

CHAPTER 225.

[S. B. 113.]

REVENUE ACT.

AN ACT relating to taxation; amending sections 4, 5, 6, 11, 15(a), 16, 17, 18, 19, 21, 25, 27, 31, 32, 34, 35, 36, 37, 45, 47, 82, 84, 87, 89, 188, 193, 199, 210(a), 211 and 219 of chapter 180, Laws of 1935 (sections 8370-4, 8370-5, 8370-6, 8370-11, 8370-15(a), 8370-16, 8370-17, 8370-18, 8370-19, 8370-21, 8370-25, 8370-27, 8370-31, 8370-32, 8370-34, 8370-35, 8370-36, 8370-37, 8370-45, 8370-47, 8370-82, 8370-84, 8370-87, 8370-89, 8370-188, 8370-193, 8370-199, 8370-210(a), 8370-211 and 8370-219, Remington's Revised Statutes), as amended by chapter 191, Laws of 1937, and chapter 227, Laws of 1937; repealing section 8 of chapter 180, Laws of 1935 (section 8370-8, Remington's Revised Statutes) and chapter 9, Laws of 1939; adding two new sections to chapter 180, Laws of 1935, to be designated sections 8-a and 33 thereof; adding a new title to said chapter 180, Laws of 1935, to be designated title XIII thereof, imposing a tax with respect to the operation of certain coin-operated machines and devices and providing for the collection and enforcement thereof; and declaring an emergency whereby the act shall take effect May 1, 1939.

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

SECTION 1. That section 4, chapter 180, Laws of 1935, as amended by section 1, chapter 227, Laws of 1937, (section 8370-4, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-4
Rem. Rev.
Stat.

Tax on
business
activities.

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

Persons
liable, rate.

(a) Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business

shall be equal to the value of the products extracted for sale or commercial use, multiplied by the rate of one-quarter of one per cent;

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

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

Manufactur-
er.

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

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

Sales at
retail.

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

Business of
buying
wheat, oats
and barley.

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

Sales at
retail.

Distribution
of articles of
tangible
personal
property.

The tax imposed under this sub-section (e) shall likewise be imposed upon persons engaged in distributing articles of tangible personal property owned by them from a warehouse or other central location to a group of retail stores, the intent hereof being to impose the wholesaling tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales, as to such persons, the amount of tax, with respect to such business, shall be equal to the value of the articles distributed, multiplied by the rate of one-quarter of one per cent; this value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers. The Tax Commission shall prescribe uniform and equitable rules for the purpose of ascertaining such value. If the provisions of this paragraph, for any reason, shall be adjudged invalid, such judgment shall not invalidate the provisions of the first paragraph of this sub-section.

Printing and
publishing.

(f) Upon every person engaging within this state in the business of printing and of publishing newspapers, periodicals or magazines; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one-quarter of one per cent;

Other
business
activities.

(g) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in sub-sections (a), (b), (c), (d), (e) and (f) above; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of one-half of one per cent. This sub-section includes, among others, and without limiting the scope hereof, persons engaged in the following businesses (whether or not title to materials used in the performance of such businesses passes

to another by accession, confusion or other than by outright sale): repairing, personal, business, professional, mechanical and educational service businesses, abstract and title insurance, financial, brokerage, construction contracting and sub-contracting, advertising and hotel businesses.

SEC. 2. That section 5, chapter 180, Laws of 1935, as amended by section 2, chapter 227, Laws of 1937, (section 8370-5, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-5,
Rem. Rev.
Stat.

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

Definitions.

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

"Tax year."

(b) The word "person" or word "company," herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise;

"Person."

"Company."

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

"Sale."

"Retail sale."

(d) The term "sale at retail" or "retail sale" means every sale of tangible personal property other than a sale to one who purchases for the purpose of resale in the regular course of business or for the purpose of consuming the property purchased in the producing for sale a new article or substance, of which such property is an ingredient or component or a chemical used in processing same. The term "sale at retail" or "retail sale" shall be construed to include: (1) The production, fabrication or printing of tangible personal property for consumers thereof upon special order and shall also include the production, fabrication or printing of tangible personal property for consumers thereof who furnish either directly or indirectly the materials used in such work; (2) the installation, cleaning, decorating, beautifying, repairing or otherwise altering or improving the personal property of consumers or for consumers thereof; (3) the renting or leasing of tangible personal property; (4) the sale of tangible personal property to persons who use such property in the business of erecting buildings or otherwise improving, altering, or repairing real property of others, or in performing public improvement contracts, irrespective of whether the work is performed by any such persons under lump sum contract, time and material contract, day labor or otherwise. The term shall not be construed to include sales of feed to persons producing for sale, milk, eggs, wool, fur, meat or other substances obtained from livestock, animals or poultry;

"Sale at wholesale."

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

"Gross proceeds of sale."

(f) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, the cost of

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

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

"Gross income of the business."

(h) The term "value proceeding or accruing" means the consideration, whether money, credits, rights or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The Tax Commission may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due;

"Value proceeding or accruing."

(i) The word "extractor" means every person who, from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or commercial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource

"Extractor."

product, or fells, cuts or takes timber or other natural product, or takes, cultivates, or raises fish, shell fish or other sea or inland water foods or products; it does not include persons performing under contract the necessary labor or mechanical services for others;

"Manufacturer."

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

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

"Commercial use."

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

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

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

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

(4) Any other use of products extracted or manufactured on a commercial scale under such

rules and regulations as the Tax Commission shall prescribe;

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

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

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

(p) The term "tuition fee" shall be construed to include library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution: *Provided*, That the term "educational institution," as used herein, shall be construed to mean only those institutions created or generally accredited as such by the state and offering to students an educational program of a general academic nature but not including specialty schools, business colleges, trade schools or similar institutions; "Tuition fee."

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

successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor;

“Consumer.”

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

Amends
§ 8370-6,
Rem. Rev.
Stat.

SEC. 3. That section 6, chapter 180, Laws of 1935, as amended by section 3, chapter 227, Laws of 1937, (section 8370-6, Remington’s Revised Statutes), be and the same hereby is amended to read as follows:

Persons
taxable.

Section 6. Every person engaging in activities which are within the purview of the provisions of two or more paragraphs (a), (b), (c), (d), (e), (f) and (g) of section 4, shall be taxable under each paragraph applicable to the activities engaged in: *Provided, however,* That persons taxable under paragraphs (a) or (b) of said section shall not be taxable under paragraph (d) of said section with respect to making sales at wholesale of products extracted or manufactured within this state by such persons.

Adds §8 (a)
to ch. 180.
Laws 1935.

SEC. 4. That chapter 180, Laws of 1935 be amended by adding thereto a new section following section 8 thereof to be designated as section 8(a) and to read as follows:

Person
engaged in
rendering
services both
within and
without
state.

Section 8(a). Any person engaged in the business of rendering services both within and without this state shall, for the purpose of computing tax

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

SEC. 5. That section 11, chapter 180, Laws of 1935, as amended by section 4, chapter 227, Laws of 1937, (section 8370-11, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-11
Rem. Rev.
Stat.

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

Persons to
whom tax
is not
applicable.

(a) Any person engaging in the business of selling at retail whose gross proceeds of sales is less than one thousand (\$1,000.00) dollars, and any person engaging in any other business activity whose value of products, gross proceeds of sales or gross income of the business is less than four hundred (\$400.00) dollars, for a bi-monthly period: *Provided, however,* That where one person engages in more than one business activity and the combined measures of tax applicable to such businesses exceed four hundred (\$400.00) dollars, or, where one of such business activities is that of selling at retail, one thousand (\$1,000.00) dollars, for the taxable bi-monthly period no exemption or deduction from the amount of tax is allowed by this provision: *Provided, further,* That any person claiming exemption under the provisions of this sub-section may be required to file returns as provided herein even though no tax may be due;

Minimum.

(b) Any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of title V of this act;

Specific tax.

Insurance.

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

Agricultural products.

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

Boxing contests.

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

Race meets.

(f) Any person in respect to the business of conducting race meets for the conduct of which a

license must be secured from the horse racing commission;

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

(h) Fraternal benefit societies, as defined in Fraternal societies.
Rem. Rev. Stat., section 7259, fraternal fire insurance associations, as described in sub-division third of Rem. Rev. Stat., section 7131, and beneficiary corporations or societies organized under and existing by virtue of Rem. Rev. Stat., sections 3872 to 3883, inclusive, for the purpose of paying death benefits, as provided in Rem. Rev. Stat. of Washington, section 3879;

(i) Any person in respect to the business of Hospitals.
operating a hospital: *Provided*, That no exemption is granted to hospitals organized for profit or where the income therefrom inures to the benefit of any physician, surgeon, stockholder or individual by virtue of ownership or control of such hospital and: *Provided, further*, The word "hospital" shall not be construed to include clinics and resorts or spas, even though health attractions shall be operated in conjunction therewith;

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

(k) National banks, state banks, trust Banks.
companies, mutual savings banks, buildings and loan and savings and loan associations with respect to their banking business, trust business or savings and loan business but not with respect to engaging in any other business taxable hereunder, even though such

other business be conducted primarily for the purpose of liquidating the assets thereof.

Amends § 8370-15 (a) Rem. Rev. Stat.

SEC. 6. That section 15 (a), chapter 180, Laws of 1935, as enacted by section 5, chapter 227, Laws of 1937, (section 8370-15 (a), Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Public work contracts—taxes prior lien upon amount of final payment.

Section 15 (a). The amount of all taxes, increases and penalties due or to become due from a contractor or his successors or assignees with respect to a public improvement contract shall be a lien prior to all other liens upon the amount of the final payment withheld by the disbursing officer under such contract, and the amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such final payment remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

Certificate stating all taxes paid, required.

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

If within thirty (30) days after receipt of notice by the Tax Commission of the completion of the contract the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the Tax Commission may certify to the disbursing officer the amount of all taxes, increases and penalties due from such taxpayer together with the amount of all taxes to be-

come due with respect to such contract and may request payment thereof to the Tax Commission in accordance with the priority provided by this section. The disbursing officer shall within ten (10) days after receipt of said certificate and request pay to the Tax Commission the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract and after payment of all claims which by statute are a lien upon the final payment retained by the disbursing officer, shall pay to the Tax Commission the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the Tax Commission for the balance of all taxes, increases or penalties shown to be due by the certificate of the Tax Commission.

Amount of
taxes paid
to Tax
Commission.

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

Amends
§ 8370-17
Rem. Rev.
Stat.

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

Definitions:

(a) The term "selling price" means the consideration, whether money, credits, rights, or other property, expressed in the terms of money, paid or delivered, by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes or any other expenses whatsoever paid or accrued and without any deduction on account of losses;

"Selling
price."

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

"Seller."

(c) The word "buyer" and the word "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint-stock company, business trust,

"Buyer."

corporation, association, society, or any group of individuals acting as a unit, whether mutual, co-operative, fraternal, non-profit or otherwise, municipal corporation, quasi-municipal corporation, the State of Washington, its departments, institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed.

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

Amends
§ 8370-18
Rem. Rev.
Stat.

SEC. 8. That section 18, chapter 180, Laws of 1935, (section 8370-18, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Sellers.

Section 18. Every consignee, bailee, factor or auctioneer authorized, engaged or employed to sell or call for bids on tangible personal property belonging to another and, so selling or calling, shall be deemed the seller of such tangible personal property within the meaning of this title; and all sales made by such persons are subject to the provisions of this title even though the sale would have been exempt from tax hereunder had it been made directly by the owner of the property sold. It shall be the duty of every consignee, bailee, factor or auctioneer to collect and remit the amount of tax due under this title with respect to sales made or called by them: *Provided, however,* That if the owner of the property sold is engaged in the business of selling tangible personal property in this state the tax imposed under this title may be remitted by such owner under such rules and regulations as the Tax Commission shall prescribe.

SEC. 9. That section 19, chapter 180, Laws of 1935, (section 8370-19, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-19
Rem. Rev.
Stat.

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

Sales not
taxable.

(a) Casual and isolated sales by a person who is not engaged in any business activities taxable under title II or title V of this act.

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

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

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

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

(f) Sales of materials, equipment, parts or other articles to be used in the construction and repair of any commercial vessel or ship, moving in interstate or foreign commerce.

Vetoed.

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

Amends
§ 8370-16
Rem. Rev.
Stat.

Section 16. From and after the first day of May, 1935, there is hereby levied and there shall be collected a tax on each retail sale in this state equal to two per cent of the selling price. The tax imposed under this title shall apply to the retail sale of intoxicating liquor by the Washington state liquor stores.

Retail
sales—rate.

Amends
§ 8370-21
Rem. Rev.
Stat.

SEC. 11. That section 21, chapter 180, Laws of 1935, as amended by section 7, chapter 227, Laws of 1937, (section 8370-21, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Seller to
collect tax—
liability.

Section 21. The tax hereby imposed shall be paid by the buyer to the seller, and it shall be the duty of each seller to collect from the buyer the full amount of the tax payable in respect to each taxable sale. The amount of tax shall be paid by the buyer in cash, or by token or in scrip having the face value of either the purchase price or that portion of the purchase price for which the tax has not been paid in cash. The tax required by this title, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the Tax Commission, and any seller who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed in this act shall be guilty of misdemeanor and punished in the manner prescribed by law. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the Tax Commission in the manner prescribed by this act, whether such failure be the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of such tax. The amount of tax, until paid to the seller, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required under this title with intent to violate the provisions of this act or to gain some advantage or benefit either direct or indirect, and any buyer who refuses to pay any tax due under this title shall be guilty of a misde-

Penalty for
failure to
pay.

meanor and punishable in the manner prescribed by law.

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

Amends
§ 8370-25,
Rem. Rev.
Stat.

Section 25. In the case of installment sales and leases or rental agreements, the commission, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

Installment
sales—
collection
of tax.

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

Rentals and
leases.

Where the buyer purchases an article of tangible personal property for the purpose of renting or leasing the same but subsequently becomes the user thereof, or where a buyer purchases an article of tangible personal property partly for the purpose of renting or leasing the same and partly for his own use, the Tax Commission shall prescribe equitable rules and regulations relating to the method to be used by the taxpayer in classifying and reporting such transactions for the purpose of paying the taxes imposed under the provisions of this act.

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

Cash
receipts.

Amends
§ 8370-27
Rem. Rev.
Stat.

SEC. 13. That section 27, chapter 180, Laws of 1935, (section 8370-27, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Rebates and
refunds
unlawful.

Section 27. Whoever, excepting as expressly authorized pursuant to this act, refunds, remits or rebates to a buyer, either directly or indirectly and by whatsoever means, all or any part of the tax levied by this title, or makes in any form of advertising, verbal or otherwise, any statements which might infer that he is absorbing the tax or paying the tax for the buyer by an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be guilty of a misdemeanor. The violation of this section by any person holding a license granted by the state or any political subdivision thereof shall be sufficient grounds for the cancellation of the license of such person upon written notification by the Tax Commission to the proper officer of the department granting the license that said person has violated the provisions of this section. Before any license shall be cancelled hereunder, the licensee shall be entitled to a hearing before the department granting the license under such regulations as the department may prescribe.

Amends
§ 8370-31
Rem. Rev.
Stat.

SEC. 14. That section 31, chapter 180, Laws of 1935, as amended by section 1, chapter 191, Laws of 1937, (section 8370-31, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Purchases
subsequent
to April 30,
1935.

Section 31. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state any article of tangible personal property purchased at retail or produced or manufactured for commercial use. This tax will not apply with respect to the use of any article of tangible personal property purchased, pro-

duced or manufactured outside this state until the transportation of such article has finally ended or until such article has become commingled with the general mass of property of this state. This tax shall apply to the use of every article of tangible personal property except as hereinafter provided, irrespective of whether the article or similar articles are manufactured within the State of Washington or are available for purchase within the State of Washington, and irrespective of any other condition. Such tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate of two per cent.

SEC. 15. That section 32, chapter 180, Laws of 1935, as amended by section 2, chapter 191, Laws of 1937, (8370-32, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-32
Rem. Rev.
Stat.

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

Non-taxable
articles.

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

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

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

(d) In respect to the use of rolling stock or aircraft or floating equipment of a common carrier, the first use of which within the state is actual use of conducting interstate or foreign commerce;

(e) In respect to the use of any article of tangible personal property which the state is prohibited

from taxing under the constitution of the state or under the constitution or laws of the United States.

Adds § 33,
ch. 180,
Laws 1935.

SEC. 16. That chapter 180, Laws of 1935, be amended by adding thereto a new section following section 32 thereof to be designated as section 33 and to read as follows:

Retailer to
collect tax
on sales of
tangible
personal
property and
give receipt.

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

Amends
§ 8370-34
Rem. Rev.
Stat.

SEC. 17. That section 34, chapter 180, Laws of 1935, as amended by section 3, chapter 191, Laws of 1937, (section 8370-34, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Monthly
statement.

Section 34. Each taxpayer subject to the provisions of this title shall, on or before the fifteenth day of the month succeeding the end of the bi-monthly period in which the tax accrued, file a return with the Commission showing in detail the total quantity of tangible personal property used by him within the state during the preceding bi-monthly period subject to the tax herein imposed, and such other information as the Commission may deem pertinent. Each taxpayer shall remit to the Commission with each such return the amount of tax shown thereon to be due. Every retailer required to collect the tax imposed under this title shall file returns as provided herein showing the total value of the articles sold by the retailer, the use of which became subject to the tax imposed by this act during the

Remittances.

period for which the return is filed and shall show such other information as the Tax Commission may deem necessary for the proper administration of this act. The return shall be accompanied by a remittance of the amount of tax herein required to be collected by the retailer during the period covered by the return. Where the tax imposed under this title is collected by the retailer and a receipt is given therefor, the purchaser shall not be required to make any remittance with respect to the use of such property.

SEC. 18. That section 35, chapter 180, Laws of 1935, as amended by section 4, chapter 191, Laws of 1937 (section 8370-35, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Section 35. For the purposes of this title:

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

(b) The term "use," "used," "using" or "put to use" mean any act by which the taxpayer takes or

Amend
§ 8370-35
Rem. Rev.
Stat.

Definitions:

"Value of
article used."

"Use."

assumes dominion or control over the article of tangible personal property after delivery thereof is completed within this state, and shall include installation, storage, withdrawal from storage or any other act preparatory to subsequent actual use or consumption within this state: *Provided*, That tax liability under this title shall arise only as to that use as defined hereunder which first occurs within this state and no further tax shall be imposed under this title upon the same person with respect to any other subsequent use of the same article.

“Taxpayer.”

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

“Retailer.”

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

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

Amends
§ 8370-36
Rem. Rev.
Stat.

SEC. 19. Section 36, chapter 180 of the Laws of 1935 (section 8370-36 of Remington’s Revised Statutes) as amended by section 10, chapter 227 of the Laws of 1937 is hereby amended to read as follows:

Public
utility tax,
businesses
taxable.

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

I. Railroad, express, railroad car, water distribution, light and power, telephone and telegraph busi-

nesses: Three per cent: *Provided, however,* That a common carrier railroad operating as a plant facility to the extent of eighty per cent or more of its business shall pay a tax of one-fourth of one per cent on such eighty per cent or more of its business and three per cent on all other business;

II. Gas distribution business: Two per cent;

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

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

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

SEC. 20. That section 37, chapter 180, Laws of 1935, as amended by section 11, chapter 227, Laws of 1937, (section 8370-37, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-37
Rem. Rev.
Stat.

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

Definitions:

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

"Railroad
business."

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

"Express
business."

(c) The term "railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or

Railroad car
business."

any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business;

“Water distribution business.”

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

“Light and power business.”

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

“Telephone business.”

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

“Telegraph business.”

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

“Gas distribution business.”

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

“Highway transportation business.”

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

“Urban transportation business.”

(j) The term “urban transportation business” means:

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

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

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

"Public
service
business."

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

"Gross
operating
business."

delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses;

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

Amends
§ 8370-45
Rem. Rev.
Stat.

SEC. 21. That section 45, chapter 180, Laws of 1935, as amended by section 14, chapter 227, Laws of 1937, (8370-45, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Section 45. For the purposes of this title, unless otherwise required by the context:

"Admission."

(a) The term "admission" includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor. It includes also all charges made for the rental or use of equipment or facilities for purposes of recreation or amusement. Where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charge shall be considered as the charge for admission. The term shall also include automobile parking charges where the amount of such charge is determined according to the number of passengers in the automobile.

"Person."
"Successor."

(b) The words "person" and "successor" shall have the same meaning as is attributed to such words in title II of this act.

Amends
§ 8370-47
Rem. Rev.
Stat.

SEC. 22. That section 47, chapter 180, Laws of 1935, (section 8370-47 of Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Admissions
tax, credited.

Section 47. Every person receiving any payment for admissions, taxable under this title, shall collect the amount of tax imposed hereby from the person making such payments. The tax required to be col-

lected under this title shall be deemed to be held in trust by the person required to collect the same until paid to the Tax Commission as herein provided, and any person receiving payment of such taxes, who shall appropriate or convert the same to his own use or to any use other than the payment of the tax as herein provided to the extent that the amount of the tax is not available for payment on the due date for filing returns as herein provided, shall be guilty of a misdemeanor. In case any person required to collect the tax imposed under this title fails to collect the same, or having collected the tax fails to pay the same to the Tax Commission in the manner prescribed by this act, whether such failure be the result of his own acts or the result of acts or conditions beyond his control, he shall nevertheless be personally liable to the state for the amount of such tax. The taxes imposed hereunder shall be due and payable to the state in bi-monthly installments and remittance therefor shall be made on or before the fifteenth day of the month next succeeding the end of the bi-monthly period in which the tax is collected or accrued. The person receiving any payment for admissions on or before said fifteenth day of said month, shall make out a return, upon such forms and setting forth such information as the tax commission may require, showing the amount of tax upon admissions for which he is liable for the preceding bi-monthly period, sign and transmit the same to the Tax Commission, together with a remittance for said amount in the form required in section 191 of this act. The Tax Commission may, in its discretion, require verified annual returns from any taxpayer setting forth such additional information as it may deem necessary to determine correctly tax liability.

Penalty for appropriating.

Bi-monthly remittance.

Returns.

Verified annual returns.

SEC. 23. That section 82, chapter 180, Laws of 1935, (section 8370-82, Remington's Revised Stat-

Amends
§ 8370-82
Rem. Rev.
Stat.

utes), be and the same hereby is amended to read as follows:

Cigarette
tax.

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

Rate.

Collection.

Stamps.

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

Wholesaler.

Interstate
business.

(b) Every wholesaler in this state shall immediately, after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax as stated herein: *Provided, however,* That any wholesaler engaged in interstate business, who shall furnish surety bond in a sum satisfactory to the Commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this title. Said interstate stock shall be kept separate and apart from stamped stock. Every

wholesaler shall, at the time of shipping or delivering any of the articles taxed herein, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable articles, and shall retain the same subject to the use and inspection of the Tax Commission;

(c) Every retailer shall, except as to those articles on which the tax has been paid by the proper affixing of stamps by a wholesaler, as herein provided, affix the stamps for the denomination and amount necessary to represent the tax on each individual package or container, the same to be done, in all cases, immediately upon receipt by the retailer of the unstamped articles; Retailer.

(d) Said stamps shall be affixed in such manner that they cannot be removed from the package or container without said stamp being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed; and such stamps may be cancelled by the use of a rubber stamp bearing the certificate number of such wholesaler or retailer as shown by the certificate of registration issued to him by the Tax Commission, as provided in title XVIII of this set [act], and such stamps may be cancelled as soon as they shall be affixed to the package or container;

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

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

(g) It is the intent and purpose of this title to levy a tax on all of the articles taxed herein, sold,

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

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

Amends
§ 8370-84
Rem. Rev.
Stat.

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

Records and
invoices.

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

kind and quantity thereof and the date of delivery of the same.

SEC. 25. That section 87, chapter 180, Laws of 1935, (section 8370-87, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-87
Rem. Rev.
Stat.

Section 87. If any wholesaler or retailer, subject to the provisions of this title or any rules and regulations promulgated by the Tax Commission under authority hereof, shall be found to have failed to affix the stamps required, or to have the same affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this title or rules and regulations promulgated by the Tax Commission in the administration hereof, there shall be assessed and collected from such wholesaler or retailer, in addition to any tax that may be found due, a penalty equal to the amount of any tax found to be due plus interest thereon at the rate of one per cent for each thirty days or portion thereof from the date the tax became due, and upon notice mailed to the last known address of the taxpayer said amount shall become due and payable in ten days, at which time the Tax Commission, or its duly authorized agent, may make immediate demand upon such wholesaler or retailer for the payment of all such taxes and penalties: *Provided*, That the Tax Commission, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate of one per cent for each thirty days or portion thereof. The keeping of any unstamped articles coming within the provisions of this title shall be *prima facie* evidence of the intent to violate the provisions of this title.

Penalty for
violation of
rules and
regulations
or provisions
of act.

SEC. 26. That section 89, chapter 180, Laws of 1935, (section 8370-89, Remington's Revised Stat-

Amends
§ 8370-89
Rem. Rev.
Stat.

utes), be and the same hereby is amended to read as follows:

Seizures.

Section 89. In all cases of seizure of any property made subject to forfeiture under the provisions of this title, which, in the opinion of the person making the seizure, is of the appraised value of one hundred (\$100.00) dollars, or more, the said person shall proceed as follows:

Appraisement.

(a) He shall cause a list containing a particular description of the property seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of this state, residing within the county where the seizure was made. Said list and appraisement shall be properly attested by the said person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one (\$1.00) dollar per day for not exceeding two days, to be paid as other costs;

Notice.

(b) If the property seized is believed, by the person making the seizure, to be of less value than one hundred (\$100.00) dollars, no appraisement shall be made;

(c) The person making the seizure shall proceed to give notice thereof for five days, in writing, at three places in the county where the seizure is made. One of the notices shall be posted at the county court house; another at the place where the goods were seized; and the other at some public place. The notice shall describe the property seized, and the time and place and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized, and shall require any person claiming it to appear and make such claim in writing, within five days from the date of the first posting of such notice. Such person making the seizure shall also deliver to the

person from whom the property was seized, and also to the owner, if known, a copy of the said notice;

(d) Any person claiming the said property seized as contraband, within the time specified in the notice, may file with the Tax Commission a claim, in writing, stating his interest in the property seized, and may execute a bond to the Tax Commission in a penal sum equal to double the value of the property so seized, but in no case shall said bond be less than one hundred (\$100.00) dollars, with sureties to be approved by the clerk of the superior court in the county in which the property is seized, conditioned that in case of condemnation of the property seized, the obligor shall pay to the Tax Commission the full value of the property so seized, and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney's fee. And, upon delivery of such bond to the Tax Commission, it shall transmit the same with the duplicate list or description of the property seized to the Prosecuting Attorney of the county in which such seizure was made, and said Prosecuting Attorney shall prosecute the case to secure the forfeiture of said property in the court having jurisdiction. Upon filing the bond aforesaid, the said property shall be delivered to the claimant pending the outcome of the case: *Provided*, That he shall at once affix the required stamps thereto;

Bond
executed by
claimant.

(e) If no claim is interposed and no bond is filed within the time above specified, such property shall be forfeited, without further proceedings, and the same shall be sold as herein provided, and the proceeds of sale when received by the Tax Commission shall be paid into the state treasury as are other funds collected: *Provided*, That in seizures of property of less value than one hundred (\$100.00) dollars, the same may be advertised by the Tax Commission with other quantities at Olympia or at

any other city or town in which a branch office of the Tax Commission is located and disposed of as hereinbefore provided;

Court proceedings.

(f) In proceedings to secure a confiscation of the property hereinbefore mentioned, where the value of the goods seized at one time is one hundred (\$100.00) dollars, or less, the justice court of the place where the property is situated, shall have jurisdiction to try the cause. Where the value of the property seized at one time is more than one hundred (\$100.00) dollars, then the superior court of the county where the property is seized shall have jurisdiction to try the cause.

The proceedings against property seized, according to the provisions of this act, shall be considered a proceeding in rem unless otherwise herein provided.

Within ten days after filing the bond provided for in subdivision (d) hereof, the claimant shall file a petition in the court having jurisdiction of the cause, and the Tax Commission or other party authorized to prosecute the confiscation of said property, shall plead to it as if it were an ordinary action at law, and the same rules of pleading and procedure applicable to actions in the justice court or superior court shall be observed in this action, and the costs shall be adjudged as in other actions: *Provided, however,* That neither the state, nor the Tax Commission, nor any other person representing the state shall be liable for the costs in event the court shall not confiscate the property in controversy.

Amends
§ 8370-188
Rem. Rev.
Stat.

SEC. 27. That section 188, chapter 180, Laws of 1935, as amended by section 17, chapter 227, Laws of 1937, (section 8370-188, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Section 188. If, upon examination of any returns or from other information obtained by the Tax Commission it appears that a tax or penalty has been paid less than that properly due, the Tax Commission shall assess against the taxpayer such additional amount found to be due and shall add thereto an amount equal to 5% of the amount of such additional tax as penalty and interest for the first calendar year or portion thereof in which the deficiency was incurred, and shall add further thereto interest computed at the rate of six per cent per annum upon the amount of such additional tax from the last day of the year in which the deficiency was incurred to the date on which the assessment is made. The Tax Commission shall notify the taxpayer by mail of such additional amount and the same shall become due and shall be paid within ten days from the date of such notice, or within such further time as the Tax Commission may provide. If payment is not received by the Tax Commission by the due date of such notice, the Tax Commission may add a penalty of ten per cent of the amount of the additional tax found due. If the Tax Commission finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of 50% of the additional tax found to be due may be added.

Returns,
errors.

If, upon examination of any returns or from other information obtained by the Tax Commission it appears that a tax has been paid in excess of that properly due, the Tax Commission shall notify the taxpayer by mail and the amount of such excess shall be credited against any tax or installment thereof then due or to become due from the taxpayer under any other subsequent return for the same year, and any balance of such excess at the end of such tax year, or upon the filing of a final return upon ceasing business, shall be refunded on request of the taxpayer by means of vouchers ap-

proved by the Tax Commission and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide.

Amends
§ 8370-193
Rem. Rev.
Stat.

SEC. 28. That section 193, chapter 180, Laws of 1935, (section 8370-193, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Failure or
refusal to
make return.

Section 193. If any person shall fail or refuse to make any return required by this act, the Tax Commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax herein prescribed; and to this end the Tax Commission by itself or its duly appointed agent may make examination of the books, records and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry. The oath may be administered by any member of the Commission or by its duly authorized agent. The Tax Commission may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon, and where such return is not accepted, the taxpayer will be deemed to have failed or refused to file a return.

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

thereof from the date upon which the tax is due as provided by this act, and shall notify such taxpayer by mail of the total amount of such tax, penalties and interest and the total amount shall become due and shall be paid within ten days from the date of such notice.

Assessments and corrections of assessment may be made by the Commission at any time within four years after the close of the tax year.

Corrections
within
three
years.

SEC. 29. That section 199, chapter 180, Laws of 1935, (section 8370-199, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-199
Rem. Rev.
Stat.

Section 199. Any person having been issued a notice of additional taxes, delinquent taxes, interest or penalties assessed by the Tax Commission under the provisions of this act, may within twenty days after the issuance of the original notice of the amount thereof petition the Tax Commission in writing for a hearing and correction of the amount of such assessment. The petition shall set forth the reasons why such hearing should be granted and the amount of the tax, interest or penalties, which the petitioner believes to be due. The Tax Commission shall promptly grant such hearing and shall fix the time and place therefor and notify the petitioner thereof by mail. If no such petition be filed within such twenty day period the assessment covered by such notice shall become final.

Hearing and
correction of
amount of
tax.

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

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

Appeal to
court.

Any person, except one who has failed to keep and preserve books, records and invoices as provided in section 190 hereof, or in section 84, title XII, of this act, having paid any tax as required by this act and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston County, within one year after the payment of such tax, or within thirty days after the date of the notice denying such a hearing or after the date of the order provided in this section. In the appeal the taxpayer shall set forth the amount of the tax imposed upon him, which he concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the Tax Commission within the time herein provided and by filing the original thereof with proof of service with the clerk of the superior court of Thurston County. Within ten days after filing notice of such appeal, the taxpayer shall file with the clerk of the superior court a good and sufficient surety bond payable to the State of Washington in the sum of two hundred (\$200.00) dollars, conditioned to diligently prosecute the appeal and pay the state all costs that may be awarded if the appeal of the taxpayer is not sustained. The trial in the superior court on the appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. The burden shall rest upon the tax-

Surety
bond.

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

SEC. 30. That section 210(a), chapter 180, Laws of 1935, as enacted by section 21, chapter 227, Laws of 1937 (section 8370-210(a), Remington's Revised Statutes), be and the same is hereby amended to read as follows:

Amends
§ 8370-210 (a)
Rem. Rev.
Stat.

Section 210(a). Any tax or penalty due under the provisions of this act or under chapter 191, Laws of 1933, as amended by chapter 57, Laws of 1933, Extraordinary Session, which the Tax Commission deems to be uncollectible, may be charged off accounts receivable subject to approval upon examination by the Budget Division of the Department of Finance, Budget and Business of the State of Washington: *Provided, however,* That such amount charged off shall continue to be a debt due the State of Washington from the taxpayer and may

Uncollectible
accounts.

at any time be transferred back to accounts receivable for the purpose of collection.

Files may be destroyed, when.

The Tax Commission, subject to the approval of the Budget Division, of the Department of Finance, Budget and Business, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer under the provisions of chapter 191, Laws of 1933, or chapter 180, Laws of 1935, and any amendments thereto for any such taxable year or any preceding taxable year.

Amends
§ 8370-211
Rem. Rev.
Stat.

SEC. 31. That section 211, chapter 180, Laws of 1935, as amended by section 22, chapter 227, Laws of 1937, (section 8370-211, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Allocation
of receipts.

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

52.25% thereof to the state current school fund;

2.92% thereof to the University of Washington fund;

1.63% thereof to the Washington State College fund;

0.05% thereof to the Bellingham Norman School fund;

0.13% thereof to the Cheney Normal School fund;

0.25% thereof to the Ellensburg Normal School fund;

42.77% thereof to the state general fund:

Provided, That the allocations hereby made to each

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

SEC. 32. That section 219, chapter 227, Laws of 1937, (section 8370-219, Remington's Revised Statutes), be and the same hereby is amended to read as follows:

Amends
§ 8370-219
Rem. Rev.
Stat.

Section 219. The state does hereby preempt the field of imposing taxes on the use of tangible personal property, admissions, conveyances and cigarettes, as included under chapter 180, Laws of 1935, title IV, sections 31 to 35, inclusive, title VI, sections 44 to 50, inclusive, title VIII, sections 53 to 60, inclusive, title XII, sections 82 to 95, inclusive, and no county, town or other municipal subdivision shall have the right to impose taxes of the nature therein defined.

State
preempts
right to
impose reve-
nue taxes.

SEC. 33. That chapter 180, Laws of 1935, as amended by chapters 191 and 227, Laws of 1937 (sections 8370-1 to 8370-220, inclusive, Remington's Revised Statutes), be and the same hereby is amended by adding thereto a new title after title XII, to be designated title XIII, reading as follows:

Title XIII. Tax on Coin-Operated Machines and Devices.

Vetoed.

Section 96. From and after May 1, 1939, there is hereby levied and there shall be collected from every person engaging within this state in the business of operating any pinball machine, slot machine, iron claw machine, traveling crane, or other mechanically or electrically coin-operated machine or

device, wherein the element of chance or the element of chance and skill is involved in determining the payout to the player, a tax at the rate of five dollars (\$5.00) for each such machine or device so operated for each calendar month or fraction thereof.

Section 97. Each person subject to the tax imposed by this title shall, on or before the fifteenth day of the month succeeding the end of the bi-monthly period in which the tax accrued, file a return with the Tax Commission showing the total number of machines or devices operated during the preceding bi-monthly period or portion thereof, together with such other information as the Commission may prescribe, and remit with each such return the amount of tax shown thereby to be due.

Section 98. The meaning ascribed to words and phrases in titles I, II and III and all of the provisions of titles XVIII, XIX and XX of this act, in so far as applicable, shall have full force and effect with respect to the tax imposed by this title. The term "engaging within this state in the business of operating" shall, without limiting the meaning ordinarily ascribed to it, include the owning, possessing, leasing, setting up, maintaining, operating or displaying for the commercial operation thereof of any machine or device subject to tax under this title, and without regard to whether or not any such act is wholly incidental to another business activity engaged in by the taxpayer. The tax imposed by this title shall be in addition to any other tax to which the taxpayer may be subject under the laws of this state. The state does not by this title preempt the field of imposing taxes on machines or devices hereby taxed and this title shall not be construed to bar counties and incorporated cities and towns from regulating, licensing or taxing any such machines or devices.

Vetoed.

SEC. 34. That section 8, chapter 180, Laws of 1935, (section 8370-8, Remington's Revised Statutes), and chapter 9, Laws of 1939, be and the same hereby are repealed.

Repeals
§ 8370-8
Rem. Rev.
Stat.

SEC. 35. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect May 1, 1939.

Effective
date.

Passed the Senate March 9, 1939.

Passed the House March 9, 1939.

Approved by the Governor March 21, 1939, with the exception of sub-section (f) of section 9, and section 33, which are vetoed.

CHAPTER 226.

[H. B. 466.]

INSURANCE COMMISSIONER.

AN ACT fixing the salary of the State Insurance Commissioner.

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

SECTION 1. Effective January 15, 1941, the State Insurance Commissioner shall receive an annual salary of six thousand five hundred dollars (\$6,500).

Passed the House March 2, 1939.

Passed the Senate March 7, 1939.

Approved by the Governor March 21, 1939.