

CHAPTER 178.

[H. B. 513.]

PERSONAL NET INCOME TAX.

AN Act relating to taxation; providing revenues for support of the state government by means of taxes with respect to the income of residents of the state and fiduciaries, for the privilege of receiving income therein while enjoying the protection of its laws; providing for the assessment, collection and distribution of such taxes; defining the powers and duties of certain officers in connection therewith; prescribing penalties; making an appropriation, and repealing all acts and parts of acts in conflict therewith, and declaring an emergency.

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

Definitions :

SECTION 1. For the purposes of this act, unless otherwise required by the context:

“Commission.”

(a) The term “commission” means the tax commission of the State of Washington;

“Taxpayer.”

(b) The term “taxpayer” includes any individual or fiduciary subject to the tax imposed by this act;

“Individual.”

(c) The term “individual” means a natural person;

“Fiduciary.”

(d) The term “fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate;

“Resident.”

(e) The term “resident” applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this act with reference to the income of any income year, any individual domiciled in the State of Washington and any other individual who maintains a permanent place of abode within the state or spends in the aggregate more than six months of the income year within the state;

(f) The term "income year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed under this act. Income year includes, in the case of a return made for a fractional part of a year under the provisions of this act and under regulations prescribed by the commission, the period for which such return is made;

"Income year."

(g) The term "fiscal year" means an accounting period of twelve months ending the last day of any month other than December;

"Fiscal year."

(h) The term "paid," for the purposes of the deductions under this act, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act;

"Paid."

The term "received," for the purpose of computing net income under this act, means "received or accrued," and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed under this act;

"Received."

(i) The term "foreign country" means any jurisdiction other than one embraced within the United States. The term "United States," when used in a geographical sense, includes the states and territories of Alaska and Hawaii, the District of Columbia and the possessions of the United States;

"Foreign country."

(j) The term "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members whether in cash or in other property of the corporation;

"Dividend."

(k) The term "trade or business" includes the performance of the functions of a public office.

"Trade or business."

SEC. 2. There shall be levied, collected and paid to the state for each income year by every resident of the State of Washington for the privilege of re-

Levying of income tax.

ceiving income therein while enjoying the protections of its laws—

Normal tax.

(a) A normal tax with respect to his income at the rate of three per cent of the amount of the net income in excess of the credits against net income as provided in sections 9 and 10;

Surtax.

(b) A surtax with respect to his income at the rate of four per cent of all surtax net income in excess of \$4,000.

“Surtax net income.”

SEC. 3. As used in section 2, the term “surtax net income” means the amount of the net income in excess of the credits against net income provided in section 10.

Date of computing first tax.

SEC. 4. The first tax payable under this act shall be computed upon income for the calendar year ending December 31, 1935, or for any fiscal year ending during such calendar year.

“Net income.”

SEC. 5. “Net income” means the gross income computed under section 6 less the deductions allowed by section 7.

“Gross income.”

SEC. 6. (a) “Gross income” includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also, from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever;

Exemptions.

(b) The following items shall not be included in gross income and shall be exempt from taxation under this act:

Amounts received under a life insurance contract. By reason of death.

(1) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such

amounts are held by the insurer, under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the income year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the income year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the income year over an amount equal to three per cent of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this act in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph 1 or this paragraph;

Endowment contract.

Amounts under annuity.

Transfer of insurance, endowment, annuity.

(3) The value of property acquired by gift, bequest, devise or inheritance (but the income from such property shall be included in gross income);

Gift.

(4) Interest upon the obligations of the United States or its possessions, agencies or instrumentalities which is or shall be exempt from state taxation by Federal law;

Interest upon obligations of U. S.

Amounts through accident or health insurance.

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

Minister of gospel's home.

(6) The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

Compensation from U. S.

(7) Salaries, wages, pensions and other compensation received from the United States by officials, employees or veterans thereof which are or shall be exempt from state taxation by Federal law;

Stock dividends.

(8) Stock dividends of a corporation distributed to its own stockholders.

Use of inventories.

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

Deductions.

SEC. 7. In computing net income there shall be allowed as deductions:

Expenses of business.

(a) All the ordinary and necessary expenses paid or incurred during the income year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

(b) All interest paid or accrued within the income year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest upon which is wholly exempt from the taxes imposed by this act;

Interest on indebtedness.

(c) Taxes paid or accrued within the income year imposed by the authority of the United States or any of its possessions or of any state, territory or District of Columbia, or of any foreign country; except inheritance taxes, Federal estate taxes, estate taxes of this or any other state, gift taxes of this or any other state and except taxes imposed by this act and taxes assessed for local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes for local benefits as is properly allocable to maintenance or interest charges;

Taxes paid or accrued by authority of U. S. or possessions.

(d) Losses sustained during the income year and not compensated for by insurance or otherwise:

Losses during year.

(1) If incurred in trade or business; or

(2) If incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) Of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck or other casualty, or from theft.

(e) Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions;

Losses from wagering transactions.

(f) The basis for determining the amount of deduction for losses sustained to be allowed, under subsection (d) shall be the adjusted basis provided in section 22 for determining the loss from the sale or other disposition of property;

Basis for determining amount of deduction.

(g) Losses from the sales or exchanges of capital assets shall be allowed only to the extent provided in section 26;

Losses from sales or exchanges of capital assets.

Debts ascer-
tained
worthless.

(h) Debts ascertained to be worthless and charged off within the income year (or in the discretion of the commission, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the commission may allow such debt, in an amount not in excess of the part charged off within the income year, as a deduction;

Property.

(i) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each;

Natural
deposits.

(j) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the commission. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent income years shall be based upon such revised estimate. In the case of leases the deduction shall be equitably apportioned between the lessor and lessee. In the case of property held by one

Case of
leases.

person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each ;

Property.

(k) The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 25 :

Basis upon which depletion, wear, etc., allowed.

(1) Contributions or gifts made within the income year to or for the use of :

Gifts ; and contribution :

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

United States.

(2) A corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ;

Organizations for special purposes.

(3) The special fund for vocational rehabilitation authorized by section 12 of the world war veterans' act, 1924 ;

Special fund for vocational rehabilitation.

(4) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earn-

War veteran organizations.

ings inures to the benefit of any private shareholder or individual; or

Fraternal society.

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

15% of Taxpayer's net income.

To an amount which in all the above cases combined does not exceed fifteen per cent of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commission;

Pension trusts by employers.

(m) An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees (if such trust is exempt from tax under section 32 relating to trust created for the exclusive benefit of employees) shall be allowed as a deduction (in addition to the contributions to such trust during the income year to cover the pension liability accruing during the year, allowed as a deduction under subsection (a) of this section) a reasonable amount transferred or paid into such trust during the income year in excess of such contributions, but only if such amount—

Exception.

(1) Has not theretofore been allowable as a deduction, and

Apportioned in equal parts.

(2) Is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made.

If exceeds 90% of net income.

If in the income year and in each of the ten preceding income years the amount of the contributions or gifts described in subsection (1), plus the amount of the income taxes paid during such year in respect of preceding income years, exceeds ninety per cent of the taxpayer's net income for each such year as computed without the benefit of subsection (1), then

the fifteen per cent limit imposed by such subsection shall not be applicable.

SEC. 8. (a) In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy;

(5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this title; or

(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than fifty per cent in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(b) Amounts paid under the laws of any state, territory, District of Columbia, possession of the United States, or foreign country as income to the

No deductions in computing net income: Personal and family expenses, improvements.

Restoring property.

Premiums on life insurance policy.

Exemption.

Loss from sales or exchanges of property.

holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this act (except the deductions provided for in subsections (i) and (j) of section 7) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such state, territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

Not reduced by deduction for shrinkage.

Allowed for purpose of normal tax.

SEC. 9. There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income—

(a) The amount received as dividends from a corporation which is subject to taxation under a statute of this state imposing a tax upon corporations according to or measured by the net income thereof;

Dividends from a corporation.

(b) The amount received as interest upon obligations of the State of Washington or of any political subdivision thereof which is included in gross income under section 6;

Interest on obligations of state.

(c) Ten per cent of the amount of the earned net income, but not in excess of ten per cent of the amount of the net income;

10% amount of earned net income.

(d) For the purposes of this section—

(1) "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for services actually rendered. In the case of a tax-

"Earned income."

payer engaged in a trade or business in which both personal services and capital are material income—producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of twenty per cent of his share of the net profits of such trade or business, shall be considered as earned income;

(2) “Earned income deductions” means such deductions as are allowed by section 7 for the purpose of computing net income, and are properly allocable to or chargeable against earned income; “Earned income deductions.”

(3) “Earned net income” means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer’s net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000. “Earned net income.”

SEC. 10. There shall be allowed for the purposes of the normal tax and the surtax the following credits against net income: Allowing credits against net income.

(a) In the case of a single person, a personal exemption of \$1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them; Single person.
Head of a family.
Husband and wife.

(b) \$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective; Person dependent on taxpayer.

(c) If the status of the taxpayer, in so far as it affects the personal exemption or credit for dependents, changes during the income year, the personal exemption and credit shall be apportioned, under rules and regulations prescribed by the commission, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

Apportioning
of personal
exemption
and credit.

Computation
of net
income.

SEC. 11. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed, in keeping the books of such taxpayer, but if no such method of accounting has been employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the commission does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in section 1 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

Gross
income.

SEC. 12. The amount of all items of gross income shall be included in the gross income for the income year in which received by the taxpayer, unless, under methods of accounting permitted under section 11, any such amounts are to be properly accounted for as of a different period. In case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period.

Case of
death.

SEC. 13. The deductions and credits provided for in this act shall be taken for the income year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

Deductions and credits.

Case of death.

SEC. 14. (a) Under regulations prescribed by the commission, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any income year the proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price;

Selling and disposing of personal property.

(b) In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year), for price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed thirty per cent of the selling price (or, in case the sale or other disposition was in an income year beginning prior to January 1, 1935, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the commission, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of

Casual sale of property.

Real property.

"Initial payments."

indebtedness of the purchaser during the taxable period in which the sale or other disposition is made;

Installment
basis.

(c) If a taxpayer entitled to the benefits of subsection (a) elects for any income year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded;

Gain or loss.

(d) If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in the case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

Not applic-
able to
transmission
at death of
installment
obligations.

This subsection shall not apply to the transmission at death of installment obligations if there is filed with the commission, at such time as it may by regulation prescribe, a bond in such amount and with such sureties as it may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment.

SEC. 15. In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the State of Washington, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commission is authorized to distribute, apportion or allocate gross income or deductions between or among such organizations, trades or businesses if it determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses.

Two or more organizations controlled by same interests.

SEC. 16. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the commission, be computed on the basis of such new accounting period, subject to the provisions of section 17.

Changing of accounting period.

SEC. 17. (a) If a taxpayer, with the approval of the commission, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year;

Approval of commission.

Separate returns.

(b) Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations pre-

scribed by the commission, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made;

(c) If a separate return is made under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months;

(d) The commission shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing such income on an annual basis) to cases where the taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it appears that for the period for which the return is so made he has received earned income;

(e) In the case of a return made for a fractional part of a year, except a return made under subsection (a), on account of a change in the accounting period, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which return is made bears to twelve months.

SEC. 18. (a) The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this act—

(1) Every individual having a net income for the income year of \$1,000 or over, if single, or if married and not living with husband or wife;

Individuals
making of a
return under
oath.

(2) Every individual having a net income for the income year of \$2,500 or over if married and living with husband or wife; and

(3) Every individual having a gross income for the income year of \$5,000 or over, regardless of the amount of his net income.

(b) If a husband and wife living together have an aggregate net income for the income year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed upon the aggregate income;

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

SEC. 19. Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this act:

Making of a return by a fiduciary for following individuals:

(a) Every individual having a net income for the income year of \$1,000 or over, if single, or, if married, and not living with husband or wife;

(b) Every individual having a net income for the income year of \$2,500 or over, if married and living with husband or wife;

(c) Every individual having a gross income for the income year of \$5,000 or over, regardless of the amount of net income;

(d) Every estate or trust the net income of which for the income year is \$1,000 or over;

(e) Every estate or trust the gross income of which for the income year is \$5,000 or over regardless of the amount of net income;

(f) Every estate or trust of which any beneficiary is a non-resident alien.

SEC. 20. Under regulations of the commission a return made by one or two or more joint fiduciaries shall be sufficient compliance with the requirements of section 19. Such fiduciary shall make oath—

Oath.

(1) That he has sufficient knowledge of the affairs of the individual, estate or trust for which the return is made to enable him to make the return, and

(2) That the return is, to the best of his knowledge and belief, true and correct.

Subject to provisions of law.

SEC. 21. Any fiduciary required to make a return under this act shall be subject to all the provisions of law which apply to individuals.

Determining gain or loss.

SEC. 22. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be determined in accordance with the provisions of section 113 of the "Federal revenue act of 1934," which are hereby referred to and incorporated for the purpose of this section with the same force and effect as though fully set forth herein;

"Federal revenue act of 1934."

(a) Except as otherwise provided in this section the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided for determining gain and the loss shall be the excess of the adjusted basis provided for determining loss over the amount realized;

Excess of amount realized.

(b) In computing the amount of gain or loss under subdivision (a), proper adjustment shall be made for any expenditure, receipt, loss or other item properly chargeable to capital account;

Proper adjustment.

(c) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received;

(d) In the case of a sale or exchange the extent to which gain or loss determined under this section shall be recognized shall be determined under the provisions of section 23 of this act;

§ 23 of
the act.

(e) Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the inclusion in gross income of that portion of any installment payment representing gain or profit in the year in which such payment is received.

SEC. 23. Upon the sale or exchange of property the entire amount of gain or loss determined under section 22 shall be recognized with the exceptions provided for in section 112 of the "Federal revenue act of 1934" which are hereby referred to and incorporated with the same force and effect as though fully set forth herein.

Sale or
exchange.

In the case of installment sales the taxpayer may elect to proceed in the same manner provided in section 14 of this act, in which case the taxpayer shall account for profits on installments received subsequent to December 31, 1934, on sales made prior thereto. If the taxpayer elects to proceed otherwise, the transaction will be deemed to have been closed when the sale was made.

Installment
sales.

SEC. 24. In the case of property acquired in a manner prescribed in section 113 (a) (2) to section 113 (a) (14) of the "Federal revenue act of 1934," relating to property acquired by gift, or in trust, property transmitted at death, tax-free exchanges generally, involuntary conversion, wash sales of stock, etc., the basis shall be determined in accordance with the provisions of section 113 of the "Federal revenue act of 1934" which are hereby referred

Property
acquired in
manner
prescribed
in § 113,
"Federal
revenue act
of 1934."

to and incorporated with the same force and effect as though fully set forth herein.

Basis for allowing exhaustion wear, etc., on property.

SEC. 25. The basis upon which exhaustion, wear and tear, obsolescence, depreciation and depletion are to be allowed in respect of any property shall be the adjusted basis provided in sections 113 and 114 of the "Federal revenue act of 1934," which are, for the purposes of this section, hereby referred to and incorporated with the same force and effect as though fully set forth herein.

Capital asset.

SEC. 26. In the recognition of gain or loss upon the sale or exchange of a capital asset taxpayers under this act shall be controlled by the provisions of section 117 of the "Federal revenue act of 1934" pertaining to and limiting the amount of capital gains and losses.

Case of loss from sale of securities.

SEC. 27. (a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for loss shall be allowed under section 7 (d) (2) unless the claim is made by a dealer in stocks or securities and with respect to a transaction made in the ordinary course of his business;

(b) If the amount of stocks or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities, the loss from the sale or other disposition of which is not deductible, shall be determined under rules and regulations prescribed by the commission;

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities in the acquisition of which (or the contract or option to acquire which) resulted in the non-deductibility of the loss, shall be determined under rules and regulations prescribed by the commission.

SEC. 28. The tax imposed by this act upon individuals shall apply to the income of estates or of any kind of property held in trust including—

Tax applies to income of estates, or trust property:

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

Inclusions:

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 33 (relating to revocable trusts) and section 34 (relating to income for benefit of the grantor).

SEC. 29. The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

Net income of estate or trust.

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contribu-

Exceptions.

tions authorized by section 7 (1) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the income year paid or permanently set aside for the purposes and in the manner specified in section 7 (1), or is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

Additional deduction in computing net income.

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its income year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding income year;

Additional deduction.

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its income year which is properly paid or credited during such year to any legatee, heir or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.

SEC. 30. (a) For the purpose of the normal tax and the surtax the estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 10 (a) and if no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then, in addition, the same credits against net income for dividends and interest as are allowed by section 9;

Allowance
of credits
against
net income.

(b) If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under sections 9 and 10, his proportionate share of such amounts of dividends and interest specified in section 9 as are, under this act, required to be included in computing his net income. Any remaining portion of such amounts specified in section 9 shall, for the purpose of the normal tax, be allowed as credits to the estate or trust.

Inclusion of
proportion-
ate share
of such
amounts
of dividends
and interest.

SEC. 31. If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 29(b), to include in computing his net income, shall be based upon the income of the estate or trust for any income year of the estate or trust ending within his income year.

Amount
based on
income of
estate or
trust.

SEC. 32. A trust created by any employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under section 28, (but the amount actually distributed or made available to any distributor shall be taxable to

Trust or
profit-shar-
ing plan
exempt
under § 28.

Distributees allowed as credits.

him in the year in which so distributed or made available to the extent that it exceeds the amounts so paid by him). Such distributees shall, for the purpose of the normal tax, be allowed as credits against net income such part of the amount so distributed or made available as represents the items of dividends and interest specified in section 9.

Power to revest in grantor title to part of corpus of trust.

SEC. 33. Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(a) In the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(b) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor.

Where any part of income of a trust:

SEC. 34. (a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

Held or accumulated.

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

Distributed to grantor.

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 7(1),

Applied to payment of premiums.

relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

"In the discretion of the grantor."

SEC. 35. In the case of an estate or trust, or of a beneficiary of an estate or trust, the proper part of each share of the net income which consists, respectively, of ordinary net income, capital net gain, or capital net loss, shall be determined under rules and regulations to be prescribed by the commission and shall be separately shown in the return of the estate or trust, and shall be taxed to the beneficiary or to the estate or trust as provided in this act, but at the rates and in the manner provided in section 26, relating to capital net gains and losses.

Proper part of each share to be determined by rules of the commission.

Separately shown.

Taxed to beneficiary.

SEC. 36. Every executor, administrator, assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the state from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the state, or for so much thereof as may remain due and unpaid.

Executor answerable for payment of debts.

SEC. 37. Individuals carrying on business in partnership shall be liable for the tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the income year. The net income of the partnership shall be computed in

Partnerships liable for the tax only individually.

the same manner and on the same basis as in the case of an individual.

Credits allowed.

SEC. 38. The partner shall, for the purposes of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under sections 9 and 10, his proportionate share of such amounts (not in excess of the net income of the partnership) of dividends and interest specified in section 9 as are received by the partnership.

Determination of proper share.

SEC. 39. In the case of the members of a partnership, the proper part of each share of the net income which consists of earned income shall be determined under rules and regulations to be prescribed by the commission and shall be separately shown in the return of the partnership.

Proper part of each share; determination of.

SEC. 40. In the case of the members of a partnership the proper part of each share of the net income which consists, respectively, of ordinary net income, capital net gain, or capital net loss, shall be determined under rules and regulations to be prescribed by the commission and shall be separately shown in the return of the partnership and shall be taxed to the member as provided in this act, but at the rates and in the manner provided in section 26 relating to capital net gains and losses.

Partnership to make return.

SEC. 41. Every partnership shall make a return for each income year, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

SEC. 42. If the income year of a partner is different than that of the partnership, the distribu-

tive share of the net income of the partnership to be included in computing the net income of the partner for his income year shall be based upon the net income of the partnership for any income year of the partnership ending within the income year of the partner.

Distributive share of net income.

SEC. 43. The first return shall be due and the first tax payable on or before March 15, 1936, for the calendar year ending December 31, 1935, or for any fiscal year ending during such calendar year. In case a fiscal year is used as the basis, the return and tax shall be for that proportion of such fiscal year beginning January 1, 1935, and ending with the close of the fiscal year used by the taxpayer as the basis of accounting, computed as provided in section 17. Subsequent returns shall be due and taxes payable on or before March fifteenth of each year, if the taxpayer's accounting is on a calendar year basis, and on or before the fifteenth day of the third month following the close of the fiscal year if the taxpayer's accounting is on a fiscal year basis. In case of sickness, absence or other disability or whether in its judgment good cause exists, the commission may allow further time for filing returns.

First return due.

Subsequent returns.

SEC. 44. (a) If the commission 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 prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the income year then last past or the income year current unless such proceedings be brought without delay, the commission shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the

Termination of taxable period. Notice given taxpayer.

taxable period so declared terminated and of the tax for the preceding income year, or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired, and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the commission made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design;

(b) A taxpayer who is not in default in making any return or paying any tax under this act may furnish to the State of Washington, under regulations to be prescribed by the commission, security, approved by the commission, that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The commission may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other taxes due under this act. If security is approved and accepted pursuant to the provisions of this subsection and such further or other security with respect to the tax or taxes covered thereby is given as the commission shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes;

Penalty for violation.

(c) If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per cent of the total amount of the tax or deficiency in the tax, together with interest at the rate of 1 per cent a month from the time the tax became due.

SEC. 45. (a) A remittance for the full amount of the tax as shall appear from the face of the return, shall accompany the return, except in the cases specified in subdivision (b) of this section. If the time for filing the return shall be extended, interest at the rate of six per cent per annum from the time when the return was originally required to be filed to the time of payment shall be added and paid;

Filing of
return.

(b) The taxpayer may elect to pay the tax in two equal installments, in which case one-half thereof shall be paid in the time, place and manner provided in subdivision (a) of this section and the remaining one-half shall be paid in like manner on or before six months thereafter: *Provided*, That in case the total amount of the tax shall be twenty-five (\$25.00) dollars or less the whole amount thereof shall be paid at the time required for filing the return: *Provided further*, That no taxpayer shall be entitled to pay the tax in two installments as provided in this subdivision unless it shall have paid one-half of the total amount thereof at the time of filing the return.

May pay
tax in
installments.

SEC. 46. If the taxpayer shall make an error in computing any tax due from him, the tax commission shall correct such error and notify the taxpayer of its action by mailing to him a notice of the correction.

Errors in
computation
of tax.

If, upon examination of any returns it appears that a tax has been paid less than that properly due, the tax commission may add a penalty of ten per cent of the amount of any additional tax found due and shall add thereto interest at the rate of one per cent per month of the amount of such additional tax for each thirty days, or portion thereof, from the date upon which such tax became due as provided by this act, and shall notify such taxpayer by mail of the total amount of such tax, penalties and interest and the total amount shall become due and

Amount due
must be
paid in full.

shall be paid within ten days from the date of such notice, or within such further time as the tax commission may provide.

Taxes paid
in excess.

If, upon examination of any return it appears that a tax has been paid in excess of that properly due, then the amount of such excess shall be credited against any tax or installment thereof then due or to become due from the taxpayer for the same income year, and any balance of such excess for such income year shall be refunded on request of the taxpayer by means of vouchers approved by the tax commission and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide.

Taxes paid
in error.

SEC. 47. Any money paid to the tax commission through error and not in payment of any tax due hereunder, upon the request of the taxpayer by whom such payment was made, shall be refunded as provided in the foregoing section.

Judgments.

Any judgment for which recovery is granted by any court of competent jurisdiction, not appealed from, for tax, interest, penalties, and costs in a suit by any taxpayer shall be paid in like manner, upon the filing with the tax commission of a certified copy of the order or judgment of the court.

Taxpayer
must keep
records.

SEC. 48. It shall be the duty of every taxpayer to keep and preserve, for a period of five years, such suitable records as may be necessary to determine the amount of tax for which he may be liable under the provisions of this act; and all books and records shall be open for examination at any time by the commission or its duly authorized agent. Every taxpayer shall, upon request of the commission, furnish a copy of the return for the corresponding year, which he has filed or may file with the Federal government of the United States, showing his net income and how obtained and the several sources from which derived. In case a taxpayer does not keep

the necessary books and records within the State of Washington, it shall be sufficient if it produces within the state such books and records as shall be required by the tax commission, or bears the cost of examination by an agent authorized or designated by the tax commission at the place where such books and records are kept. Any taxpayer who shall fail to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the tax commission and based upon any period for which such books and records have not been so kept and preserved.

SEC. 49. Payment of the tax may be made by uncertified check under such regulations as the commission shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Payment
by check.

The tax commission shall keep full and accurate records of all funds received and disbursed by it under the provisions of this act.

Commission
shall keep
records of
all funds.

SEC. 50. If any return required by this act is not filed, or any tax due is not received by the tax commission, within ten days of the due date as set forth in this act, there may be added to such tax a penalty of ten per cent of the amount of said tax.

Penalties
if not paid
promptly.

SEC. 51. If any taxpayer shall fail or refuse to make any return or supplementary return required by this act, the tax commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax herein prescribed; and to this end the tax commission by itself or its duly appointed agent may make examination of the books, records and papers

Refusal
or failure
to pay.

of any such taxpayer and may take evidence, on oath, of any person, relating to the subject of inquiry. The oath may be administered by any member of the commission or by its duly authorized agent.

As soon as the tax commission shall procure such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any taxpayer who has failed or refused to make a return or supplementary return, it shall proceed to determine and assess against such taxpayer the tax and penalties provided by this act, but such action shall not deprive such taxpayer from appealing to the superior court as hereinafter provided. To such assessment the commission may add a further penalty of ten per cent of the amount of the tax for failure or refusal to make a return and shall add thereto interest at the rate of one per cent per month of the amount of the tax for each thirty days or portion thereof from the date upon which the tax is due as provided by this act, and shall notify such taxpayer by mail of the total amount of such tax, penalties and interest and the total amount shall become due and shall be paid within ten days from the date of such notice.

Commission
may examine
any records.

SEC. 52. The tax commission or its duly authorized agent may examine any books, papers, records or other data bearing upon the amount of any tax payable or upon the correctness of any return, or for the purpose of making a return where none has been made, or in order to ascertain whether a return should be made, as required by this act; and may require the attendance of any person at a time and place fixed in a summons served by any sheriff in the same manner as a subpoena is served in a civil case, or served in like manner by an agent of the tax commission. The persons summoned may be required to testify and produce any books, papers,

May require
presence and
testimony of
witnesses.

records, or data as required by the tax commission with respect to any tax, or the liability of any taxpayer therefor, under this act. The secretary of the tax commission, or any member, or any duly authorized agent thereof, shall have power to administer an oath to the person required to testify, and any person giving any false testimony after the administration of such oath shall be guilty of perjury in the first degree and, upon conviction thereof, shall be punished in the manner provided by law. If any person summoned as a witness before the tax commission, or its authorized agent, shall fail or refuse to obey the summons, or shall refuse to testify or answer any material question, or to produce any book, record, paper, or data when required to do so, he shall be guilty of contempt and it shall be the duty of the tax commission to thereupon institute proceedings in the superior court of Thurston county or of the county in which such person resides to punish any such person as for contempt of court for failure to obey such summons and appear as a witness, or for refusal to testify or answer any material question, or for refusal to produce any book, record, paper or other data as required by the tax commission or its authorized agent.

SEC. 53. All officers empowered by law to administer oaths, the members of the commission and such officers as it may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return required by this act or the rules and regulations of the commission.

Administra-
tion of oaths.

SEC. 54. All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person of interest, rent, salaries, wages, premiums, annuities, compensa-

Information
regarding
incomes.

tions, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in sections 43 and 44), of \$1,000 or more in any income year, or, in the case of such payments made by the state or any municipal subdivision thereof, the officers or employees of the state or any municipal subdivision thereof having information as to such payments and required to make returns in regard thereto by the regulations herein provided for, shall render a true and accurate return to the commission under such regulations and in such form and manner and to such extent as may be prescribed by it, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Such returns may be required, regardless of amounts,—

(a) In the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and

(b) In the case of collections of items of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from alien corporations by persons undertaking as a matter of business or for profit the collection of payments of such interest or dividends by means of coupons, checks, or bills of exchange.

When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

SEC. 55. Every person doing business as a broker shall, when required by the commission, render a correct return duly verified under oath, under such rules and regulations as the commission may prescribe, showing the names of the customers for whom such person has transacted any business with such details as to the profits, losses, or other

Interest on
bonds, etc.

Collections
of interest
on foreign
securities.

Brokers
must furnish
information
regarding
customers.

information which the commission may require, as to each of such customers as will enable the commission to determine whether all income tax due on profits or gains of such customers has been paid.

SEC. 56. Any notice or order required by this act to be mailed to any taxpayer shall be sent by ordinary mail, addressed to the address of the taxpayer as shown by the records of the tax commission, or, if no such address is shown, to such address as the tax commission is able to ascertain by reasonable effort. Failure of the taxpayer to receive any such notice or order mailed shall not release the taxpayer from any tax or any increases or penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this act.

Notices or orders sent by mail.

Failure to receive such shall not release obligation.

SEC. 57. All taxes, penalties and interest imposed under the provisions of this act shall be paid in full before any action may be instituted in any court to contest all or any part of such tax, penalties or interest. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax or penalty imposed by this act, or any part thereof, except upon the ground that the assessment thereof was in violation of the constitution of the United States or that of the State of Washington.

Taxes must be paid before action instituted.

SEC. 58. Any taxpayer, having paid any tax, original assessment, additional assessment or corrected assessment of any tax made by the tax commission under the provisions of this act, may apply to the tax commission by petition in writing within one year after such payment, for a hearing and a correction of the amount of the tax so assessed upon him, in which petition he shall set forth the reasons why such hearing should be granted, and the amount in which such tax should be reduced. The commission shall promptly consider such petition, and may

Petitions for hearings as to correctness of taxes.

grant such hearing or deny the same. If denied, the petitioner shall be notified by mail thereof forthwith; if granted, the commission shall notify the petitioner by mail of the time and place fixed for such hearing. After such hearing the commission may make such order as may appear to it just and lawful and shall mail a copy of such order to the petitioner.

May appeal
to superior
court.

Any taxpayer, except one who has failed to keep and preserve books, records and invoices as provided in section 26 hereof, having paid any tax as required by this act and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county within thirty days after the payment of such tax, or within thirty days after the date of the notice denying such a hearing or after the date of the order provided in this section. In the appeal the taxpayer shall set forth the amount of the tax imposed upon him, what he concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the tax commission within the time herein provided and by filing the original thereof with proof of service with the clerk of the superior court of Thurston county. Within ten days after filing notice of such appeal, the taxpayer shall file with the clerk of the superior court a good and sufficient surety company bond payable to the State of Washington in the sum of \$500, conditioned to diligently prosecute the appeal and pay the state all costs that may be awarded if the appeal of the taxpayer is not sustained. The trial in the superior court on the appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. The burden shall rest upon the taxpayer to prove that the tax as paid by him is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plain-

Must
give bond.

Burden of
proof shall
rest on
taxpayer.

tiff, and the State of Washington, the defendant; and both parties shall be entitled to subpoena and require the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant and material to determine the correct amount of the tax that should be paid by the taxpayer under this act. Either party shall be allowed to appeal to the supreme court in the same manner as other civil actions are appealed to that court. It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the tax commission for a hearing in order to appeal to the superior court, as herein provided; but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

SEC. 59. The tax commission, by its order, may hold in abeyance the collection of tax from any taxpayer or any group of taxpayers when a question bearing on their liability for tax hereunder is pending before the courts.

Commission may hold in abeyance collections.

SEC. 60. When any assessment or additional assessment has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods of time as the tax commission may by general regulation provide, of the whole or any part of such assessment, by filing with the tax commission a bond in such amount, not exceeding double the amount as to which the stay is desired, and with sureties as the tax commission deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, together with interest thereon at the rate of one per cent of the amount of such assessment for each thirty days or portion thereof from the due date of such assessment until paid.

Stay of collection.

Collection
of taxes by
sale of
property.

SEC. 61. If any tax, increase or penalty imposed by this act, or any portion of such tax, increase or penalty is not paid within fifteen days after the same shall become due, the tax commission shall issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant, together with interest thereon at the rate of one per cent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant, plus the cost of executing said warrant, and return such warrant to the tax commission and pay to it the money collected by virtue thereof within sixty days after the receipt of such warrant.

The sheriff, within thirty days after the receipt of said warrant, shall file with the clerk of the superior court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the tax or portion thereof and any increases and penalties for which the warrant is issued and the date 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 of the taxpayer against whom it is issued and shall be the same as a judgment in a civil case duly docketed in the office of such clerk, and the sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to executions or other process issued against rights or property upon judgments of said superior court. The sheriff shall be entitled to fees as provided by law for his services in levying execution on a superior court judgment and the clerk

shall be entitled to a filing fee of \$1.00, which shall be added to the amount of such warrant. The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer. If the return on the warrant shall show that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of such warrant.

In the discretion of the tax commission, a warrant of like terms, force and effect may be issued and directed to any agent of the commission authorized to collect taxes under this act, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of such warrant.

SEC. 62. Any tax due and unpaid under this act, and all increases and penalties thereon, shall constitute a debt to the State of Washington and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies. In all cases of insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer hereunder, the claim of the state for said taxes and all increases and penalties thereon shall be a lien prior to all other liens, except prior tax liens, and the mere existence of such cases or conditions shall be sufficient to create such lien

Taxes
constitute
a debt.

Prior lien.

without any prior or subsequent action by the state, and in all such cases it shall be the duty of all receivers, assignees or trustees to notify the tax commission of such receivership, assignment or bankruptcy within thirty days from the date of their appointment and qualification. Any receiver, assignee or trustee not giving the notification as provided for above shall become personally liable for the payment of said taxes and all increases and penalties thereon.

Taxes by this act additional to other taxes.

SEC. 63. Taxes imposed by this act shall be in addition to any and all other licenses, taxes and excises levied or imposed by the state or any municipal subdivision thereof.

Violations by taxpayer.

SEC. 64: Any person required under this act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any record, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this act, who wilfully fails to pay such tax, make such return, keep such records, or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, be fined not more than \$500 or imprisoned for not more than six months, or both, together with the costs of prosecution. Any person required under this act to collect, account for, and pay over any tax imposed by this act, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned for not more than three years in the state penitentiary, or both, together with the costs of prosecution. Any

Misdemeanor.

Violations by collectors; evasion of taxes.

Felony.

person who wilfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, this act, of a false or fraudulent return, affidavit, claim, or document shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony, and upon conviction thereof be fined not more than \$5,000 or imprisoned for not more than three years in the state penitentiary, or both, together with the cost of prosecution. The term "person," as used in this section, includes a member or employee of a partnership.

Defining
"person."

SEC. 65. The administration of this act shall be vested in and exercised by the tax commission which shall prescribe forms and rules of procedure in conformity with this act for the determination of the taxable status of any individual or fiduciary, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed hereunder. The tax commission may make and publish such rules and regulations, not inconsistent with this act, necessary in enforcing its provisions, which rules and regulations shall have the same force and effect as if specifically included herein, unless declared invalid by the judgment of a court of record not appealed from. It shall be the duty of the tax commission to exercise general supervision of the collection of taxes provided in this act, and, in the discharge of such duty, the tax commission may institute and prosecute such suits or proceedings in the courts of this state as may be necessary and proper, appearing therein for such purpose.

Administra-
tion of act.

When recovery is had in any suit or proceeding against an officer, agent or employee of the tax commission for any act done by him or for the recovery

of any money exacted by or paid to him and by him paid over to the tax commission, in the performance of his official duty, and the court certifies that there was probable cause for the act done by such officer, agent or employee, or that he acted under the direction of the tax commission or proper officer thereof, no execution shall issue against such officer, agent or employee, but the amount so recovered shall, upon final judgment, be paid by the tax commission as an expense of operation.

Receipts paid
into state
treasury.

SEC. 66. The tax commission, on the next business day following the receipt of any payments under this act, shall transmit the same to the state treasurer, taking his receipt therefor, and the state treasurer upon receiving taxes paid under this act shall deposit the same in the state treasury to the credit of the state general fund.

Commission
shall not
reveal
information
regarding
any taxpayer.

SEC. 67. Except as hereinafter provided it shall be unlawful for the tax commission or any member, deputy, clerk, agent, employee or representative thereof or any other person to make known or reveal any facts or information contained in any return filed by any taxpayer pursuant to the provisions of this act or disclosed in any investigation or examination of the taxpayer's books and records made in connection with the administration of this act. The foregoing, however, shall not be construed to prohibit the tax commission or a member or employee thereof from: (a) giving such facts or information in evidence in any court action involving tax imposed under this act or involving a violation of the provisions of this act or involving another state department and the taxpayer, if such facts and information are relevant to the issues in such case; (b) giving such facts and information to the taxpayer or his duly authorized agent; (c) publishing

Exceptions.

statistics so classified as to prevent the identification of particular returns or reports or items thereof; (d) giving such facts or information, for official purposes only, to the governor, attorney general or to any committee or sub-committee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions; (e) permitting its records to be audited and examined by the proper state officer, his agents and employees; or (f) giving any such facts or information to the commissioner of internal revenue of the United States or to the proper officer of any state tax department, for official purposes, but only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officers of this state. Any person acquiring knowledge of such facts or information in the course of his employment with the tax commission and any person acquiring knowledge of such facts and information as provided under (d), (e) and (f), above, who shall reveal or make known any such facts or information to another not entitled to knowledge of such facts or information under the provisions of this section, shall be punished by a fine of not exceeding \$1,000 and, if the offender or person guilty of such violation be an officer or employee of the state, shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

Violation of
this section.

SEC. 68. There is hereby appropriated from the general fund, for the fiscal biennium, beginning April 1, 1935, and ending March 31, 1937, the sum of one hundred twenty-five thousand (\$125,000.00) dollars, or so much thereof as shall be necessary to carry out the provisions of this act.

Appropriation to
carry out
provisions
of act.

Appropriation for refunds.

SEC. 69. There is hereby appropriated from the general fund, for the fiscal biennium, beginning April 1, 1935, and ending March 31, 1937, the sum of fifty thousand (\$50,000.00) dollars, or so much thereof as shall be necessary, for the purpose of refunding taxes, penalties and interest collected under the provisions of this act, either upon vouchers approved by the tax commission, as provided in this act, or upon judgment rendered against this state ordering the repayment and refunding of taxes, penalties and interest collected under the provisions of this act and any costs and interest assessed against the state in such judgments.

Partial invalidity.

SEC. 70. If any section, clause or part of this act shall for any reason be adjudged invalid or unconstitutional, such adjudication shall not affect the remaining portions of the act.

Conflicting statutes repealed.

SEC. 71. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Effective immediately.

SEC. 72. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect immediately.

Passed the House March 14, 1935.

Passed the Senate March 13, 1935.

Approved by the Governor March 23, 1935.