

P484

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No. 3—S. E. T.

Office of  
State Tax Commissioner

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# LAW AND INSTRUCTIONS

RELATIVE TO THE

# SPECIAL EXCISE TAX

REQUIRED OF

**CORPORATIONS, JOINT STOCK COMPANIES;  
ASSOCIATIONS AND INSURANCE COMPANIES**

**For the Privilege of Carrying On or Doing Business in  
the State of West Virginia**

**Measured by Their Annual Net Incomes from All Sources**

**Sections 5 to 16, Both Inclusive, of Chapter 3, Acts of the Legislature of West  
Virginia, Second Extraordinary Session.**

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**JANUARY 15, 1916**

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TRIBUNE PTG. CO., CHARLESTON W. VA

## PREFACE

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Included in the provisions of Chapter 3, Acts of the Legislature of West Virginia, Second Extraordinary Session, 1915,—*an act to provide additional revenue for the state*,—are sections 5 to 16 requiring a special excise tax on corporations, joint stock companies, associations, and insurance companies, for the privilege of doing business in the State of West Virginia; such a tax has been more comprehensively defined as “a tax upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, such as the continuity of the business without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of being controlled and managed by corporate directors, and the general absence of individual liability; advantages which do not exist when the same business is conducted by private individuals or partnerships.”

In so far as the act relates to the time, manner in which and by whom, returns are to be filed and the financial features of the returns, as applicable to the reporting corporations, and the duties of the state tax commissioner as to the assessment and collection of the tax accruing from any corporation, the act is mandatory, and provides no discretion to be exercised on the part either of the corporation making return or the state tax commissioner as to such matters.

The state tax commissioner is required to determine what is or is not a proper item of income or a proper deduction, but, in his determination as to what are such proper items, he is required to “follow and adopt any rule, or construction, which may hereafter be promulgated by the commissioner of internal revenue of the United States, or given to said act of congress passed on the third day of October, one thousand nine hundred and thirteen, by the courts of the United States.”

To assist corporations, etc., in making a prompt and proper compliance with the provisions of the excise tax law and to lessen misapprehension on account of the requirements as to what corporations are liable for, and what subject to the tax, what corporations are to make return, the manner in which return is to be made and the time of filing same, the determination of what is or is not a proper item of income or deduction, and other administrative features of the law,

I append hereto, together with the law, such instructions or rulings, as, at this time, appear to be proper, each to be considered and treated as a ruling of this department until revoked or superseded. These instructions include rulings of the Commissioner of Internal Revenue of the United States, relating to financial data, not in conflict with specific requirements of our law.

A copy of this pamphlet is being sent to each corporation liable to the tax and it should be kept in the files of the corporation for the reason that additional rulings will be in short form and in the nature of a supplement to this pamphlet.

Each corporation, etc., paying a tax under the excise tax law will be given a number which will in due time be communicated to it, *which number should be treated as confidential information*. Our reports to the State Auditor of collections on account of the special excise tax will be reported, for example, with, say, two corporations whose numbers are 897 and 1125, respectively, in a manner similar to the following:

“To the State Auditor:

“Attached hereto is certificate of deposit covering collections, received this day, account SPECIAL EXCISE TAX, from

“Corporation No. 897..... \$235.50

“Corporation No. 1125..... 65.00.”

The legislature very wisely safeguarded the information contained in any return or supplement thereto, or other document, filed with this office by corporations in compliance with the excise tax law, by providing that only the Supreme Court, in its discretion, in each particular case, can “prescribe the manner in, and conditions upon, which any return may be made public or the use thereof in any court or judicial proceedings be procured,” unless the president or other chief officer making the return consents to the making public of the same. In many cases it is not difficult to conceive that should competitors or others be made aware of a corporation’s trade secrets or the amount or source of its income and indebtedness, that such information would be embarrassing, and possibly ruinous, to the reporting corporation.

It is the intention of this department that no effort shall be spared in the absolute protection of returns and information contained therein coming into its possession on account of the special excise tax. All returns, documents, etc., will be securely kept, and any person guilty of the slightest infraction of the publicity feature of the law will be vigorously prosecuted.

It is a ruling of this department that requests over the telephone for any information, the giving of which would in anywise violate the letter or the spirit of this law, will be denied, even though such requests purport to be direct from the corporation's office or to be made by its president or any other of its officers.

It is a ruling of this department that all officers and employees of any bank made a depository of money or its equivalent for the purpose of transmitting collections on account of the special excise tax into the state treasury shall be regarded, in so far as such officers and employees may have knowledge as to the amount of such tax paid by any corporation subject thereto, as agents of this department.

As a further safeguard for the protection of confidential information, it is the intention of this department that all communications as are deemed necessary to be made by it to the corporations relative to the contents of their returns, or the ascertainment of their tax, shall always be made to the corporation at its official address as shown by our records,—the idea being that the official addressee of the corporation shall receive *all* communications which this department may have occasion to make relative to items, etc., in returns, regardless of the sources of the inquiries.

Practically all corporations liable to make returns have furnished this department with their official addresses, which addresses have been already noted on our records. Any corporation whose official address is other than that shown on the envelope in which this pamphlet is enclosed, should, without delay, forward its correct official address. The official addressee may be merely the name of the corporation; or the name of the corporation in care of its president or other officer. Inasmuch, however, as the return is required to be signed and sworn to by the "president, vice-president, or other principal accounting officer," it is preferable, should the corporation desire to give its official addressee and address as other than merely its name, street and number or building, city and state, that the official addressee be given as the name of the corporation in care of such principal officer as has charge or a thorough knowledge of the books of account and other records of the corporation relating to its finances; as for example, The A. B. C. Co., c/o John Doe, President, 385 Times Bldg., Charleston, W. Va.

The tax is measured by the net income from all sources, arrived at by deducting certain items of expense, etc., from the gross amount of income received within the year *from all sources*. A very small proportion of the corporations required to file returns will have trouble

in determining what are proper items authorized to be deducted, and any corporation has the privilege and it is especially requested to make inquiry of this department at any time concerning any item of deduction about which it has any doubt.

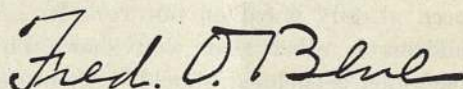
There will be forwarded with this pamphlet two blanks for return, both of which should be filled out,—one to be returned to this office, the other kept in the corporation's files for reference. It is important that you carefully read the form and all instructions before making entries in the return proper.

Returns, etc., will be filed under the names of the corporations, and it is desired that all communications to this department bear the name of the corporation so communicating, or concerning which any letter is written.

All returns and communications relative to the special excise tax should be addressed to the state tax commissioner, *Special Excise Tax Bureau*.

If, after reading the law and instructions herewith, any corporation is in doubt as to what constitutes a proper item of income or deduction, or any other matter respecting its return, I shall, upon request, be glad to give such further information as may be at my command.

Very respectfully,

A handwritten signature in cursive script that reads "Fred. O. Blue". The signature is written in dark ink and is positioned above the printed name of the commissioner.

*State Tax Commissioner.*

Charleston, West Virginia,  
January 15, 1916.

(Index Appended.)

## SPECIAL EXCISE TAX LAW

[Sections 5 to 16, both inclusive, of Chapter 3, Acts of the Legislature of West Virginia, Second Extraordinary Session.]

### CHAPTER 3.

AN ACT to provide additional revenue for the state \* \* \* \* by imposing a special excise tax on corporations, joint stock companies, associations, and insurance companies, for the privilege of doing business in the state of West Virginia; amending chapter thirty-two of the code, by adding thereto sections five to sixteen, both inclusive, of this act, to be numbered from one hundred and forty-seven to one hundred and fifty-eight, both inclusive, of said chapter.

[Passed May 21, 1915. In effect ninety days from passage. Approved by the Governor May 24, 1915.]

*Be it enacted by the Legislature of West Virginia:*

\* \* \* \* \*

Sec. 5. Every corporation, joint stock company, or association organized for profit, and having a capital stock represented by shares, and every insurance company, respectively, now or hereafter organized under the laws of this state, or under the laws of any other state or government and engaged in any business whatsoever in the state of West Virginia, shall pay an annual special excise tax for the privilege of carrying on or doing business in the state of West Virginia, equivalent to one-half of one *per centum* upon the entire net income of such company, received by it from all sources during the year, on business transacted and capital invested in this state, as hereinafter set forth; *provided, however,* that nothing in this section contained shall apply to labor, agricultural or horticultural organizations; nor to mutual savings banks not having a capital stock represented by shares and which are operated exclusively for the benefit of their depositors; nor to cemetery companies, which are organized and operated exclusively for

Corporations,  
etc., subject to  
tax.

Tax not to apply to certain  
organizations  
specified.

the benefit of their members; nor to fraternal beneficiary societies, orders or associations operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members; nor to domestic building and loan associations organized and operated exclusively for the benefit of their members; nor to any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes; nor to business leagues, chambers of commerce or boards of trade, or to any civic league or organization organized and operated exclusively for the promotion of social welfare, none of which said organizations, savings banks, cemetery companies, fraternal beneficiary societies or fraternities, building and loan associations, charitable, religious, scientific or educational associations, business leagues, chambers of commerce or boards of trade, or civic leagues, named in this proviso, are organized for profit, and no part of the net income of which inures to any private stockholder or individual.

Sworn returns  
to be delivered,  
when; to whom.

Sec. 6. Every such corporation, joint stock company, association, or insurance company, hereinafter called company, liable under the preceding section for the tax imposed by this act, shall, on or before the first day of March, one thousand nine hundred and sixteen, and on or before the first day of March in each year thereafter, deliver to the state tax commissioner a return in writing, which shall be signed and sworn to by its president, vice-president, or other principal accounting officer, in the form prescribed by the state tax commissioner, as hereinafter prescribed, for the year ending December thirty-first, next preceding; *provided*, that any corporation, joint stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income, ascertained as herein provided, for the year ending on the

Fiscal year,  
how established.



day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the tax commissioner not less than thirty days prior to the date upon which its annual return shall be filed. And all corporations, joint stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter. Such return shall accurately and fully set forth:

*First.* The total amount of paid up capital stock of such company outstanding at the close of the year; or, if no capital stock, the amount employed in its business at the close of the year.

*Second.* The total amount of its bonded and other indebtedness at the close of the year.

*Third.* The gross amount of its income received during such year from all sources, and in the case of insurance companies distinguishing between that arising from business transacted within this state and out of this state; and also stating separately the amount received by it within the year, by way of dividends upon stock of other corporations, joint stock companies, associations or insurance companies subject to the tax imposed by this act, giving the name and location of every such company, upon the stock of which such dividends are received, and the amount of such dividends received from each of such companies.

*Fourth.* The total amount of all the ordinary and necessary expenses paid out of the earnings within the year in the maintenance and operation of the business and properties thereof, stating separately all charges such as rentals or other payments required to be made as a condition to the continued use or possession of the property.

*Fifth.* The total amount of all losses actually sustained during the year and not compensated by insurance

Fiscal year:  
another return  
due, when.

Return to  
show:

Paid up capi-  
tal stock, etc.

Bonded and  
other debt.

Gross income  
from all sources,  
how shown.

Ordinary and  
necessary ex-  
penses, how  
shown.

Losses and de-  
preciations, etc.

or otherwise, stating separately any amounts claimed for depreciation of property; and, in the case of insurance companies, also of dividends paid within the year, including those paid on policy and annuity contracts, and the net addition, if any, required by law to be made within the year to reserve funds in this state.

Interest paid;  
maximum of  
principal on  
which interest  
allowable.

*Sixth.* The amount of interest accrued and paid within the year on its bonded and other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on the amount of the indebtedness not exceeding the amount of the capital employed in the business at the close of the year; and in case of a bank, banking association, or trust company, stating separately all interest paid within the year on deposits.

Interest paid  
by banks on de-  
posits.

Taxes.

*Seventh.* The amount paid by it within the year for taxes of every kind imposed under the authority of this state, and separately the amount so paid by it for taxes imposed by any other government.

Net income.

*Eighth.* The net income of such company, after making the deductions and exemptions authorized by the next section.

Net income,  
how ascertained.

Sec. 7. The net income of every such company as is required to make the return named in the preceding section, and for which the tax shall be assessed which is imposed by this chapter, shall be ascertained by deducting from the gross amount of its income received within the year:

Ordinary and  
necessary ex-  
penses.

*First.* All of the ordinary and necessary expenses actually paid within the year out of its earnings in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of the property.

Losses; depre-  
ciation; deple-  
tion.

*Second.* All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in case of mines, a reasonable allowance for the depletion of ores and of

other natural deposits, not to exceed five *per centum* of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds, and the sums other than dividends paid within the year on policy and annuity contracts; *provided*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses, shall be entitled to deduct from gross income any portion of such premium deposits returned to policy holders within any year; and that life insurance companies shall be entitled to deduct from gross income in any year such portion of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual policy holder, or treated as an abatement of premium of such individual policy holder, within such year, and that assessment insurance companies shall be entitled to deduct from gross income in any year the actual amount deposited with any state officer, pursuant to law, as addition to guaranty or reserve funds.

Insurance companies—additions to reserve funds, etc.

Mutual fire insurance companies.

Life insurance companies.

Assessment insurance companies.

*Third.* The amount of interest accrued and paid within the year on its bonded or other indebtedness as defined and limited in the preceding section; and in case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits; *provided*, that in case of bonds or other indebtedness that have been issued with a guaranty that the interest payable thereon shall be free from taxes, no deduction for the payment of the tax herein imposed shall be allowed, and in case of a bank, banking association, loan or trust company, interest paid within the year on deposits or moneys received for investment and secured by interest bearing certificates of indebtedness issued by such bank, banking association, loan or trust company.

Interest accrued and paid.

Bank, interest paid on deposits.

Interest on certain indebtedness, deduction not allowed.

Bank, etc.—certain interest.

*Fourth.* All sums paid by it within the year for taxes of every kind, other than assessments for local benefits or improvements.

Taxes paid.

*Fifth.* All amounts received by it within the year as dividends upon stock of other corporations, joint stock

Certain dividends received.

companies, associations, or insurance companies, subject to the tax hereby imposed.

Tax, how computed.

The tax herein imposed shall be computed upon the entire taxable net income accrued within the year ending December thirty-first, one thousand nine hundred and fifteen, and for each calendar or fiscal year thereafter.

Corporation to pay tax on entire net income arising, etc.

It is the intention of this chapter to assess the tax imposed thereby on the net income as defined therein of the corporations, joint stock companies, associations, and insurance companies named in section four, arising from business transacted and capital invested in this state.

Corporation doing interstate business, etc.—how net income apportioned.

Every such company having capital invested in its business in this state only, shall pay the tax upon its entire net income ascertained as herein provided; and every such company, except an insurance company, engaged in business and having capital invested and transacting business both in and out of the state, shall pay the tax upon that part of its entire net income which bears the same proportion to its whole net income that the assessed value for purposes of taxation of its assets and property within the state bears to the total assessed value of all of its assets and property in the jurisdictions where it is located.

Insurance companies doing interstate business—how net income apportioned.

Insurance companies transacting business both in and out of the state shall pay the tax upon that part of the entire net income which bears the same proportion to the whole net income ascertained, as herein provided, that the gross receipts from business transacted within the state bears to the total gross receipts from all sources for the period the tax is assessed.

Life insurance companies shall not be required to pay certain license, etc., taxes.

No life insurance company, subject to the tax imposed by this act, and the tax of two *per centum* on its premium income imposed by chapter seventy-seven of the acts of one thousand nine hundred and seven, nor any agent thereof, shall be required to pay a license or other like tax to any municipal corporation for the privilege of transacting business therein.

Blank forms for return.

Sec. 8. The state tax commissioner shall furnish blank forms for making all returns required by this chapter, which forms shall conform as far as practicable to those furnished from time to time to such companies by the collector of internal revenue for the United States

for making returns for the excise tax provided for by act of congress passed on the third day of October, nineteen hundred and thirteen. And any company required to make a return by any provision of this chapter may furnish to the state tax commissioner a copy or duplicate of the return for the same period which it may make to the collector of internal revenue, under the requirements of said act of congress, except that an insurance company, transacting business both in and out of the state, shall supplement the same by a statement showing separately the gross income from business transacted in the state and the gross income from all sources; and any such company, other than an insurance company, engaged in business and having capital invested both in and out of the state, shall supplement said copy or duplicate to be furnished to the state tax commissioner, with a statement showing the assessed valuation of all property and assets for purposes of taxation in the state, and the total assessed value for purposes of taxation of all property and assets out of the state. Such duplicate or copy and any supplemental statement furnished with the same, shall be verified by the oath of the president or a vice president and treasurer of the company making the return, and the affidavit shall state that the copy or duplicate is an exact and true copy of the account and statement contained in the return made for the same period to the collector of internal revenue, under the provisions of said act of congress. The return so made shall be accepted as conclusive by the state tax commissioner for the purposes of this act, except that any company which may be required to make any amended or supplemental return to the collector of internal revenue under said act of congress for any year, shall, upon making the same, forthwith furnish to the state tax commissioner a copy or duplicate of such amended or supplemental return, which shall be considered in connection with the original return to the state tax commissioner in assessing the tax levied under this act.

Corporation may furnish copy or duplicate of return made to collector of internal revenue.

In certain cases such copy or duplicate shall be supplemented.

Verifications by certain officers; what affidavit to state.

The returns so made shall be accepted, etc.

Sec. 9. The state tax commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by a notice

State tax commissioner to ascertain and assess tax, and notify company.

Corporation  
may appeal,  
when.

In case com-  
pany fail or re-  
fuse to make re-  
turn, state tax  
commissioner to  
proceed to obtain  
facts and infor-  
mation, how.

To ascertain  
and assess tax  
upon company  
which failed or  
refused to make  
return; shall no-  
tify company.

His act final  
as to any such  
company.

Company may  
apply for correc-  
tion of amount  
of tax, to whom;  
how; when.

Board may  
grant or deny  
hearing.

deposited in the post office addressed to such company at its principal office or place of business. Such ascertainment of the tax shall be final and conclusive, unless the same be appealed from in the manner following, within thirty days after such notice is so deposited. If

any company fail or refuse to make a return, the state tax commissioner shall proceed, in such manner as may seem best, to obtain the facts and information required to be furnished by such return; and to this end he may, by himself or his duly appointed agent, make examination of the books, records and papers of any such company, and may take the evidence, on oath, of any person who he may believe shall be in possession of facts or information pertinent to the subject of inquiry, which oath he or the agent so appointed by him may administer. As soon as possible after procuring such information as he may be able to do with respect to any company failing or refusing to make a return, the state tax commissioner shall proceed to ascertain and assess the tax upon such company, and shall notify it of the amount thereof as hereinbefore provided. And his act shall be final as to any company which refused to make a return.

Sec. 10. If any such company, making a return as provided by this act, feels aggrieved by the assessment so made upon it for any year by the state tax commissioner, it may apply to the board of public works by petition, in writing, within thirty days after the notice is deposited as provided in the preceding section, for a hearing and a correction of the amount of the tax so assessed upon it by the state tax commissioner, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The board shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the board shall notify the petitioner of the time and place fixed for such hearing. After such hearing the board may make such order in the matter as may appear to them just and lawful, and shall furnish a copy of such order to the petitioner.

Sec. 11. No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this act, or any part of them, so assessed upon any corporation, joint stock company, association, or insurance company, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state; or, that the same were fraudulently assessed; or that there was a mistake made in the amount of taxes assessed upon such corporation, joint stock company, association, or insurance company. In the latter case no such injunction shall be awarded, unless application shall be first made to the board of public works to correct the alleged mistake, and the board shall refuse to do so, which fact shall be stated in the bill, or unless the complainant pay into the treasury of the state all taxes appearing by the bill of complaint to be owing.

Injunction to restrain collection of tax shall not be awarded, except upon certain grounds.

Sec. 12. Every company so assessed with taxes shall pay the same into the state treasury within sixty days after the date of the mailing of the notice of the amount thereof, or within thirty days after notification of the amount thereof, when ascertained and assessed by the board of public works on appeal. All taxes assessed under provisions of this act against any such company shall constitute a debt to the state, and may be collected by action of assumpsit, or appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies. It shall be the duty of the state tax commissioner to proceed to collect such taxes with a penalty of ten *per centum* added thereto if not paid when due.

Company assessed with tax to pay same, when.

Tax may be collected how.

State tax commissioner to proceed to collect.

Sec. 13. The special excise tax imposed by this act shall be a tax in addition to all license or other taxes now imposed or prescribed by law as a condition for the transaction of any business in this state, by any corporation, joint stock company, association, or insurance company; and when paid, shall authorize the company making payment to engage in the business authorized by its charter, if otherwise lawful, and if such authority be not otherwise forfeited, within the state of West Virginia for the year for which the same is levied. At the time of paying the taxes the state tax commissioner shall issue

Tax is in addition to all other taxes now imposed as a condition for transaction of business.

When paid, shall authorize company to engage in business, etc.

Receipt for taxes paid to be furnished by state tax commissioner.

to the company paying the same a certificate of payment for the proper fiscal year.

Penalties for making fraudulently false return or statement.

Sec. 14. Any person required or authorized by law to make, sign or verify any return by this act, who makes any false or fraudulent return or statement with intent to defraud the state, or defeat or evade the payment of the tax, or any part thereof, imposed by this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or may be imprisoned not exceeding one year, or both, at the discretion of the court, to which fine shall be added the costs of the prosecution.

Penalties for unlawfully divulging, permitting inspection of or printing or publishing contents, etc., of returns.

Sec. 15. It shall be unlawful for any officer, agent, clerk or other employee of the state to divulge or make known in any manner whatever, not provided by law, to any person, the amount or source of indebtedness, income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return made under the provisions of this act; or to permit any such return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person, except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever, not provided by law, any such return or any part thereof, or the amount or source of income, profits, losses or expenditures appearing in any such return. Any person violating the foregoing provision shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year; or, in the discretion of the court, be both so fined and imprisoned; and if the offender be an officer or an employee of this state he shall be dismissed from office and be incapable thereafter of holding any office in the state or any subdivision of the state. The state tax commissioner shall be custodian of all such returns, and shall securely keep the same. The supreme court of appeals of the state may, in each particular case, on application of any officer of the state charged with the enforcement of the laws of the state, and of any person or corporation interested,

State tax commissioner custodian of returns.

How return may be made public or use in court proceeding of return or copy thereof had.



prescribe the manner in, and conditions upon, which any return may be made public or the use thereof in any court or judicial proceedings be procured. The court may also provide for the use of a copy of such return instead of the original; *provided, however*, that nothing herein shall prohibit the making public of any such return by and with the consent of the president or other chief officer of the company making the return.

Sec. 16. In determining what is or is not a proper item of income of any company, or a proper deduction from gross income, for the purposes of this chapter, the state tax commissioner shall follow and adopt any rule, or construction, which may hereafter be promulgated by the commissioner of internal revenue of the United States, or given to said act of congress passed on the third day of October, one thousand nine hundred and thirteen, by the courts of the United States, and no item which may be excluded by any such rule, or construction of said act, shall be included in the income of any such company, or taxed as a part of its income under the provisions of this chapter, and any item of deduction from gross income made proper by such rule, or construction of said act of congress, shall be allowed as a proper item of deduction under this act.

State tax commissioner shall follow and adopt certain rules and constructions relative to items of income and deduction.

Sec. 17. That chapter thirty-two of the code be amended by adding thereto sections five to sixteen, both inclusive, of this act, to be numbered in said chapter from one hundred and forty-seven to one hundred and fifty-eight, both inclusive.



**INSTRUCTIONS**  
CONCERNING  
**THE SPECIAL EXCISE TAX**

REQUIRED OF

Corporations, Joint Stock Companies, Associations and Insurance  
Companies for the Privilege of Carrying On or Doing Busi-  
ness in the State of West Virginia,

Equivalent to One-Half of One Percentum Upon Their Entire Net  
Incomes, Received by them from All Sources During the  
Year, on Capital Invested and Business Transacted  
in the State of West Virginia

(Chapter 3, Sections 5 to 16, Second Extraordinary Session, Legislature of 1915.)

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STATE OF WEST VIRGINIA,  
OFFICE OF STATE TAX COMMISSIONER,

*Charleston, January 15, 1916.*

**CORPORATIONS REQUIRED TO PAY TAX.**

**Art. 1. Domestic Corporations (Except Insurance).**—Every corporation, joint stock company, or association organized for profit, and having a capital stock represented by shares, organized under the laws of the State of West Virginia, and in existence during the calendar year 1915, or any part thereof, and having a net income arising from capital invested and business transacted in this state after making the certain deductions from gross income authorized by law, is subject to the payment of the special excise tax.

**Art. 2. Foreign Corporations (Except Insurance).**—Every corporation, joint stock company, or association organized for profit, and having a capital stock represented by shares, organized under the laws of any state or government other than West Virginia, engaged in any business whatsoever in the State of West Virginia during the calendar year 1915, or any part thereof, and having a net income arising from capital invested and business transacted in this state after making the certain deductions from gross income authorized by law, is subject to the payment of the special excise tax.

**Art. 3.** Every corporation included in Articles 1 and 2, having capital

invested in its business in this state only, shall pay the tax upon its entire net income.

Every corporation included in Articles 1 and 2, having capital invested and transacting business both in and out of this state, shall pay the tax upon that part of its entire net income which bears the same proportion to its whole net income that the assessed value for purposes of taxation of its assets and property within this state bears to the total assessed value of all of its assets and property in the jurisdictions where located.

**Art. 4. Insurance Companies—Domestic.**—Every insurance company organized under the laws of the state of West Virginia, and in existence during the calendar year 1915, or any part thereof, and having a net income arising from capital invested and business transacted in this state after making the certain deductions from gross income authorized by law, is subject to the payment of the special excise tax.

**Art. 5. Insurance Companies—Foreign.**—Every insurance company organized under the laws of any state or government other than West Virginia, and in existence during the calendar year 1915, or any part thereof, and having a net income arising from capital invested and business transacted in this state after making the certain deductions from gross income authorized by law, is subject to the payment of the special excise tax.

**Art. 6.** Every insurance company included in Articles 4 and 5, having capital invested in its business in this state only, shall pay the tax upon its entire net income.

Every insurance company included in Articles 4 and 5, transacting business both in and out of the state, shall pay the tax upon that part of its entire net income which bears the same proportion to its whole net income that the gross receipts from business transacted within the state bears to the total gross receipts from all sources for the period for which the tax is assessed.

#### CORPORATIONS, ETC., EXEMPT.

**Art. 7.** The following classes of corporations, etc., are not subject to the payment of the special excise tax:

When not organized for profit, and no part of the net income of which inures to any private stockholder or individual,—

(a) Labor, agricultural or horticultural organizations,

(b) Mutual savings banks { Not having a capital stock represented  
by shares and which are operated exclu-  
sively for the benefit of their depositors,

(c) Cemetery companies.. { Which are organized and operated exclu-  
sively for the benefit of their members.

- (d) Fraternal beneficiary societies, orders or associations..... } Operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members,
- (e) Domestic building and loan associations..... } Organized and operated exclusively for the benefit of their members,
- (f) Any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes,
- (g) Business leagues, chambers of commerce or boards of trade,
- (h) Civic league or organization..... } Organized and operated exclusively for the promotion of social welfare.

**Art. 8.** All labor, agricultural or horticultural organizations, mutual savings banks, cemetery companies, fraternal beneficiary societies, orders or associations, domestic building and loan associations, corporations or associations organized and operated exclusively for religious, charitable, scientific or educational purposes, business leagues, chambers of commerce or boards of trade, and civic leagues or organizations organized exclusively for the promotion of social welfare, enumerated in section 5 as exempt, shall, by affidavit, or otherwise, at the request of the state tax commissioner, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, and that none of the net income inures to any private stockholder or individual. In the absence of such a showing, such organizations may, at any time, be required to make returns of annual net income or disclose their books of account for examination in order that the status of the company may be determined.

#### "CORPORATIONS" CONSTRUED.

**Art. 9.** "Corporation" or "corporations", as used in these instructions, shall be construed to include all corporations, joint stock companies or associations, and all insurance companies, coming within the terms of the law, and such organizations will be hereinafter referred to as "corporations."

#### "DOMESTIC" AND "FOREIGN" CORPORATIONS.

**Art. 10.** For convenience, corporations are divided into two classes,—domestic and foreign.

1. A Domestic corporation is—

- (a) One incorporated by or under the laws of the State of West Virginia, or  
(b) Under the laws of the State of Virginia before the twentieth day of June, 1863, and which has its principal place of business and chief works (if it have chief works) in the State of West Virginia.

Domestic corporations are subdivided into two classes—resident and non-resident.

1. A resident corporation is a domestic corporation whose principal place of business and chief works (if it have chief works) are located within the State of West Virginia.

2. A non-resident corporation is a domestic corporation whose principal place of business or chief works is located without the State of West Virginia.

2. Every other corporation is a Foreign corporation.

Art. 11. Corporations will be hereinafter referred to as either "domestic" or "foreign" when necessary to distinguish as between corporations organized under the laws of the State of West Virginia and those organized under the laws of any other state or government.

#### CORPORATIONS REQUIRED TO MAKE RETURNS.

Art. 12. Domestic corporations.—Every corporation organized under the laws of the State of West Virginia for profit, having a capital stock represented by shares, in existence during the calendar year 1915, or any part thereof, is required to make return, regardless of whether or not it had investments or transacted business in this state during the said year. As to domestic corporations, the duty to make return does not depend upon the receipt of income.

Art. 13. Foreign corporations.—Every corporation organized for profit under the laws of any state or government other than West Virginia, having a capital stock represented by shares, and having any gross income arising from capital invested and business transacted in the State of West Virginia during the calendar year 1915, or any part thereof, is required to make return.

Art. 14. Any net income arising from capital invested and business transacted through an agent, local agency or branch for and on behalf of a foreign corporation admitted to do business in the state, or, by law, required to be admitted before doing business in the state, is subject to the special excise tax, and every foreign corporation carrying on business in the manner indicated will be required to make return. An agent who is doing business in this state, buying and selling certain products for such foreign corporation, is to all intents and purposes a branch of the foreign corporation, as through and by him the foreign corporation is transacting business in this state.

Art. 15. Insurance companies.—Every insurance company engaged in any business whatsoever in the State of West Virginia during the calendar year 1915, or any part thereof, whether organized under the laws of this state or under the laws of any other state or government, is required to make return. In case any such company is a domestic corpor-

ation, the duty to make return depends upon a corporate existence under the laws of this state; if a foreign corporation, upon whether or not it was engaged in any business whatsoever in this state during the above period.

**Art. 16. As to corporations not specifically exempt.**—Every corporation having a capital stock represented by shares and having any gross income arising from capital invested and business transacted in this state during the calendar year 1915, or any part thereof, and not specifically enumerated in Article 7 of these instructions as exempt, shall make the return of annual net income required by law whether or not it may have any income subject to tax. Mutual telephone companies, mutual insurance companies, and like organizations, although local in character, and whose income consists largely from assessments, dues, and fees paid by members, do not come within the class of corporations specifically enumerated as exempt. Not coming within the statutory exemption, all organizations of this character will be required to make returns of annual net income, and pay any special excise tax thereby shown to be due. For this purpose the surplus of receipts of the year over expenses will constitute the net income upon which the tax will be assessed.

**Art. 17.** Any corporation as to whose status under the law there is doubt, or which does not clearly come within one or another of the classes of those specifically enumerated as exempt, should file a return (in blank if desired) and attach thereto a statement setting out fully the nature and purpose of the organization, the source of its income, and what disposition is made of it, particularly of any surplus, and whether or not any part of the income of which inures to any private stockholder or individual.

**Art. 18. Subsidiary companies.**—Every corporation liable for the special excise tax, regardless of its relation to another corporation, is held to be a separate and distinct entity, and, unless it comes within the class of organizations specifically enumerated in the act as exempt, must make a separate and distinct return, complete in every detail.

If such subsidiary companies actually have no net income or earnings and no expenses of operation, and the earnings accrue direct to the parent company, which company also pays direct the operating expenses of the subsidiaries, that fact must be clearly set out in the returns of the subsidiaries.

In any event, subsidiary corporations can not escape liability to make returns.

**Art. 19.** A Railroad or other corporation which has leased its properties in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock or the interest on the bonded indebtedness, or both, and such rental is paid by the lessee either to the corporation itself or directly to the stock and bond holders, must

make a return of annual net income showing the rental so paid as having been received by the corporation.

**Art. 20. Dissolved corporations.**—Corporations liable for the special excise tax, and dissolved during the calendar year 1915, or whose charters were surrendered or who withdrew from the State of West Virginia during the said year, are required to make returns of net income covering the period from January 1, 1915 to the date of such dissolution, surrender or withdrawal.

**Art. 21. New corporations.**—Corporations liable for the special excise tax, organized during the calendar year 1915, are required to make returns of net income for the period from the date of their organization to December 31, 1915, unless a year other than the calendar year is established.

**Art. 22. Change of name of corporation.**—The mere change in name does not constitute a new corporation. If the business was continuous throughout the year, no change in management or operation other than the change of name, the return should be made covering the business transacted throughout the year, such return to be made by the corporation in the name which it bears at the end of the year, with a notation on the return to the effect that the name had been changed, giving both the old and new names. If, however, a distinct new corporation was organized to take over the property of the old, both corporations will be required to make separate returns covering the periods of the year during which they were respectively in charge of the business.

**Art. 23. Corporations going into liquidation.**—Corporations liable for the special excise tax and going into liquidation during any tax period may, at the time of such liquidation, prepare a "final return" covering the income received or accrued to them during the fractional part of the year during which they were engaged in business, and immediately file the same.

**Art. 24. Corporations not completely organized.**—Organizations which have applied for and never received charters, or corporations which have received charters and never perfected their organizations, transacted no business and had no income whatever from any source, may, on presentation of these facts to the state tax commissioner, be relieved from the necessity of making returns of annual net income so long as they remain in this unorganized condition.

**Art. 25. Corporation leasing property on royalty basis.**—In the case of mines operated by a lessee on a royalty basis it is held that the lessor corporation in disposing of its ores or natural deposits on the basis of royalties has a measure of profit in every unit of property disposed of in this way, and that so much of the gross receipts on account of royalties



as is in excess of depletion, not exceeding 5 per cent of the gross value of the output at the mine, plus any incidental expenses to which the corporation may be subject, is income within the meaning of the special excise tax law and must be so returned by the lessor.

**Art. 26. Defunct or dissolved corporations.**—In cases wherein corporations have, by affidavit or otherwise, clearly established the fact and satisfied the state tax commissioner that they are defunct or dissolved, and are no longer carrying on any business and have no property or income, returns will not be required of them after such condition has been clearly established. But one showing of this character as to each particular corporation will be required, unless it shall later appear that any corporation shall have such income within the meaning of the law as brings it within its requirements.

#### TIME FOR FILING RETURNS.

**Art. 27.** In all cases where a fiscal year is not established in the manner provided by law returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year. Such returns in either case provided must be verified under oath or affirmation of its president, vice-president, or other principal accounting officer.

**Art. 28.** The state tax commissioner is not authorized to extend the time for filing returns.

**Art. 29.** If it shall appear in any case that a return has been made on the basis of a fiscal year not designated in the manner provided, the corporation making such return will be advised that such return can not be accepted, but must be made to cover the business of the calendar year.

**Art. 30.** If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the state tax commissioner on or before the last due date, and should the return not be actually received until subsequent to that date, it will be considered and treated as having been filed within the prescribed time.

**Art. 31.** "Last due date," as hereinbefore used, is construed to mean the last day upon which a return is required to be filed in accordance with the provisions of the law.

**Art. 32.** When the due date as above defined falls on Sunday or on a legal holiday, the last due date will be held to be the day next following such Sunday or legal holiday and the return should be filed not later than such following day, or, if placed in the mails, it should be posted in ample time to reach the state tax commissioner's office, under ordinary handling of the mails, on or before the date on which the return is thus made due.

**Art. 33. Fiscal year.**—Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year, must, *on or before January 31, 1916*, file with the state tax commissioner a notice, in writing, setting forth that it has designated the last day of some month in the year (other than the last day of December) as the day of the closing of its fiscal year, and that from the date so designated as the closing of its fiscal year its books have been or will be kept on the basis of such designated fiscal year. No special form of this notice is prescribed, but notice must be in the hands of the state tax commissioner not later than January 31, 1916. The notice, given in the time and manner provided, *establishes* the fiscal year and requires no action on the part of the state tax commissioner. When a fiscal year is established a return for that portion of the calendar year 1915 that precedes the first full fiscal year must be filed on or before March 1, 1916, and a return for the fiscal year (12 months) must be filed on or before the last day of the 60-day period next following the closing date of the fiscal year. **Example:** a corporation that has designated March 31, 1916 as the close of its fiscal year must file a return on or before March 1, 1916 for the period from January 1, 1915 to March 31, 1915; and a return for the first fiscal year,—April 1, 1915 to March 31, 1916,—must be filed on or before May 30, 1916.

The following table is self-explanatory.

WHEN FISCAL YEAR IS ESTABLISHED AS ENDING THE LAST DAY OF ANY MONTH OTHER THAN DECEMBER.

When Fiscal Year Ends:	FIRST RETURN		SECOND RETURN		THIRD RETURN	
	To Be Filled on or Before:	To Cover Period From:	To Be Filled on or Before:	To Cover Fiscal Year:	To Be Filled on or Before:	To cover fiscal year.
1916	1916		1916		1917	
Jan. 31	March 1	Jan. 1, 1915 to Jan. 31, 1915	Mch. 31	Feb. 1, 1915 to Jan. 31, 1916	Apr. 1	Apr. 1, 1915 to Jan. 31, 1916
Feb. 29	March 1	Jan. 1, 1915 to Feb. 28, 1915	Apr. 29	Mch. 1, 1915 to Feb. 29, 1916	Apr. 29	Apr. 1, 1915 to Feb. 29, 1916
Mch. 31	March 1	Jan. 1, 1915 to Mch. 31, 1915	May 30	Apr. 1, 1915 to Mch. 31, 1916	May 30	Apr. 1, 1915 to Mch. 31, 1916
Apr. 30	March 1	Jan. 1, 1915 to Apr. 30, 1915	June 29	May 1, 1915 to Apr. 30, 1916	June 29	May 1, 1915 to Apr. 30, 1916
May 31	March 1	Jan. 1, 1915 to May 31, 1915	July 30	June 1, 1915 to May 31, 1916	July 30	June 1, 1915 to May 31, 1916
June 30	March 1	Jan. 1, 1915 to June 30, 1915	Aug. 29	July 1, 1915 to June 30, 1916	Aug. 29	July 1, 1915 to June 30, 1916
July 31	March 1	Jan. 1, 1915 to July 31, 1915	Sept. 29	Aug. 1, 1915 to July 31, 1916	Sept. 29	Aug. 1, 1915 to July 31, 1916
Aug. 31	March 1	Jan. 1, 1915 to Aug. 31, 1915	Oct. 30	Sept. 1, 1915 to Aug. 31, 1916	Oct. 30	Sept. 1, 1915 to Aug. 31, 1916
Sept. 30	March 1	Jan. 1, 1915 to Sept. 30, 1915	Nov. 29	Oct. 1, 1915 to Sept. 30, 1916	Nov. 29	Oct. 1, 1915 to Sept. 30, 1916
Oct. 31	March 1	Jan. 1, 1915 to Oct. 31, 1915	Dec. 30	Nov. 1, 1915 to Oct. 31, 1916	Dec. 30	Nov. 1, 1915 to Oct. 31, 1916
Nov. 30	March 1	Jan. 1, 1915 to Nov. 30, 1915	Jan. 29, '17	Dec. 1, 1915 to Nov. 30, 1916	Jan. 29, '18	Dec. 1, 1915 to Nov. 30, 1916

**MANNER IN WHICH RETURNS ARE TO BE MADE.**

**Art. 34. Blank forms, etc.**—Under the authority conferred by this act, forms of return have been prescribed, in which the various items specified in the law are to be stated. Failure on the part of any corporation, joint-stock company, association, or insurance company liable to this tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Corporations not supplied with the proper forms for making the return should make application therefor to the state tax commissioner in ample time to have its return prepared, verified, and filed on or before the last due date.

Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for. Returns with such statements as "our deductions exceed our gross income" written on the blank forms in lieu of actual figures, and all otherwise imperfect or incorrect returns will not be accepted as meeting the requirements of the law.

**Art. 35. No particular system of bookkeeping or accounting will be required** by this department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account.

**Art. 36. The books of a corporation are assumed to reflect the facts as to its earnings, income, etc.** Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation.

**Art. 37. Income of contracting companies.**—As this department requires no special system of bookkeeping, neither does it require any specific method by which the net income to be returned by corporations shall be determined.

In the case of a large contracting company, which has numerous uncompleted contracts which probably, in some cases, run for periods of several years, there is no objection to such corporation preparing its return in such manner that its gross income will be arrived at on the basis of completed work—that is to say, on jobs which have been finally completed and payments made during the year in which the return is made. If the gross income is arrived at in this method, the deductions

from gross income should be limited to the expenditures made on account of such completed contracts.

**Art. 38. Itemized statement on return form.**—In the case of public service and all other corporations it is desired by this department that the supplementary statement which forms a part of the return form, prescribed by the state tax commissioner for the use of such corporations in making their returns of annual net income, shall be prepared as far as practicable in detail.

It is not expected or required, however, that every particular item going to make up either gross income or the deductions therefrom shall be set out in the supplementary statement. It will be sufficient for the purpose of this department in the case of public service corporations and other similar concerns that they supply the information by classes rather than giving the items in detail, classifying the income and expenditures in the same manner as is required as to these items by the Interstate Commerce Commission.

**Art. 39. Signature and verification.**—Returns must be signed and verified by the president, vice president, or other principal accounting officer, and must be sworn to before an officer authorized to administer oaths and the seal of the attesting officer, if he is required to have a seal, must be impressed on the return in the space provided for that purpose.

#### CAPITAL ASSETS.

**Art. 40. Carrying charges.**—In the case of a holding or developing company which has not yet reached the stage of having any income of consequence resulting from its corporate operations, the carrying charges or other excess over the incidental income received may be added to and made a part of the cost of the property.

As a general proposition involving the acquirement and holding property for future sale, which property was acquired prior to the incidence of the tax and from which property there is but a nominal income, insufficient to meet the carrying charges, it would be proper for the corporation to add to the initial cost of the property the carrying charges, such as interest, insurance, and taxes actually paid, and from that amount deduct the incidental income which may have been received between the date of purchase and the date of the incidence of the tax. The result then shown will be the cost of the property or the amount to be excluded from the proceeds as capital when the property is sold.

**Art. 41. Capital assets, valuation of; when.**—In case wherein property was taken over in the exchange for the capital stock of a corporation at a par value greatly in excess of the true value of the property, and such property should be later sold, it will be necessary to ascertain as nearly as possible the true value of the property at the time it was taken over, and any excess over this ascertained true value at which the property is sold will be held to be the profit or income to the corporation.

Similar action may be taken in cases wherein corporations acquire

property for a mere nominal sum and which had at the time of its acquirement a value greatly in excess of such sum. A careful estimate of the value of such property at the time it was acquired may be fixed and set up as the value representing the cost of the property, and any excess over such fixed value at which such property may be thereafter disposed of will be treated as income to be accounted for in accordance with the rules of this department in the sale of capital assets. The value of the property fixed in the manner and for the purpose hereinbefore indicated will be subject to the approval of the state tax commissioner.

#### WHAT RETURNS TO SHOW— PAID UP CAPITAL STOCK.

First. The total amount of paid up capital stock of such company outstanding at the close of the year; or, if no capital stock, the amount employed in its business at the close of the year. •

**Art. 42.** Every corporation, in making return, must report under item 1 of the return form the total par value of its stock, both common and preferred, outstanding at the close of the year.

Stock outstanding at the close of the year and upon the basis of which dividends are or may be paid is held to be paid-up capital stock within the meaning of the law. For this purpose it is immaterial whether the stock be paid for in cash, promissory notes, or other assets. The fact that the notes are given in payment of the stock issued and that the notes have not been paid in full at the time the return is made is immaterial.

**Art. 43.** Corporations operating leased lines should not include the capital stock of the lessor corporations in their own statement of capital stock outstanding at the close of the year. The indebtedness of such lessor corporations should not be included in the statement of the indebtedness of the lessee unless the lessee has assumed the same. Each leased or subsidiary company will make its own separate return, accounting for therein all income which it may have received by way of dividends, rentals, interest, or from any other source.

#### BONDED AND OTHER INDEBTEDNESS.

Second. The total amount of its bonded and other indebtedness at the close of the year.

**Art 44.** The amount of interest-bearing indebtedness of a corporation, outstanding at the close of the year, should be reported under item 2 (a) of the return form whether the interest accrued upon such indebtedness was actually paid within the year or not.

**GROSS INCOME.**

Third. The gross amount of its income received during such year from all sources, and in the case of insurance companies distinguishing between that arising from business transacted within this state and out of this state; and also stating separately the amount received by it within the year, by way of dividends upon stock of other corporations, joint stock companies, associations or insurance companies subject to the tax imposed by this act, giving the name and location of every such company, upon the stock of which such dividends are received, and the amount of such dividends received from each of such companies.

**Art. 45.** The following definitions and rules are given for determining the gross income of various classes of corporations:

**Gross income of banks and other financial institutions** consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account, within the calendar or fiscal year for which the return is made.

**Gross income of insurance companies** consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account within the calendar or fiscal year for which the return is made.

**Gross income of manufacturing companies** shall consist of the total sales of manufactured goods during the year covered by the return increased or decreased by the gain or loss as shown by the inventories of finished and unfinished products, raw material, etc., at the beginning and the end of the year. To this amount should be added the income, gains, or profits from all other sources as shown by the books of account.

**Gross income of mercantile companies** shall include the total merchandise sales during the year, increased or decreased by the gain or loss as shown by the inventories of merchandise at the beginning and end of the year for which the return is made; to this amount should be added the income, gains, or profits derived from all other sources as shown by the books of account.

**Gross income of miscellaneous corporations** consists of the total revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources as shown by the books of account.

**Gross income—definition.**—It will be noted from these definitions that the gross income embraces not only the operating revenues, but also income, gains, or profits from all other sources, such as rentals, royalties, interest, and dividends from stock owned in other corporations, and

appreciation in values of assets, if taken up on the books of account as gain; also profits made from the sale of assets, investments, etc.

Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above, and which are applicable thereto.

**Art. 46a.** In ascertaining net income derived from the sale of capital assets, if such assets were acquired subsequent to January 1, 1915, the difference between the selling price and the buying price shall constitute an item to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1915, the amount of profit or loss representing the difference between the selling and buying price is to be prorated to determine the proportion of the gain or loss arising subsequent to January 1, 1915, and the proportionate part belonging to the years subsequent to January 1, 1915, shall be added to or deducted from the gross income for the year in which the sale was made.

**Art. 46b.** For the purpose of determining the amount of profit or loss arising from the sale of capital assets acquired prior to January 1, 1915, which shall be taken into account by corporations in making their returns of annual net income, the gain or loss represented by the difference between the purchase price and the selling price shall be prorated according to the number of years the assets were held prior to their sale, and the amount thus apportioned or apportionable to the years subsequent to January 1, 1915, shall be included in or deducted from the gross income of the year in which the assets were sold, accordingly as they were sold for more or less than their original cost. To any gain thus apportioned and to be included in income there should be added any amount or amounts which had been charged against and deducted from gross income subsequent to January 1, 1915, on account of the depreciation of the assets sold and not used to make good such depreciation shall be added to the gain apportioned to these years and will be included in the income of the year in which the property was sold. Likewise, for the purpose of a deduction from gross income of the year in which the assets were sold, loss resulting from any such sale, apportionable to the years subsequent to January 1, 1915, will be reduced by the amount of the unused portion of the depreciation charged off with respect to such assets since January 1, 1915.

**Art. 46c.** In the case of changes in book values of capital assets resulting from a reappraisal of property, the consequent gains or losses shall be computed for the return in the manner prescribed above in the case of the sale of capital assets.

In cases wherein there is an annual adjustment of book values of securities, real estate and like assets, and the increases and decreases



in values, thus indicated, are taken up on the books and reflected in the profit and loss account, such readjusted values will be taken into account in making the return of annual net income and no prorating will be required. If such adjustment had been made annually prior to January 1, 1915, the book value of the assets at that date will be taken as the basis for determining gain or loss resulting from subsequent sale, maturity, or adjustment. The adjustment referred to will comprehend assets which have increased in value as well as those which have decreased.

**Art. 46d. Inventory.**—In order that certain classes of corporations may arrive at their correct income, it is necessary that an inventory, or its equivalent, of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year shall be made in order to determine the gross income or to determine the expense of operation.

A physical inventory is at all times preferred, but where a physical inventory is impossible and an equivalent inventory is equally accurate, the latter will be acceptable.

An equivalent inventory is an inventory of materials, supplies, and merchandise on hand taken from the books of the corporation.

**Art. 47. Returns of holding companies.**—In a case wherein a holding company actually takes up each month on its books its proportionate share of the earnings of the underlying companies, such holding company will be required to include in its gross income the amounts thus taken up regardless of the fact that the same may not have been actually paid to it in cash. The fact that the underlying companies credit to the holding company the amount of earnings to which it is entitled on the basis of the stock it holds, together with the fact that the holding company takes up on its books the amount thus credited, renders it incumbent upon the holding company to return these amounts as income, regardless of the fact that the underlying companies needed these earnings and used them in making extensions and improvements and in furtherance of their business.

Expenditures for such extensions and improvements being chargeable to the property account of the subsidiary companies are not deductible from the gross income and will therefore not have the effect to reduce the earnings to their respective shares of which the stockholders are entitled.

**Art. 48. Sinking fund increment taxable income.**—In case wherein corporations set aside and place in a sinking fund under the control of trustees their own bonds or the bonds of other corporations which they may own, it is held that the fund thus set aside by the corporation is an asset of the corporation, and any increment to that fund as a result of investments made by the trustees having the same in charge is income to the corporation and should be so included and accounted for in its returns of annual net income.

If the trustees have invested the amount of the sinking fund reserve

or any portion of it in the bonds of the corporation and such corporation pays to the trustees the interest on these bonds, such corporation will be permitted to deduct such interest from its gross income, provided the amount of the interest thus paid, plus the interest on any other outstanding indebtedness which it may have, does not exceed the limit fixed by the law, and provided further that the interest paid to the trustees, together with all other earnings on investments of the sinking fund made by the trustees, is included in the income of the corporation.

**Art. 49. Dividends received by corporations.**—The income received by corporations on account of dividends will be subject to tax in the hands of the company paying the same, being a part of its net earnings.

The income received by corporations on account of dividends received from other corporations that do not pay a special excise tax to the State of West Virginia will be subject to the tax in the hands of the company receiving the same; but all dividends received from corporations who pay a special excise tax to the State of West Virginia are deductible from the gross income of the corporation receiving the same.

**Art. 50. Income from real estate transactions.**—Gains and profits resulting from a real estate transaction are subject to the special excise tax in so far as they represent actual net income for the year in which the transaction occurred. The amount of income to be returned for the purpose of the income tax in the case of the sale of capital assets is the amount received upon the sale of the property in excess of its original cost, provided both the purchase and sale of the property took place since January 1, 1915. If the property was acquired prior to January 1, 1915, the difference between the cost price and the selling price will be considered income to the corporation, which income may be prorated according to the number of years the property was held prior to its sale, and the amount thus apportioned to the years subsequent to January 1, 1915, will be returned as income for the year in which the property was sold.

In determining the amount of income to be accounted for on this basis, the corporation will consider mortgages, mortgage notes, or any other credits received in payment of the property as though they were cash, and if it should occur that the purchaser of any of the property should later default in payment the corporation will be entitled to take credit as a loss for the amount of loss actually sustained by reason of the default.

In determining the cost of the property for the purpose of arriving at the profit realized upon the sale it will be permissible for the corporation to add to the initial cost such carrying charges as interest, taxes, insurance, etc., provided such carrying charges have not been deducted from net income which the corporation may have had and returned for years subsequent to January 1, 1915, and prior to the date of the sale of the property.

**Art. 51. Tax-free covenant.**—Each corporation must account for, in its

return of annual net income, all income which it receives from all sources. Interest received by a corporation on bonds which it holds, whether they are guaranteed to be tax free or not, must be included in the income of the corporation receiving the same and so accounted for in its return of annual net income. In other words, the corporation receiving the income must pay the tax upon the same, if it have a net income subject to tax, and the matter of complying with the covenant of the bond is a matter to be adjusted between the debtor corporation and the bondholder.

**Art. 52. Items entering into cost of manufacture.**—The only interest which constitutes an allowable deduction from gross income under the special excise tax law is the amount actually paid within the year on the maximum principal ascertained by adding to the full amount of the paid-up capital stock outstanding at the close of the year one-half of the interest-bearing indebtedness also then outstanding.

Interest payments of this character, being allowable deductions from gross income, will not be taken into account as a part of the cost of manufacture for the reason that to consider them an element of the cost of manufacture and to deduct them from gross income as specific items would in effect result in a double deduction of the amounts involved.

A corporation would not be permitted to include in its deductions the rental value of the property which it owns and occupies nor would it be permitted to deduct from gross income the interest which the capital invested or employed would earn were it otherwise invested.

It therefore follows that a corporation can not take into account as a part of the cost of manufacture any possible earnings; that is, earnings which might accrue on its capital or investment had such capital been so placed as to earn a given rate of interest.

A manufacturing corporation may include as an element of the cost of manufactured products, the cost of the raw material, the cost of labor of the men who actually work on such products, as well as the cost of supervisory, or what may be denominated as "unproductive" labor, such as that of the foremen, inspectors, overseers, etc., provided such expenditures are not separately deducted from gross income in the return of annual net income.

The overhead charges referred to in Form 1-S. E. T. should include the salaries of officers, clerk hire, and such other office expenses as do not have to do directly with the manufacture of the product.

**Art. 53. Gifts to corporation.**—The value or amount of a gift to a corporation is held to be income to such corporation and should be returned as such for the year in which the gift is received.

#### ORDINARY AND NECESSARY EXPENSES.

Fourth. The total amount of all the ordinary and necessary expenses paid out of the earnings within the year in the maintenance and operation of the business and properties thereof, stating separately all charges such as rentals or other payments required to be made as a condition to the continued use or possession of the property.

**LOSSES,—DEPRECIATION, DEPLETION, ETC.**

Fifth. The total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts claimed for depreciation of property; and, in the case of insurance companies, also of dividends paid within the year, including those paid on policy and annuity contracts, and the net addition, if any, required by law to be made within the year to reserve funds in this state.

**INTEREST PAID.**

Sixth. The amount of interest accrued and paid within the year on its bonded and other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on the amount of the indebtedness not exceeding the amount of the capital employed in the business at the close of the year; and in case of a bank, banking association, or trust company, stating separately all interest paid within the year on deposits.

**TAXES PAID.**

Seventh. The amount paid by it within the year for taxes of every kind imposed under the authority of this state, and separately the amount so paid by it for taxes imposed by any other government.

**NET INCOME.**

Eighth. The net income of such company, after making the deductions and exemptions authorized by the act.

**DEDUCTIONS—**

Art. 54. It is immaterial whether the deductions except for taxes and losses are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books of the corporation as to constitute a liability against the assets of the corporation making the return. Deductions for taxes, however, should be the aggregate of the amounts actually paid, as shown on the cash book of the corporation. Deductions for losses should be confined to losses actually sustained and charged off during the year and not compensated by insurance or otherwise. Except as the same may be modified by the provisions of the act, limiting certain deductions and authorizing others, the net income as returned for the purpose of the tax should be the same as that shown by the books or the annual balance sheet.

**ORDINARY AND NECESSARY EXPENSES.**

Art. 55. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books at the actual value of such stock.

Art. 56. Expenses of operation and maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of the goods sold or inventoried at the end of the year, and all other

expenses incurred in the operation of the business except such as are required by the act to be segregated in the return.

**Art. 57. Expenses deductible by tenant corporations.**—In the case of corporations which occupy leased premises under a lease contract which requires such corporations to make all necessary repairs or improvements, which repairs or improvements revert to the owner of the fee at the expiration of the lease, the tenant corporation is entitled to charge the cost of all such repairs and improvements to the expense of doing business. This expense of improvements, somewhat permanent in character, should, however, be prorated over the number of years constituting the term of the lease, and the amount deductible from gross income of each year would be the aliquot part of the cost of such repairs and improvements.

**Art. 58. The cost of erecting permanent buildings** on ground leased by a company is a proper deduction as a rental charge, provided such buildings are left on the ground at the expiration of the lease as a part of the rental payment. In such case the cost will be prorated according to the number of years constituting the term of the lease and the annual deduction will be made accordingly.

**Art. 59. Incidental repairs** which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses.

**Art. 60. Amounts expended in additions and betterments** which constitute an increase in capital investment are not a proper deduction.

**Art. 61. Materials and supplies.**—In ascertaining expenses proper to be included in the deductions to be made under the item of "Expenses," corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made.

**Art 62. Special compensation not deductible.**—Special payments made by a corporation as extra compensation to certain of its employées may be deducted from gross income, if it is clearly shown that such payments are made as compensation for services rendered and are paid in pursuance of a contract expressed or implied.

If such so-called "compensation" is gratuity or voluntary payment, for which no service is rendered, the amounts so paid are not deductible.

**Art. 63. Fixed salaries and commissions.**—In cases wherein employees or officers of a corporation are paid a stated salary to which is added a certain percentage of the net profits of the corporation as compensation for services rendered, such corporation will be required to report under

item 4 (a) of the return form the amount of such combined payments made to such individuals during the year, provided the combined amount is \$3,000 or more.

**Art. 64. Salaries paid officers and employees.**—In the case of salaries paid to officers and employees of corporations, this department has fixed no definite amounts which may be allowably deducted from gross income. Any amount representing a fair and reasonable compensation for the services rendered by the officers or employees, if actually paid, will constitute an allowable deduction from gross income. The salaries which constitute such allowable deductions should not depend upon the profits of the corporation, but should, as indicated, be a fair measure of compensation for services rendered, and upon this basis should not vary accordingly as the net income or profits of the corporation may vary from year to year.

**Art. 65. Amounts paid as compensation or additional compensation to officers or employees,** which amounts are based upon the stockholdings of such officers or employees, are held to be dividends, and although paid in lieu of salaries or wages, are not allowable deductions from gross income, for the reason that dividends are not deductible.

**Art. 66. Donations.**—Donations by corporations which legitimately represent a consideration for a benefit flowing directly or indirectly to the corporation as an incident of its business are allowable deductions from gross income in ascertaining net income subject to the special excise tax, as donations to a hospital upon consideration that employees of the corporation are to have a ward for their use in case of accident or illness. The absence of consideration moving in some form to the corporation will make a contribution a mere gratuity. Gratuities are not allowable deductions in a return of income by corporations.

Donations made for purposes connected with the operation of the property, when limited to charitable institutions, hospitals, or educational institutions conducted for the benefit of the employees of a corporation or their dependents, shall be proper as a deduction under the head of expense in the return of the corporation.

**Art. 67. Life insurance in favor of corporations.**—In cases wherein corporations pay premiums on insurance policies insuring, in favor of the corporations, the lives of officers or others, such premiums may be allowably deducted from the gross income of the corporations paying the same.

In all such cases the proceeds of the policies when paid at maturity or upon death of the insured shall be returned by the corporation as income for the year in which such proceeds were received.

**Art. 68. Pensions paid employees, etc.**—Amounts paid for pensions to retired employees, or to their families, or others dependent upon them, or on account of injuries received by employees, are proper deductions as ordinary and necessary expenses. Gifts or gratuities to employees in

the service of a corporation are not properly deductible in ascertaining net income of the corporation.

**Art. 69. Bond discount deductible.**—In the case of a corporation selling its own bonds at a discount, the amount of the discount should be prorated over the life of the bonds and the proportionate part of such discount applicable to each year during the life of the bonds, constitutes an allowable deduction from the gross income of such year. The deduction from gross income in the case of 20-year bonds would be one-twentieth of the aggregate amount of the discount on the bonds sold.

### LOSSES.

**Art. 70. The deductions for losses** must be losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of property or assets, including in the latter value such amount if any, as has, in the current or previous years, been set aside and deducted from gross income by way of depreciation, as elsewhere defined, and has not been paid out in making good such depreciation.

**Art. 71. Funds set aside by a corporation for insuring its own property** are not a proper deduction, but any loss actually sustained and charged to such fund may be deducted.

**Art. 72. Bad debts**, if so charged off the corporation's books, during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

**Art. 73. Reserves to take care of anticipated or probable losses** are not a proper deduction from gross income.

**Art. 74. Loss due to voluntary removal of buildings, etc.**, incident to improvements is either a proper charge to the cost of new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation of the new building. Any loss claimed because of the voluntary removal of a building is presumed to have been covered by previous depreciation charges; otherwise the amount of such loss will constitute a part of the cost of the new building.

**Art. 75. All losses claimed arising from sale of capital assets** should be arrived at in the manner prescribed in article 46a, defining gains arising from sale of capital assets.

**Art. 76. Insurance companies—Losses.**—Under item 5 (a) of the return form, the insurance company may take credit for all losses actually sustained during the year and not compensated by insurance or otherwise, including losses resulting from the sale or maturity of securities

or other assets, as well as decreases by adjustment of book values of securities, in so far as such decreases represent actual declines in values which have taken place during the year for which the return is made; also losses from agency balances, or other accounts, charged off as worthless; losses by defalcation; premium notes voided by lapse, when such notes shall have been included in gross income. This item will not, however, include payments on policy contracts.

#### DEPRECIATION AND DEPLETION.

**Art. 77. No fixed rates for depreciation.**—This department has fixed no definite rates by which an allowable deduction on account of depreciation in the value of any class of property subject to wear and tear is to be computed.

The rule which this department has established and which is very generally followed by corporations contemplates that an allowable depreciation deduction within the meaning of the excise tax law shall be computed upon the basis of the cost of the property and the probable number of years constituting its life.

The life of the property necessarily depends upon its character, the uses to which it is put, and the conditions under which it is used. These elements being taken into consideration, corporations should, as a result of experience and observation, very closely approximate the number of years constituting the life of the property and upon this basis determine the rate of depreciation which annually occurs.

**Art. 78. The deductions for depreciation** should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should be formed upon the assumed life of the property, its cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years.

**Art. 79. The depreciation allowance,** to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and should be so entered on the books as to constitute a liability against the assets of the company, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost.



**Art. 80.** Depreciation set up on the books and deducted from gross income can not be used for any purpose other than making good the loss sustained by reason of the wear and tear, exhaustion, or obsolescence of the property with respect to which it was claimed. If it develops that an amount has been reserved or deducted in excess of the loss by depreciation, the excess shall be restored to income and so accounted for.

**Art. 81.** If any portion of the depreciation set up is diverted to any purpose other than making good the loss sustained by reason of depreciation, the income account for the year in which such diversion takes place must be correspondingly increased.

**Art. 82.** Depreciation in book values of capital assets shall be treated in the return in the manner prescribed in the case of loss from sale of capital assets (art. 46a), but amounts arbitrarily charged off will not be allowed as deductions except so far as they represent an actual shrinkage in values which may be determined to have taken place during the year for which the return is made.

**Art. 83.** With respect to bond issues where bonds are disposed of for a price less than par and are redeemable at par, it is held that because of the fact that such bonds must be redeemed at their face value the loss sustained by reason of their sale for less than their face value may be prorated by the issuing corporation in accordance with the life of the bond.

**Art. 84.** As to real estate.—Real estate as such, and as distinct from the improvements thereon, is not reduced in value by reason of wear and tear, and it therefore follows that the "allowance" contemplated by depreciation in the case of real estate corporations does not apply to the ground, but is intended to measure the decline in the value of the improvements, which decline in value is due to wear and tear of such improvements.

In determining the cost of the real estate, in most cases no segregation is made of the cost of buildings as separate and distinct from the cost of the grounds upon which such buildings stand. In such cases, where the actual cost of the buildings or improvements at the time they were taken over by the corporation can not be definitely determined, it will be sufficient for the purpose of determining the rate of depreciation to be used in computing the amount which will be deductible from gross income to estimate the actual value of the buildings or improvement as of January 1, 1915, provided such buildings were in existence at that time, and provided that the value placed upon such buildings shall not be in excess of the cost of such buildings, less an amount measuring the depreciation which had previously been sustained.

**Art. 85.** Shrinkage in value of securities.—Bonds and securities are

not subject to wear and tear within the meaning of the special excise tax law, and therefore depreciation does not apply to any shrinkage in their value. Shrinkage in the value of securities as such does not constitute a loss actually sustained within the year, the amount of which is definitely ascertained. Therefore, under the rules of this department and consistent with the provision of the law, a shrinkage in the value of bonds or like securities does not constitute an allowable deduction from gross income either as loss or depreciation.

The fact that bonds and similar securities were written off at the direction of the Comptroller of the Currency or a state banking department is not material. A mere book entry does not constitute either a loss or gain for the purpose of the income tax. The fact that bonds were written off does not necessarily imply that they are a total loss, nor is this act a conclusive proof that any loss occurred during the year for which the return is made.

Losses of this character are only ascertainable when the securities mature, are disposed of, or canceled.

**Art. 86. Good will.**—Good will does not represent a value attaching to physical property, and is held to be an intangible asset, whose value separate and apart from the business with which it is connected is not capable of determination. For the purpose of the special excise tax, it is capable of neither appreciation nor depreciation. Hence an amount claimed to represent its decline in value is not an allowable deduction from gross income in computing the tax liability of a corporation.

**Art. 87. An allowance for depreciation of patents** will be made on the following basis:

The deduction claimed for exhaustion of the capital assets as represented by patents to be made in the return of annual net income of a corporation for any given year shall be one-seventeenth of the actual cost of such patents reduced to a cash basis. Where the patent has been secured from the Government by a corporation itself, its cost would be represented by the various Government fees, cost of drawings, experimental models, attorneys' fees, etc. Where the patent has been purchased by the corporation for a cash consideration, the amount would represent the cost. Where the corporation has purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities at the time of the purchase will represent the cost of the patent to the corporation.

**Art. 88.** With respect to the depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the corporation. Where the value of a patent has disappeared through obsolescence or any other cause and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss and be deducted from gross income in the return of annual net income for the year during which the facts as to obsolescence or

loss shall be established, such unreturned cash value to be fixed in accordance with the proportion that the number of years which the patent still has to run bears to the full patent period of 17 years.

**Art. 89. Investment of depreciation fund.**—Investments in additions and extensions are primarily capital investments and the fact that the corporation is investing its depreciation funds in additions and betterments or improvements would seem to indicate that the amounts set aside on account of depreciation were in excess of a reasonable allowance which the law contemplates a corporation may deduct from its gross income, and when it shall appear that by reason of the investing of its depreciation funds in additions, betterments, and improvements, it actually adds to the value of its capital assets it will be insisted upon that the amount by which the assets are increased on this account shall be returned as income and be subject to the special excise tax.

**Art. 90. Insurance companies.**—Under item 5 (b) of the return form may be deducted actual losses sustained within the year by reason of the depreciation of property, which shall have been so entered on the books of the company as to constitute a liability against its assets. An arbitrary depreciation deduction claimed in the return, but not evidenced by book entry, can not be allowed.

**Art. 91. Timber lands.**—Corporations owning tracts of timber lands and removing therefrom and selling, or otherwise disposing of the timber will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income. The purpose of the depreciation or depletion deduction is to secure to the corporation, when the timber has been exhausted, an aggregate amount which, plus the salvage value of the land, will equal the capital actually invested in such timber and land.

**Art. 92.** When an amount sufficient to return this capital has been secured through annual depreciation deductions no further deduction on this account shall be allowed. For the purpose of increasing the deduction on this account no arbitrary increase in values shall be made, unless such increase in value shall be returned as income for the year in which the increase in value was taken up on the books.

**Art. 93.** The depreciation of coal, iron, oil, gas, and all other natural deposits must be based upon the actual cost of the properties containing such deposits. In no case shall the annual deduction on this account exceed 5 per cent of the gross value at the mine (well, etc.) of the output for the year for which the computation is made.

**Art. 94.** Gross value at the mine, etc.—“Gross value at the mine,”

as contemplated in that provision of the special excise tax law which authorizes mining companies to deduct from gross income an amount to take care of depletion of natural deposits, is held to mean the gross price at which the ore, coal, oil, gas or other product could be sold at the mine; that is, its actual bona fide market value.

The term "gross" as applied to "value" contemplates the aggregate value of the product at the mine determined upon the basis of the market conditions at the time and place, and is best defined as the price at which the product sells or would sell when delivered at the mouth of the mine in a marketable condition. Five per cent of the value thus determined will constitute the maximum amount which a mining corporation may deduct under the special excise tax law from gross income on account of depletion of natural deposits. This does not contemplate that the full 5 per cent of the gross value will be allowed if the aggregate amount calculated at a less rate will equal the cost in place of such deposits or secure to the corporation the return of its capital when the deposits have been exhausted.

If the rate of 5 per cent per annum shall return to the corporation its capital investment prior to the exhaustion of the deposits, the rate on which the annual deduction for depletion of deposits is based must be lowered in accordance with the estimated number of years it will take to exhaust the estimated reserves.

In case the market value of the product of the mine or well is established at some place other than at the mine or well, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, less transportation and reduction charges.

In case the reserves shall be in excess of the estimates, no further deduction on account of depletion shall be made where the capital investment has been returned to the corporation.

**Art. 94a.** In addition to the deduction to measure the loss due to depletion, the corporation will be allowed the usual depreciation of its machinery, equipment, etc., such depreciation to be determined on the basis of the cost and estimated life of the property with respect to which the depreciation is claimed.

**Art. 95.** Corporations leasing oil or gas territory shall base their depletion deduction upon the cost of the lease, and not upon the estimated value, in place, of the oil or gas.

**Art. 96.** Corporations operating mines (including oil or gas wells) upon a royalty basis only can not claim depreciation because of the exhaustion of the deposits.

**Art. 97.** \* Unearned increment will not be considered in fixing the value on which depreciation shall be based.

#### INSURANCE COMPANIES.

**Art. 98. Payments on Policies.**—In item (c) credit will be taken for all death, disability, or other policy claims, including fire, accident, and liability losses, matured endowments, annuities, payments on in-

stallment policies, surrender values, and all claims actually paid under the terms of policy contracts. Reserves covering liabilities for losses incurred, reported, resisted, adjusted or unadjusted but not paid, can not be deducted from gross income under this or any other item of the return.

**Art. 99a. Net addition to reserve fund.**—The reserve funds of insurance companies to be considered in computing the deductible net addition to reserve funds are held to include only the reinsurance reserve and the reserve for supplementary contracts required by law in the case of life insurance companies, the unearned premium reserves required by law in the case of fire, marine, accident, liability, and other insurance companies, and only such other reserves as are specifically required by the statutes of a state within which the company making the return is doing business. For the purpose of this deduction, the net addition is the excess of the reserve at the end of the year over that at the beginning of the year and may be based upon the highest authorized reserve required by any state in which the company making the return does business.

**Art. 99b. Mutual fire insurance companies,** requiring their members to make premium deposits to provide for losses and expenses, are entitled to deduct from gross income any portion of such premium deposits returned to policy holders within the year.

**Art. 99c. Life insurance companies** shall be entitled to deduct from gross income in any year such portion of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual policy holder, or treated as an abatement of premium of such individual policy holder, within such year.

**Art 99d. Assessment insurance companies** shall be entitled to deduct from gross income in any year the actual amount deposited with any state officer, pursuant to law, as addition to guaranty or reserve funds.

#### INTEREST.

**Art. 100.** It is held that in the case of a corporation having capital stock this deductible interest is interest actually accrued and paid within the year on an amount of indebtedness not exceeding the paid-up capital stock outstanding at the close of the year, increased by the addition thereto of one-half the interest-bearing indebtedness outstanding at the close of the year.

The qualifying phrase, "outstanding at the close of the year," appearing in the foregoing quotation, is held to apply to both paid-up capital stock and indebtedness, and one-half the sum of qualifies only the indebtedness, which indebtedness, like the paid-up capital stock, is required by the law to be reported, in making return of annual net income, as outstanding at the close of the year.

If no indebtedness is outstanding at the close of the year, the maximum deduction allowable on account of interest paid will be the amount of interest actually accrued and paid on the amount of indebtedness not exceeding at any time within the year the entire paid-up capital stock outstanding at the close of the taxable year; that is, in such case, the paid-up capital stock outstanding at the close of the year

measures the highest amount of indebtedness upon which deductible interest can be computed.

For the purpose of an allowable deduction, interest on the maximum amount of indebtedness, determined in the manner above indicated, can be computed upon such amount only for the time during which such amount of indebtedness is not in excess of the paid-up capital stock, increased by one-half the sum of the interest-bearing indebtedness outstanding at the close of the year.

In any event, the amount of interest, in order to constitute an allowable deduction, must not only be within the limit of the law as herein defined, but must have actually accrued and been paid within the year for which the return is made.

In a case where no capital stock exists, the limitation as to deduction is confined to interest actually paid on an amount of indebtedness not exceeding at any time during the year the capital employed in the business at the close of the year.

Interest paid on indebtedness, wholly secured by collateral the subject of sale in ordinary business of such corporations, will be allowed as a deduction to the full amount of such interest paid. This contemplates that the entire interest received on the collateral securing such indebtedness shall be included in the gross income returned. The expression "collateral the subject of sale," etc., refers to physical or tangible property bound for the performance of certain covenants or payment of certain obligations, and which physical or tangible property is the "subject of sale in the ordinary business of a corporation" owning the same. Where such corporation is, as a matter of its ordinary business, engaged in buying and selling, or dealing in such property, the interest actually paid within the year on indebtedness wholly secured by such collateral may be deducted from gross income as an expense of doing business, without regard to the limit of deductible interest as otherwise provided by the statute. The corporation, etc., must be organized and operated for the purpose of buying, selling, and dealing in the particular kind of property which becomes the collateral in question, and the particular property pledged for the debt upon which the interest is paid must be the "subject of sale in the ordinary business of the corporation." Real estate mortgaged, and the property of corporations organized for and engaged in the business of buying, selling, and dealing in real estate, is an example where the interest paid may be deducted as a "business expense" and not be subject to the limitation as to interest deduction.

**Art. 101.** A railroad company operating leased or purchased lines shall include all receipts derived therefrom, and, if bonded indebtedness of such lines has been assumed, such operating company may deduct the interest paid thereon to an amount as limited by the act.

**Art. 102.** Interest on bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year, provided the aggregate amount of such indebtedness on which the interest is paid does not exceed the limit prescribed by law, and in case

the indebtedness is in excess of the amount on which interest may be legally deducted the indebtedness bearing the highest rate may be first considered in computing the interest deduction and the balance, if any, will be computed upon the indebtedness bearing the next lower rate actually paid, and so on until interest on the maximum principal allowed has been computed.

**Art. 103.** In the case of banks and banking associations, loan or trust companies, interest paid within the year on deposits, or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, may be allowably deducted from the gross income of such corporations.

### TAXES.

**Art. 104.** All sums paid within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country, are deductible from gross income.

**Art. 105.** The act expressly provides that amounts paid on account of assessments for local benefits or improvements are not deductible from gross income when arriving at the net income subject to special excise tax. Assessments for local benefits or improvements are construed to mean those for street paving, sewer and other similar assessments, the fulfillment of the purposes for which levied tend to enhance the value of the property. Such assessments should be treated as permanent improvements,—charged to capital account rather than against income.

**Art. 106.** Reserves for taxes can not be allowed, as the law specifically provides that only such sums as are paid within the year for taxes shall be deducted.

**Art. 107.** Banks paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such banks can not deduct the amount of taxes so paid in making their return for the special excise tax imposed by this act. The shares of stock are the property of the stockholders, and such holders are primarily liable for the tax.

This ruling applies only to the taxes levied upon the value of the capital stock and is not intended to operate so as to prevent banking corporations from deducting from their gross income any state tax imposed against the corporation itself, as an excise or license tax.

FRED. O. BLUE,

State Tax Commissioner.

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