittance. Any money contained in said machines or devices may be removed before the machine or device is offered for sale and the amount thereof shall be considered as part of the proceeds of the sale.

Penalty for violation.

Unregistered machine may be seized.

Sale.

Money deemed as proceeds.

Amendments.

SEC. 19(a). Section 211, chapter 180, Laws of 1935, as amended by section 31, chapter 225, Laws of

1939 (section 8370-211, Remington's Revised Statutes) be and the same hereby is amended to read as follows:

Section 211. The State Treasurer, upon receipt of any payments of tax, penalty, interest or fees collected under the provisions of this act and of the several titles hereof except title XV, shall first deposit to the credit of the general fund the amount of any expenditures from said fund, not previously repaid, on account of refunds of taxes, interest and costs and shall deposit the balance thereof to the credit of the following funds:

35.63% thereof to the State Current School Fund; Allocation.

1.60% thereof to the University of Washington Fund;

1.12% thereof to the Washington State College Fund;

0.07% thereof to the Bellingham Normal School Fund;

0.16% thereof to the Cheney Normal School Fund;

0.20% thereof to the Ellensburg Normal School Fund;

61.22% thereof to the State General Fund;

Provided, That the allocations hereby made to each of the first six funds above enumerated shall never during any biennium, in the aggregate, when added to resources or receipts derived from all other sources during such biennium, exceed the total requirements of each of said funds as measured by the biennial legislative appropriations payable therefrom and whenever such limit has been reached, any moneys which would otherwise be allocable to such funds shall be deposited to the credit of the State General Fund. Limit.

SEC. 20. Section 213, chapter 180, Laws of 1935, (section 8370-213, Remington's Revised Statutes), section 214, chapter 180, Laws of 1935, (section 8370- Statutes repealed.

Statutes
repealed.

214, Remington's Revised Statutes), section 215, chapter 180, Laws of 1935, (section 8370-215, Remington's Revised Statutes) and section 216, chapter 180, Laws of 1935, (section 8370-216, Remington's Revised Statutes), be and the same hereby are repealed.

Effective
date.

SEC. 21. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect May 1, 1941.

Passed the House March 13, 1941.

Passed the Senate March 13, 1941.

Approved by the Governor March 21, 1941, with the exception of section 11- (a), which is vetoed.

CHAPTER 179.

[H. B. 78.]

AUTHORIZING JOINT PURCHASES BY SCHOOL DISTRICTS.

AN ACT relating to school directors, increasing their powers and providing for the joint purchase of supplies, equipment and services, and amending section 1, chapter 131, Laws of 1939 (section 4776 of Remington's Revised Statutes), and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Amend-
ments.

SECTION 1. Section 1, chapter 131, Laws of 1939 (section 4776 of Remington's Revised Statutes) is amended to read as follows:

Duty of
Directors.

Section 1. Every Board of Directors, unless otherwise specially provided by law, shall have power and it shall be its duty:

Employ and
discharge
teachers.

First: To employ for not more than one year, and for sufficient cause to discharge teachers, and to fix, alter, allow and order paid their salaries and compensation. The Directors, except in districts of the first class, shall make with each teacher em-

One year
terms.