

CHAPTER 156.

[H. B. 169.]

PRIVILEGE TAX.

AN Act relating to revenue and taxation; declaring certain acts to be unlawful and prescribing the penalty therefor, amending sections 4, 5, 6, 11, 16, 17, 19, 31, 32, 35, 37, 82, 210 and 211 of chapter 180, Laws of 1935, as amended by chapter 178, Laws of 1941, chapter 76, Laws of 1941 and chapter 225, Laws of 1939 (sections 8370-4, 8370-5, 8370-6, 8370-11, 8370-16, 8370-17, 8370-19, 8370-31, 8370-32, 8370-35, 8370-82 and 8370-210, Remington's Revised Statutes), and declaring that this act shall take effect May 1, 1943.

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

SECTION 1. Section 4, chapter 180, Laws of 1935, as amended by section 1, chapter 178, Laws of 1941 (section 8370-4, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amendments.

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:

Business tax.

Measured by gross business.

Persons included.

(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;

Extractors.

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 per-

Manufacturer.

sons 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;

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;

Retail merchant.

(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;

Rate.

Wholesale grain.

(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;

Rate.

Wholesalers.

(e) Upon every person except persons taxable under subsection (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;

Rate.

Printing.

(f) Upon every person engaging within this state in the business of: (1) printing and of publishing newspapers, periodicals or magazines; (2) building, repairing or improving any publicly owned street, place, road, highway, bridge or trestle which is used, or to be used, primarily for foot or vehicular traffic; as to such persons, the amount of tax on such business shall be equal to the gross in-

Road building.

come of the business multiplied by the rate of one-quarter of one per cent; Rate.

(g) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in subsections (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 subsection includes, among others, and without limiting the scope hereof (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), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale" as defined herein. Others.
Rate.

SEC. 2. Section 5, chapter 180, Laws of 1935, as amended by section 2, chapter 178, Laws of 1941 (section 8370-5, Remington's Revised Statutes), be and the same hereby is amended to read as follows: Amendments.

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

(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; "Tax 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, company, 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 "Person" or "company."

Definitions. or collected therefrom under the provisions of this act;

"Sale."

(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 subsection (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;

"Sale at retail."

(d) The term "sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated or imprinted) other than a sale to one who purchases for the purpose of resale as tangible personal property in the regular course of business or for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale. The said term also means every sale of tangible personal property to persons engaged in any business which is taxable under section 4 (f) (2) and section 4 (g) hereof.

The term "sale at retail" or "retail sale" shall be construed to include the sale of or charge made for tangible personal property consumed and for labor and services rendered in respect to the following: (1) the installing, repairing, cleaning, altering, imprinting or improving of tangible per-

sonal property of or for consumers, excluding, however, services rendered in respect to live animals, birds and insects; (2) the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth to the extent necessary for such constructing or improving, unless the charge therefor is stated separately from other charges made in connection with the work performed, under such rules as the Tax Commission may prescribe.

Definitions.

The said term shall not include the sale of or charge made for labor and services rendered in respect to the mere cleaning, fumigating, razing or moving of existing buildings or structures, or the building, repairing or improving of any publicly owned street, place, road, highway, bridge or trestle which is used or to be used primarily for foot or vehicular traffic, nor shall it include sales of feed, seed, fertilizer, and spray materials to persons for the purpose of producing for sale any agricultural product whatsoever, including milk, eggs, wool, fur, meat, honey or other substances obtained from animals, birds or insects.

(e) The term "sale at wholesale" or "wholesale sale" means any sale of tangible personal property and any sale of or charge made for labor and services rendered in respect to real or personal property, which is not a sale at retail;

"Sale at wholesale."

(f) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and for services rendered

"Gross proceeds of sale."

Definitions.

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;

"Gross income of business."

(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;

"Value proceeding or accruing."

(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;

"Extractor."

(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 products, 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;

Definitions.

(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;

"Manufacturer."

(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;

"To manufacture."

(1) The term "commercial use" means the following uses of products by the extractor or manufacturer thereof:

"Commercial use."

(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

- Definitions. and regulations as the Tax Commission shall prescribe;
- "Business." (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;
- "Engaging in business." (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;
- "Cash discount." (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;
- "Tuition fee." (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 offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry and agriculture, but not including specialty schools, business colleges, other trade schools or similar institutions;
- "Successor." (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 in-

terest 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;

Definitions.

(r) The word "consumer" means the following:

"Consumer."

(1) Any person who purchases, acquires, owns, holds or uses any article of tangible personal property other than for the purpose of resale as tangible personal property in the regular course of business or for the purpose of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

(2) Any person engaged in the business of rendering professional or personal services to persons (as distinguished from services rendered to property of persons) and who are taxable under section 4 (g) hereof;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any publicly owned street, place, road, highway, bridge or trestle which is used or to be used primarily for foot or vehicular traffic, in respect however, only to tangible personal property used or consumed in such business;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real or personal property which is being constructed, repaired, improved, cleaned, imprinted or otherwise altered by a person engaged in business, excluding only the United States of America, the State of Washington and its political subdivisions in

Definitions. respect to labor and services rendered to their real property which is used or held for public road purposes;

"Within this state." (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.

Amendments. SEC. 3. Section 6, chapter 180, Laws of 1935, as amended by section 3, chapter 178, Laws of 1941 (section 8370-6, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Persons taxable. Section 6. Every person engaging in activities which are within the purview of the provisions of two or more of paragraphs (a), (b), (c), (d), (e), (f) and (g) of section 4, shall be taxable under each paragraph applicable to the activities engaged in:

Exemptions. *Provided, however,* That persons taxable under paragraphs (a) or (b) of said section shall not be taxable under paragraphs (c) or (e) of said section with respect to making sales at retail or wholesale of products extracted or manufactured within this state by such persons.

Amendments. SEC. 4. Section 11, chapter 180, Laws of 1935, as amended by section 6, chapter 178, Laws of 1941 (section 8370-11, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

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

Limits of business. (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:

Proviso. *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; 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;

(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; Insurance business.
Proviso.

(d) Any person in respect to the business of growing or producing for sale upon his own lands or upon land in which he has a present right of possession, any agricultural or horticultural product or crop, including the raising for sale of any animal, bird or insect, or the milk, eggs, wool, fur, meat, honey or other substance obtained therefrom, or in respect to the sale of such products at wholesale by such grower, producer or raiser thereof. This exemption shall not apply to any person selling such products at retail; nor to the sale of any animal or substance obtained therefrom by a person in connection with his business of operating a stock yard or a slaughter or packing house; nor to any association of persons whatever, whether mutual, cooperative or otherwise, engaging in any busi- Wholesale agricultural products.
Exception.

ness 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;

Race meets.

(f) Any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Horse Racing Commission;

Employees.

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

Fraternal societies.

(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;

Public medical care.

(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;

Rentals on real estate.

(j) Amounts derived from the lease, rental or sale of real estate: *Provided, however*, That noth-

ing 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;

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

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

(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. Others.

SEC. 5. Section 16, chapter 180, Laws of 1935, as amended by section 2, chapter 76, Laws of 1941 (section 8370-16, Remington's Revised Statutes), be and the same hereby is amended to read as follows: Amendments.

Section 16. From and after the first day of May, 1943, there is hereby levied and there shall be collected a tax on each retail sale in this state equal to three per cent of the selling price. The tax imposed under this title shall apply to the retail sale of intoxicating liquor by the Washington state liquor stores. 3% retail sales tax levied.

SEC. 6. Section 17, chapter 180, Laws of 1935, as amended by section 8, chapter 178, Laws of 1941 (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.

"Selling price."

(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 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;

"Seller."

(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;

"Buyer" and "consumer."

(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, and also the State of Washington, its departments, institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof: *Provided*, A valid tax may be levied upon or collected therefrom under the provision of this title;

Others.

(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," "consumer," "in this state" and "within this state" shall apply equally in the provisions of this title.

Amendments.

SEC. 7. Section 19, chapter 180, Laws of 1935, as amended by section 9, chapter 225, Laws of 1939

(section 8370-19, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Section 19. The tax hereby levied shall not apply to the following sales: Sales not taxable.

(a) Casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under titles II, V or XIII of this act, or unless the article sold at a casual or isolated sale was purchased by the seller at a sale which was not taxable under this title;

(b) Sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under title V or title VI of this act, when the gross proceeds from such sales must be included in the measure of the tax imposed under said title V or title VI;

(c) The distribution and news stand sale of newspapers;

(d) Sales which the State of Washington is prohibited from taxing under the constitution of this state or the constitution or laws of the United States;

(e) Sales or [of] motor vehicle fuel taxable under chapter 58 of the Laws of 1933, section 5, (section 8327-5 of Remington's Revised Statutes);

(f) Sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to a person for use in conducting any business defined in subdivisions (a), (b), (c), (d), (e), (f), (g), or (h) of section 37 of title V of this act;

(g) Auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise.

SEC. 8. Section 31, chapter 180, Laws of 1935, as Amendments.

amended by section 6, chapter 76, Laws of 1941 (section 8370-31, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Excise tax
levied.

Section 31. From and after the first day of May, 1943, there is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state any article of tangible personal property purchased at retail or produced or manufactured for commercial use or acquired by gift. This tax will not apply with respect to the use of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property in this state. This tax shall apply to the use of every article of tangible personal property except as hereinafter provided, irrespective of whether the article or similar articles are manufactured within the State of Washington or are available for purchase within the State of Washington, and irrespective of any other condition. Such tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate of three per cent.

Rate.

Amendments.

SEC. 9. Section 32, chapter 180, Laws of 1935, as amended by section 9(a), chapter 178, Laws of 1941 (section 8370-32, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Exemptions.

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

Non-resi-
dents.

(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 use or enjoyment while temporarily within the state unless such property is used in conducting a non-transitory business activity within the state; or in respect to the use of household goods, personal effects and private automobiles by a *bona fide* resident of this state, if such articles were acquired by such person in an-

other state while a *bona fide* resident thereof and primarily for use outside this state: *Provided*, Such use was actual and substantial and such articles were acquired at least three months prior to the time he became a resident of this state;

(b) In respect to the use of any article of tangible personal property purchased at retail or acquired by gift if the sale thereof to the user or to the donor has already been subjected to tax under title III of this act and such tax has been paid by the purchaser or donor; 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 first use of which within the state is actual use in conducting interstate or foreign commerce; Interstate commerce.

(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; Tax-free items.

(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); Motor fuel.

(g) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by a person in conducting any business defined in subdivisions (a), (b), (c), (d), (e), (f), (g), or (h) of section 37 of title V of this act; Whole utility properties.

(h) In respect to the use of tangible personal property (including household goods) which have been used in conducting a farm activity: *Provided*, Such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. Farm auctions.

Nothing herein contained shall be construed to exempt from the tax imposed by this title, the use of any article of tangible personal property whether acquired through a casual sale or otherwise, except as is specifically provided in this section 32.

Amendments.

SEC. 10. Section 35, chapter 180, Laws of 1935, as amended by section 18, chapter 225, Laws of 1939 (section 8370-35, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Definitions.

Section 35. For the purposes of this title:

"Value of article used."

(a) The term "value of the article used" shall mean the consideration paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this title. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used and the cost of transportation by a common carrier. In case the article used is acquired by gift or is produced or manufactured by the person using the same or is sold under conditions wherein the purchase price, including the cost of transportation, does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the Tax Commission may prescribe;

"Use", etc.

(b) The terms "use," "used," "using" or "put to use" mean any act by which the taxpayer takes or assumes dominion or control over the article of tangible personal property after delivery thereof is completed within this state, and shall include installation, storage, withdrawal from storage or any other act preparatory to subsequent actual use or consumption within this state: *Provided*, That tax liability under this title shall arise only as to that use as defined hereunder which first occurs within this state

and no further tax shall be imposed under this title upon the same person with respect to any other subsequent use of the same article;

Definitions.

(c) The word "taxpayer" and the word "purchaser" as used in this title, shall include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in titles II and III of this act;

"Taxpayer" and "purchaser."

(d) The word "retailer," as used in this title, shall mean every person engaged in the business of selling tangible personal property at retail;

"Retailer."

(e) The meaning ascribed to words and phrases in titles I, II and III and all the provisions of titles XVIII, XIX and XX of this act, in so far as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this title.

Others.

SEC. 10A. Section 37, chapter 180, Laws of 1935, as amended by section 12, chapter 178, Laws of 1941 (section 8370-37, Rem. Supp. 1941), be and the same hereby is amended to read as follows:

Amendments.

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

Definitions.

(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;

"Railroad business."

(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;

"Express 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

"Railroad car business."

- Definitions. 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;
- "Water distribution 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;
- "Light and power business." (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;
- "Telephone business." (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;
- "Telegraph business." (g) The term "telegraph business" means the business of affording telegraphic communication for hire;
- "Gas distributing business." (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;
- "Highway transportation business." (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 III, Laws of 1921, page 338, section 1, and chapter 184, Laws of 1935, page 884, section 2 and amendments thereto, except motor vehicles operating entirely within the corporate limits of any city or town, or contiguous cities or towns or within five miles of the limits of either thereof;
- "Urban transportation business." (j) The term "urban transportation business" means:
- (1) The business of operating any railroads, 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;

Definitions.

(2) The business of operating any vehicle for public use in the conveyance of persons or property for hire, in so far as operating entirely within the corporate limits of any city or town, or contiguous cities or towns or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pick-up or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property;

(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;

"Public service business."

(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 inci-

"Gross operating revenue."

dental 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;

Others.

(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.

Amendments.

SEC. 11. Section 82, chapter 180, Laws of 1935, as amended by section 13, chapter 178, Laws of 1941 (section 8370-82, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Tax on
cigarettes.

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 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;

(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;

Wholesaler
to affix
stamps.

Proviso.

Interstate
stock to
be kept
separate.

(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

Retailer to
affix stamps.

Proviso.

Interstate
stock to
be kept
separate.

taxable articles, and shall retain the same subject to the use and inspection of the Tax Commission;

Manner of affixing stamps.

(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;

Individual packages.

(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;

Compensation for affixing stamps.

(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 five (5) per cent of the face value of the stamps purchased by them;

Intent of act.

(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 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;

First purchaser to pay.

Tax on advertising stocks.

(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.

Meter stamp machines authorized.

Amendments.

SEC. 12. Section 210, chapter 180, Laws of 1935 (section 8370-210, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Section 210. 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; (b) giving such facts and information to the taxpayer or his duly authorized agent; (c) publishing 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 or Attorney General, or to any state department or any committee or subcommittee 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; (f) giving any such facts or information to the Commissioner of Internal Revenue of the United States or to the proper officer of the tax department of any state, 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; or (g) giving any such facts or information to the department of justice or the army or navy departments of the United States, or any authorized representative thereof, for official purposes. Any person acquiring knowledge of such facts or information in the course

Secrecy of
Information.

Exceptions

- of his employment with the Tax Commission and any person acquiring knowledge of such facts and information as provided under (d), (e), (f) and (g) 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 one thousand (\$1,000.00) dollars 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.**
- Penalty.**
- Amendments.** SEC. 12A. Section 211, chapter 180, Laws of 1935, as amended by section 19(a), chapter 178, Laws of 1941 (section 8370-211, Rem. Supp. 1941), is amended to read as follows:
- Duty of Treasurer.** 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:
- Allocation.**
- 38.25% thereof to the state current school fund;
 - 2.32% thereof to the University of Washington fund;
 - 1.34% thereof to the Washington State College fund;
 - .09% thereof to the Bellingham Normal School fund;
 - .13% thereof to the Cheney Normal School fund;
 - .20% thereof to the Ellensburg Normal School fund;
 - 57.67% thereof to the state general fund;
- Limitation.** *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 there-

from 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.

SEC. 13. This act is necessary for the support of the state government and its existing institutions, and shall take effect on May 1, 1943. Effective date.

Passed the House March 10, 1943.

Passed the Senate March 10, 1943.

Approved by the Governor March 18, 1943.

CHAPTER 157.

[H. B. 194.]

PROBATE.

AN ACT relating to probate practice and procedure, and regulating the investment of funds in guardianship proceedings; amending section 213-1, chapter 156, Laws of 1917, as amended by section 3, chapter 206, Laws of 1941 (section 1583-1, Remington's Revised Statutes Supp.).

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

SECTION 1. Section 213-1, chapter 156, Laws of 1917, as amended by section 3, chapter 206, Laws of 1941 (section 1583-1, Remington's Revised Statutes Supp.), is amended to read as follows: Amendments.

Section 213-1. All moneys which may come into the possession of any guardian and which are a part of the guardianship estate which shall be properly available for investment may be, by any guardian, and without the permission of the court, invested in such bonds, securities, or other choses in action as are made by law, legal investments for trust funds by corporations doing a trust business, or mutual savings banks doing business under the laws of the State of Washington, or invested in the savings accounts of banks, trust companies, mutual savings banks, national banking associations, and savings Guardian may invest estate funds.

Legal investments.