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State and Local Revenues
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Advisory Commission on Intergovernmental Relations
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ACIR's Legislative Program

The Advisory Commission on Intergovernmental Relations is a permanent, national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government. The Commission does not function as a typical Federal agency, because a majority of Commission members come from state and local government. The Commission functions as an intergovernmental body responsible and responsive to all three levels of government.

It should not be inferred, however, that the Commission is a direct spokesman for any single level or branch of government – whether the Congress, the Federal Executive Branch, or state and local government. Nevertheless, many of the Commission’s policy recommendations are paralleled by policies of the organizations of state and local government — including the National League of Cities, U.S. Conference of Mayors, and National Association of Counties — and a substantial number of the Commission’s draft legislative proposals are disseminated by the Council of State Governments in its annual volume entitled Suggested State Legislation. The National Governors’ Conference in its report of the 67th Annual Meeting carries 38 of ACIR’s legislative proposals as an appendix entitled State Responsibilities to Local Governments: Model Legislation from the Advisory Commission on Intergovernmental Relations.

The Commission recognizes that its contribution to strengthening the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, state, and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels, with considerable emphasis upon the strengthening of state and local governments.

ACIR’s State Legislative Program represents those recommendations of the Commission for state action which have been translated into legislative language for consideration by the state legislatures. Though ACIR has drafted individual bills from time-to-time following the adoption of various policy reports, its suggested state legislation was brought together into a cumulative State Legislative Program initially in 1970. This 1975 edition is the first complete updating of the original cumulative program. It contains a number of new bills as well as major rewrites and minor updatings of previously suggested legislation.

Scope of the Legislative Program. ACIR’s reports, over the years, have dealt with state and local government modernization and finances, as well as a variety of functional activities. Commission recommendations to the states, contained in these reports, have addressed all of these subjects. The suggested legislation contained in the Commission’s State Legislative Program has been organized into ten booklets (parts) in which the draft bills are grouped logically by subject matter. The groupings for all ten booklets are listed in the summary contents of the full legislative program which follows this foreword. Then, the detailed contents of this booklet, including the title of all bills, are listed with the page numbers where they can be found.
Process for Developing Suggested Legislation. Most of the proposals in the State Legislative Program are based on existing state statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff or consultants. Individual proposals were reviewed by state officials and others with special knowledge in the subject matter fields involved. The staff, however, takes full responsibility for the final form of these proposals.

How to Use the Suggested Legislation

The Commission presents its proposals for state legislation in the hope that they will serve as useful references for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Additional copies of this booklet and the other booklets in the full Program are available upon request. Any of the materials in the Program may be reproduced without limitation.

The Commission emphasizes that legislation which fits one state may not fit another. Therefore, the following advice is offered to users of the Commission's suggested state legislation.

Fit Proposals to Each State. Many states have standard definitions, administrative procedures acts, standard practices in legislative draftsmanship, and established legislation and constitutional provisions related to new proposals. These differ widely from one state to another, yet they vitally affect the drafting of new proposals for state legislation. No model legislation can possibly reflect the variations which apply in all 50 states. Thus, ACIR strongly recommends that any user of its suggested state legislation seek the advice of legislative draftsmen familiar with the state or states in which such proposals are to be introduced.

Alternative Provisions and Optional Policies. Likewise, the Commission recognizes that uniform policies are frequently not appropriate for application nationwide. Accordingly, its adopted recommendations frequently include alternative procedures and optional policies among which the states should make conscious choices as they legislate. Consequently, the suggested legislation which follows includes bracketed language which alerts the users of these materials to the choices which are to be made. In many cases, the bracketed language is also labeled as an alternative or an option. In the case of alternatives, one (or in some cases more than one) should be chosen and the others rejected. In the case of options, the suggested language may be included or deleted without reference to other provisions unless otherwise noted.

Three types of bracketed information [ ] are provided in the suggested legislation. Brackets containing italicized information indicate wording that is essential to the legislation, but must be rewritten to conform to each particular state's terminology and legal references. Information in regular type within brackets presents alternative or optional language. The third type of brackets contains blank space and requires the insertion of a date, amount, time span, quantity, or the like, as required by each state to comply with its individual circumstances or recommendations.

Caution About Excerpting. Frequently one provision in the suggested legislation may be related to another in the same bill. Thus, any state wishing to en-
act only certain portions of the suggested legislation should check carefully to make sure that essential definitions and related provisions are taken into account in the process of excerpts those portions desired for enactment.

ACIR Assistance

Each item of suggested state legislation in this Program is referenced to the ACIR policy report upon which it is based. These reports may be obtained free of charge in most cases, by writing to ACIR, and usually may also be purchased from the U.S. Government Printing Office (especially if multiple copies are required). In those cases where a policy report is out of print, copies may be found in ACIR's numerous depository libraries throughout the nation as well as in many other libraries. In addition, where copies are otherwise unavailable, the ACIR library will arrange to loan a copy.

The ACIR staff, though limited in size, is available upon request to answer questions about the suggested legislation, to help explain it to legislators and others in states where it is under active consideration, and to assist the legislative process in other appropriate ways.

September 1975

Robert E. Merriam
Chairman
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ACKNOWLEDGMENTS

The suggested state legislation in this part of ACIR’s State Legislative Program is based largely upon existing state statutes. William G. Colman acted as consultant to the Commission in tailoring these enactments to ACIR policy.

The following persons served diligently on a panel which reviewed each proposal: Richard Carlson, director of research, Council of State Governments; Honorable Charles A. Docter, Maryland House of Delegates; Marcus Halbrook, director, Arkansas Legislative Council; David Johnston, director, Ohio Legislative Service Commission; William J. Pierce, executive director, National Conference of Commissioners for Uniform State Laws; Bonnie Reese, executive secretary, Wisconsin Joint Legislative Council; Honorable Karl Snow, Utah state senator; and Troy R. Westmeyer, director, New York Legislative Commission on Expenditure Review.

The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

- Council of State Governments
- International City Management Association
- National Association of Counties
- National Conference of State Legislatures
- National Governors’ Conference
- National League of Cities
- U.S. Conference of Mayors

The Commission acknowledges the financial assistance of the U.S. Department of Housing and Urban Development in updating and publishing this new edition of the State Legislative Program.

The Commission is grateful to all who helped to produce this volume, but the Commission alone takes responsibility for the policies expressed herein and any errors of commission or omission in the draftsmanship.

Wayne F. Anderson
Executive Director
Part III

STATE AND LOCAL REVENUES

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Strengthening the state-local revenue system has been a major policy objective of the Advisory Commission on Intergovernmental Relations for many years. ACIR’s conception of a high quality, high yield state-local tax system includes a progressive state personal income tax, a broad based state sales tax, and a fairly administered local property tax. The Commission also favors state authorization of personal income and sales taxes to certain local governments as additional sources of local tax revenue under safeguards to assure reasonable administrative and compliance costs and equalization of local revenue capacity.

Four policy characteristics provide the foundation on which the Commission believes a strong state-local tax and revenue structure can be built: (1) the state tax system should be able to generate sufficient revenue to finance most of the cost of public elementary and secondary education as well as “traditional” state programs (see Part IX of the ACIR State Legislative Program for draft measures dealing with the financing of public education); (2) the personal income tax should stand out as the single most important revenue instrument in the state tax system in that it should produce close to 25 percent of total state-local tax revenues; (3) the general sales tax should serve as the other major state tax, capable of producing between 20 and 25 percent of total state-local tax revenue without imposing an extraordinary burden on low income families (the exemption of food and drugs or the provision of income tax credits for these items can go a long way to reduce the regressive aspects of the general sales tax); and (4) the local property tax should continue to serve as a principal revenue instrument for local government. Where state government is unable to assume the fiscal responsibilities outlined here, the Commission has recommended that additional latitude be granted to local elected officials in the selection of appropriate revenue instruments for their constituencies. The Commission has recommended that, under certain conditions and safeguards, state governments permit general purpose local governments to diversify their revenue structures by levying either a local sales tax or a local income tax, or both, preferably as supplements to existing statewide income or sales taxes.

The suggested constitutional and legislative measures in the field of taxation and revenue can be grouped broadly into those dealing with property taxes and those with non-property taxes and other revenues.

**Property Taxes.** The measures to implement ACIR’s property tax recommendations comprise the following: (1) draft constitutional language for repeal of constitutional restrictions on local taxing powers; (2) provision of a real estate transfer tax to give assessors and a supervising state agency current information on the market value of real property; (3) a property tax organization and administration statute setting forth a strong state supervisory role over local property tax administration; (4) provision for complete state assumption of the property tax assessment function; for states desiring to go further in assuring equitable property tax administration; (5) a statute to provide for assessment notification, review, and appeal and for the assessment of exempt property; (6) a “circuit-breaker” bill to grant property tax relief for overburdened families; and (7) legislation to repeal taxes on business inventories with
provision for reimbursements to local governments for any resulting loss in local revenues.

Non-Property Taxes and Other Revenues. In addition to its long standing proposals for a strong state personal income tax and a broad based state sales tax, the Commission in its 1974 report on Local Revenue Diversification recommended that certain general purpose local governments be permitted access to sales and income taxes as additional revenue sources subject, however, to several safeguards. The safeguards include: (1) the provision of a uniform tax base which should conform to that of the state, where the state imposes the tax; (2) state collection and administration of the local income or sales tax or, if the state does not impose an income tax, state designation or creation of a state agency to administer the local income tax; (3) encouragement of universal or wide spread coverage by (a) mandating a minimum local levy and permitting counties and those cities with populations of at least 25,000 to choose a rate above this, subject to a specified maximum or by (b) giving first option to adopt the tax to the local government of widest jurisdictional reach with sharing provisions for municipal governments; and (4) use of the point of sale rule for determining tax liability for local sales taxes and prohibition of local use taxes on in-state purchases.

The Commission has also proposed that states authorize and encourage local governments to impose user charges and fees for specified local services. The Commission views this revenue source as an effective method for matching burdens with benefits, diversifying local revenue structures, and lessening reliance on the property tax.

The Commission has further proposed that states take action to standardize apportionment formulae in determining corporate income taxes due from multi-state businesses. With regard to subjecting interstate businesses to taxation, the Commission has urged states to establish enforceable physical presence rules to govern the reach of income and sales tax administrators.

The Commission for several years has recommended that state government pursue a vigorous fiscal equalization program to reduce existing and potential interlocal fiscal disparities. Essentially, such equalization may be achieved either through the incorporation of strong equalization provisions into formulae for the sharing of state sales or income tax proceeds with local governments, or through the inauguration of a program of general sharing of state revenues with local governments through a formula based upon a combination of population, wealth, income, and other appropriate measures of local fiscal capacity and need.

Draft legislative measures to implement recommendations concerning non-property taxes and other revenues follow. They comprise: (1) state personal income tax; (2) broad based sales tax; (3) authorization for a local income tax supplement; (4) authorization for a local sales tax; (5) state assistance in local user charge formulation; (6) taxation of interstate firms; and (7) state revenue sharing.
3.1 Property Taxes
3.101 REPEAL OR MODIFICATION OF CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS

States have a legitimate and strong concern with the property taxing powers and practices of their local governments. The property tax provides five out of six local tax dollars, making it the most important source of local government revenue. But in many states, existing constitutional and statutory restrictions on the taxing powers of local governments in terms of specific rates or allowed rates of increase, coupled with requirements for specific referendum approval of proposed property tax levies, actually handicap local governments in supplying their citizens and industries with public services and community facilities indispensable to economic growth. They constitute a serious impediment to local selfgovernment, handicap the self-reliance of local communities, and impel them toward increased financial dependence on the state and the Federal government. Rigid limitations impose conflicting pressures on assessors, warping further a function that is supposed to be a technical, not a political one.

These restrictions are the hangover of the reaction to abuses of county and municipal taxing and borrowing power dating back as much as a century. They have been rendered obsolete by subsequent developments in the quality and scale of local governments and their financing, in the competence of public officials, in more widespread citizen oversight over the conduct of local government, and in the susceptibility of tax policies of local governing bodies to periodic confirmation or rejection through the electoral process.

In a 1962 report on State Constitutional and Statutory Restrictions on Local Taxing Powers, the Advisory Commission on Intergovernmental Relations proposed that: (1) ideally, constitutional and statutory limitations on local government powers to raise property tax revenues should be repealed; (2) limitations, if imposed, should be restricted to operation and maintenance costs and should exclude requirements for servicing debt and for pay-as-you-go capital outlays; (3) limitations, if imposed, should provide for relief administratively by a state agency and politically by reference to the electorate; and (4) in any case, home rule charter cities and counties should be exempted from the application of property tax limitations imposed by general law.

About half the states have elected, in their constitutions, to leave the question of property tax limitations to the state legislature. The 1970 Illinois constitution goes further and provides that home rule units are free to "exercise any power and perform any function" including but not limited to the power "to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt" except as limited by the constitution itself, which imposes no limitations on home rule taxing powers. Other states, such as Oregon and Colorado, impose constitutional limitations on the rate of permissible increases in property tax levies. Several Eastern states, including New Jersey, Maryland, and Massachusetts, impose no constitutional or statutory restrictions.

Repeal of Constitutional Restrictions

The following suggested constitutional amendment removes from the state constitution any details regarding local government taxing and borrowing powers and gives the legislature authority to establish and revise local tax and debt policy through the normal legislative process. In this respect, it does not go as far as some constitutions in exempting home rule units from any legislative control over the way the property taxing power is exercised.

Suggested Constitutional Amendment

[REGULATION OF TAXATION AND BORROWING]

(Be it enacted, etc.)

SECTION 1. The legislature may pass laws regulating the taxing and borrowing powers of the [local governments] [political subdivisions] of the state.

SECTION 2. [All parts of the constitution in conflict with this amendment are hereby repealed.]

SECTION 3. [Identify those sections of the constitution to be repealed.]

Statutory Authorization for Local Property Tax Levies

The following suggested legislation to vest responsibility for determining property tax rates with local governing boards is modeled after a portion of the California Government Code (Division 4, Art. 2., Secs. 43090-43096). It would require (a) the local legislative body to determine annually the amount of the property tax levy; (b) the property assessing authority to certify annually the assessed value of taxable property within the jurisdiction; and (c) the local legislative authority to fix the tax rate at a level sufficient to produce the amount of the tax levy necessary to cover operating costs and the debt obligations for the fiscal year.

Section 1 sets out the purpose of the statute. Section 2 prescribes the budgetary procedure by which the local governing body determines the amount of revenue necessary to be raised via property taxation.

Section 3 provides for determination of the local property tax base and Sections 4 and 5 for determination of the tax rate which when applied against the base will produce revenue in the amount determined as necessary.

Sections 6 and 7 provide for separability and effective date clauses, respectively.
Suggested Legislation

[AN ACT TO AUTHORIZE LOCAL PROPERTY TAX LEVIES]

(By it enacted, etc.)

SECTION 1. Purpose. It is the purpose of this act to enable local governments to levy property taxes.

SECTION 2. Determination of Amount to be Raised from Property Taxes. The local legislative body shall meet annually on [insert date] and by ordinance fix the amount of money necessary to be raised by taxation upon the taxable property in its jurisdiction, in order to provide revenue to operate the various departments and agencies of the local government and to pay its indebtedness for the current fiscal year.

SECTION 3. Determination of Taxable Property Value. Annually on or before [insert date], the [insert title of assessor] shall transmit to the legislative body of each local government a written statement showing the taxable value of all property within the jurisdiction of the local government. The value shall be ascertained from the [assessment records] for the year, as equalized and corrected by the [property tax review agency].

SECTION 4. Determination of Property Tax Rate. On [insert date], the local legislative body shall fix the tax rate, designating the number of [mills] [cents upon each hundred dollars ($100)], using as a basis the value of property as shown in the written statement furnished under Section 3.

SECTION 5. Sufficiency of Property Tax Rate. The tax rate shall be sufficient to raise the amount fixed by the legislative body pursuant to Section 2.

SECTION 6. Separability. [Insert separability clause.]

SECTION 7. Effective Date. [Insert effective date.]
3.102 REAL ESTATE TRANSFER TAX

More than 35 states, the District of Columbia, and a number of local governments impose a tax on the transfer of real estate. More important than the revenue produced, this tax yields information on real estate prices that can be used in conjunction with assessed values to determine the level and uniformity achieved in assessment administration. In this respect, several states neither mandate the imposition of a real estate transfer tax nor have machinery for automatically transmitting sales price information to assessing authorities. Likewise, several states exclude the value of assumed mortgages in imposing the tax, thereby constraining the value of sales price information provided. Only 12 states have procedures for automatic transmission of sales information to assessors; 30 states either include assumed mortgages or have administrative procedures for recording the full sales price.

The accompanying suggested legislation is based in part on the West Virginia Realty Transfer Tax statute (West Virginia Code, Ch. 11, Art. 22). The suggested draft language includes, in addition to the usual provisions for imposition and collection of the tax, with definitions and exemptions (Sections 1, 2, 3), a provision (Section 4) requiring that a sworn statement of the actual selling price or current market value of the transferred property be attached to each deed presented for recordation. A provision of this kind would strengthen administration of the tax and facilitate the ready availability of sales price data for assessment-sales ratio studies in connection with property tax administration.

Appropriate language should be inserted in Section 5 regarding the distribution of collected revenues. Section 6 sets forth the powers of the responsible state agency. Sections 7 and 8 provide penalties for failing to pay the tax and for falsifying values, respectively. Section 9 provides for certain exemptions; Sections 10 and 11 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT IMPOSING A REAL ESTATE TRANSFER TAX]

(Be it enacted, etc.)

SECTION 1. Definitions. As used in this act:
(a) "Deed" means [insert the definition applied in the state's law pertaining to real estate].
(b) "[Registrar]" means [insert title of local official responsible for recording deeds].
(c) "Value" means:
   (1) in the case of any deed not a gift, the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon; and
   (2) in the case of a gift, or any deed with nominal consideration or without a stated consideration, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

SECTION 2. Imposition of Tax. A tax is imposed at the rate of [for each of value or fraction thereof] [per centum of the value], which value is declared in the affidavit required by Section 4, upon the privilege of transferring title to real property.

SECTION 3. Collection of Tax.
(a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for recordation, the [registrar] shall ascertain and compute the amount of the tax due thereon and shall collect such amount as prerequisite to acceptance of the deed for recordation.
(b) The amount of tax shall be computed on the basis of the value of the transferred property as set forth in the affidavit required by Section 4 of this act.

SECTION 4. Declaration of Value.
(a) Each deed evidencing a transfer of title subject to the tax as herein provided shall have appended thereto an affidavit of the parties to the transaction or their legal representatives declaring the value of the property transferred. If the transfer is not subject to the tax as herein provided, the affidavit shall specify the reasons for the exemption.
(b) The form of affidavit shall be prescribed by the [state tax agency] which shall provide an adequate supply of such forms to each [registrar] in the state.
(c) The [registrar] shall transmit two true copies of the affidavit to the [assessor] who shall insert the most recent assessed value of each parcel of the transferred property on both copies and shall transmit one copy to the [state tax agency].
SECTION 5. Disposition of Proceeds. [Insert appropriate language as to disposition of proceeds.]¹

SECTION 6. Powers and Duties of [State Tax Agency].

(a) The [state tax agency] may prescribe such rules and regulations as reasonably necessary to facilitate and expedite the imposition, collection, and administration of the tax imposed pursuant to this act.

(b) [If not already provided by applicable statutes insert additional subsections conferring such powers and imposing such duties as the [state tax agency] may need to compel the production of taxpayer records, to extend the time for the filing of the declaration of value, and to provide for refunding erroneous payments.]

SECTION 7. Penalty for Recording Without Tax. Any [registrar] who willfully shall record any deed upon which a tax is imposed by this act without collecting the proper amount of tax required by this act based on the declared value indicated in the affidavit appended to such deed shall, upon conviction, be fined [$50] for each offense.

SECTION 8. Penalty for Falsifying Value. Any person who shall willfully falsify the value of transferred real estate on the affidavit required by Section 4 of this act shall, upon conviction, be subject to a fine of not more than [$1,000 or to imprisonment of not more than one year, or to both such fine and imprisonment] for each offense.

SECTION 9. Exemptions. The tax imposed by this act shall not apply to a transfer of title:

(a) recorded prior to the effective date of this act;

(b) to the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(c) solely in order to provide or release security for a debt or obligation;

(d) which confirms or corrects a deed previously recorded;

(e) between husband and wife, or parent and child with only nominal actual consideration therefor;

(f) on sale for delinquent taxes or assessments;

(g) on partition;

(h) pursuant to mergers of corporations; and

(i) by a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock.

SECTION 10. Separability. [Insert separability clause.]

SECTION 11. Effective Date. [Insert effective date.]

¹Disposition of the proceeds is a matter for state policy determination. Some states will wish to use the entire proceeds for state purposes. Others will wish to share the real estate transfer tax with their local governments; still others will make the entire proceeds available to their local governments.
3.103 PROPERTY TAX ORGANIZATION AND ADMINISTRATION

State and local governments share responsibility for property assessment administration in all states except Hawaii, Montana, and Maryland. The Advisory Commission on Intergovernmental Relations in 1963 recommended that the assessment function eventually be centralized at the state level in most states (see State Assumption of Property Tax Assessment Function, 3.104). In most states, meanwhile, efforts at improving the quality of property assessment must concentrate, over the near and intermediate term, on knitting this two level system into a well coordinated, smoothly functioning operation.

Property tax assessment reform, though slow and difficult in coming, does occur. In 1974, for example, six states enacted major improvements in assessment administration. Montana and Maryland went to centralized state assessment. Kansas discontinued the practice of locally electing assessors and replaced them with county appointed, state certified assessors. Wisconsin moved the assessment of manufacturing property to the state level and began partial financing (75 percent) of a county assessment system. Maine created larger assessing areas and provided for local appointment of assessors from a list of certified eligibles provided by the state, with state mandated tenure after a two year probationary period; and Florida granted its state department of revenue responsibility for supervising the local assessment process.

The prevailing pattern for state-local property tax administration — subject to innumerable variations — provides a four step process:

1. local assessment districts, which are responsible for the bulk of primary assessing;
2. local or county boards of review;
3. county boards of equalization; and
4. one or more state agencies which are responsible for functions such as supervision of local assessment, technical aid to local assessors, taxpayer appeals hearings, interarea equalization of assessment, central assessment of some classes of property, and valuation research.

The suggested legislation coordinates state-local administrative organization under a central directing authority. The draft proposal spells out the responsibilities of each level and provides effective machinery for the coordination of assessment standards and procedures.

It provides for a single state agency which is professionally organized and equipped for the job. Adequate powers of supervision and regulation are clearly defined by law. The state agency has responsibility for assessment supervision and equalization, assessment of all state assessed property, and valuation research.

At the local level, the suggested legislation provides that no assessment districts be less than county-wide. If the counties are too small to be efficient assessment districts — as if often the case — the bill authorizes the creation of multicounty assessment districts. To avoid wasteful duplication of assessment effort, it eliminates all overlapping assessment districts (township and municipal). It also provides for county assessors to be appointed on the basis of demonstrated merit and to be subject to removal for good cause by the appointing official.

The suggested act seeks to encourage the employment of professional assessors and appraisers; therefore, no residence requirement is included. To omit a residence requirement, some states may find it necessary to amend the relevant general personnel statutes or write an affirmative exemption into this statute.

This draft legislation draws on Oregon, Maryland, and Kentucky experience, particularly the provision of state technical assistance to local assessment jurisdictions. In 1969, Nebraska enacted property tax organization and administration statutes closely parallel to this draft bill. Other recent state statutes relevant to the draft legislation include: Arizona, state revision of county valuations (Chapter 123, Laws

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1973); Illinois, appointment of county and township assessors (Illinois Tax Reports, 91-030); and Pennsylvania, Draft of Consolidated Real Estate Assessment Law, Special House Committee on Local Realty Tax Administration, September 15, 1970.

Section 1 of the draft sets out the purpose of the act and Section 2 establishes a division of property taxation in the state tax agency.

Section 3 sets forth procedures for the certification and appointment of assessors.

Section 4 provides for the conduct of assessment ratio studies and publication of findings therefrom by the division. Section 5 provides for the assessment of tax exempt property by the county assessor and publication of information regarding such property.

Sections 6, 7, and 8 deal with provision of forms, preparation and maintenance of tax maps, and provision of tax manuals and guides.

Section 9 requires the division to formulate a uniform system for the preparation of tax rolls and bills.

Section 10 provides for conduct, by the division, of engineering and other technical studies for local governments.

Section 11 provides for state assistance in local assessment of major industrial and commercial properties for localities, with optional reimbursement from localities. An alternate Section 11 provides for direct state assessment of such properties.

Sections 12 and 13 authorize the conduct, by the division, of studies and inspections and of training programs for state and local assessment personnel.

Section 14 provides for the enforcement of assessment standards.

Section 15 provides for the appointment of assessors.

Section 16 makes findings of the county assessor binding for local tax purposes.

Section 17 provides for the creation of multicounty assessment districts.

Sections 18 and 19 authorize the voluntary transfer of the assessment function from the county to the state.

Section 20 creates a property tax revolving fund to receive reimbursements for state services provided to localities.

Sections 21 and 22 provide for separability and effective date clauses, respectively.
Suggested Legislation

[AN ACT PROVIDING FOR PROPERTY TAX ORGANIZATION AND ADMINISTRATION]
(Be it enacted, etc.)

SECTION 1. Purpose. It is the purpose of this act to establish a division of property taxation, to provide for the duties and responsibilities of assessors, and to provide for state-county relations in respect to assessment and appraisal of property.

SECTION 2. Division of Property Taxation.
(a) There shall be in the state tax agency a division of property taxation, hereinafter called the division. The head of the division shall be the director, appointed by the head of the state tax agency in accordance with the provisions of the state merit system law. The director shall serve in accordance with the provisions of the law. He shall have experience and training in the fields of taxation and property appraisal.

(b) The employees of the division shall be in the state merit service. The director may contract for the services of expert consultants to the division.

(c) In addition to any duties, powers, or responsibilities otherwise conferred upon the director, he shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to ad valorem taxation. The director shall have rule making authority in accordance with the state administrative procedures act. Whenever the division assesses or appraises property, or provides services therefor, it shall prescribe the methods and specifications for such assessment or appraisal.

SECTION 3. Assessors and Appraisers; Qualifications and Certification.
(a) Assessors shall be appointed by the county governing body. Except as expressly permitted by statute, no person shall be eligible for election to the office of assessor and no person shall perform the duties or exercise the authority of an assessor or appraiser of property in or on behalf of any county unless he is the holder of an assessor's or appraiser's certificate, as the case may be, issued by the director.

(b) The director shall provide for the examination of applicants for such certificates. No certificate shall be issued to any person who has not demonstrated to the satisfaction of the division that he is competent to perform the work of an assessor or appraiser, as the case may be, but any applicant for a certificate who is denied the same shall have a right to a review of the denial [in accordance with the state administrative procedures act].

1As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multimember commission appointed for overlapping terms.

(a) The [division] annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the [division] shall compute measures of central tendency and dispersion in accordance with appropriate standard statistical analysis techniques. [As used in this section, "dispersion" means the percentage which the average of the deviations of the assessment ratio of individually sold [or appraised] properties bears to their median ratio.]

(b) The [director] may require reports from [assessors] and other local fiscal officers to report on assessed valuations and other features of the property tax. The [division] shall construct and maintain its system for the collection and analysis of property tax facts so as to enable it to make intrajurisdictional comparisons as well as intercounty comparisons based on property tax and assessment ratio data [compiled for other states by the United States Bureau of the Census, or any agency successor thereto].

(c) The [state tax agency] shall publish annually the findings of the [division's] assessment ratio studies together with digests of property tax data.

(d) The [county assessor] shall post annually in his office the assessment ratio as found in his county as determined by the [division].

SECTION 5. Tax Exemption Information. The [county assessor] regularly shall assess all tax exempt property within the county, calculate the total assessed valuation for each type of exemption, and compute the percentages of total assessed valuations exempted. The totals and computations made and obtained, together with summary information on the function, scope, and nature of exempted activities, shall be published annually by the county.

SECTION 6. Forms. The [division] shall devise, prescribe, [supply,] and require the use of all forms deemed necessary for effective administration of the property tax laws. The [division] may provide forms on a reimbursable basis. So far as practicable, the forms shall be uniform but nothing herein shall be deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

SECTION 7. Tax Maps. The [division] shall require each [county assessor] to maintain tax maps in accordance with standards specified by the [division]. Whenever necessary to correct mapping deficiencies, the [division] shall install standard maps or approve mapping plans and supervise map production. The [state tax agency] [shall] [may] require the county to reimburse the state for tax maps installed by the [division]. The amount or amounts of such reimbursement shall be de-
SECTION 8. Provision of Tax Manuals and Guides. The [division] shall prepare, issue, and periodically revise guides for the use of local assessors in the form of handbooks of rules and regulations, appraisal manuals, special manuals and studies, cost and price schedules, news and reference bulletins, and digests of property tax laws suitably annotated.

SECTION 9. Uniform System of Preparation of Assessment Rolls and Tax Bills, for Statewide Use. Pursuant to rules and regulations, the [division] shall develop, maintain, and enforce a uniform statewide system for the preparation of assessment rolls, tax rolls, tax bills, and all other county revenue functions through data processing facilities. To insure system compatibility and uniformity while the statewide system is being developed, any additional utilization of data processing facilities by counties or multicounty assessment districts shall be subject to approval by the [division].

SECTION 10. Provision of Engineering, Professional, and Technical Services. Whenever a [county governing board] requests the [state tax agency] to provide engineering, professional, or technical services for the appraisal or reappraisal of properties, the [state tax agency] may, within its available resources, and in accordance with its determination of the need therefor, provide these services. The county shall pay to the [state tax agency] the actual cost of the services in accordance with a schedule of standard fees and charges furnished and, from time-to-time, revised by the [state tax agency]. All payments received by the [state tax agency] pursuant to this section shall be deposited in the [state treasury] to the account of the [state tax agency].

[Alternative 1.]

[SECTION 11. Appraisal of Industrial and Commercial Properties. The [division] shall provide to each county or multicounty assessment district the services of certified appraisers for the appraisal of major industrial and commercial properties. The properties to be appraised shall be determined by the [division] after consultation with the [county assessor]. In making these determinations, the [division] shall take into account the ability of the [county assessor] to perform appraisals with the resources at his disposal. [Add provision to require reimbursement or county charge as may be appropriate.]

[OR]

[Alternative 2.]

[SECTION 11. Appraisal of Industrial Property.

(a) Notwithstanding other provisions of the law, industrial property in this state, whether real estate or personal property, shall be valued and assessed by the [state tax agency].

\[In the place of the last two sentences of Section 7, a state may prefer the following: "Cost of map production and installation incurred pursuant to this section shall be charged to the county."\]

\[States that consider direct state assessment of industrial property desirable (rather than strong state supervision over local administration of the tax on such property) may wish to consider alternative Section 11.\]
(b) Industrial property as used herein means a combination of land, improvements, and machinery functioning as a unit: in assembly, fabrication, processing, manufacture, and distribution of finished or partly finished products from raw materials (including agricultural products) or fabricated parts; in the processing of natural resources, including minerals and gravel.

(c) The [state tax agency] shall assess industrial property as provided by law, and, on or before [insert date], shall certify to the [insert appropriate official] of each county in which the property, is located the amount of the assessment made against each description.

(d) The [state tax agency] may request the assistance of county assessing officers and local assessors in valuing any industrial property.

SECTION 12. Inspections, Investigations, and Studies. The [division] may make the necessary inspections, investigations, and studies for the adequate administration of its responsibilities pursuant to this act. These may be made in cooperation with other state agencies, and, in connection therewith, the [division] may utilize reports and data of other state agencies.

SECTION 13. Training Programs. The [division] shall conduct or sponsor in-service, pre-entry, and intern training programs on the technical, legal, and administrative aspects of the assessment process. For this purpose it may cooperate with educational institutions, local, regional, state, or national assessors' organizations, and with other organizations interested in improving assessment practices. The [division] may reimburse the participation expenses incurred by assessors and other employees of the state and its subdivisions whose attendance at in-service training programs is approved by the [division]. The counties, from the county [general fund], shall reimburse the expenses incurred by the [county assessor] when the [division] does not reimburse him for attending the programs contemplated in this section.

SECTION 14. Enforcement of Assessment and Appraisal Standards.

(a) In order to promote compliance with the requirements of law, the [director] shall issue and, from time-to-time, may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance. Such standards shall relate to:

(1) adequacy of tax maps and records;
(2) types and qualifications of personnel;
(3) methods and specifications for the appraisal or reappraisal of property.

For failure to meet the standards contained in the rules and regulations, the [director] may suspend, in whole or in part, performance of the assessment or appraisal function by a county.

(b) If the [director] finds that a county has failed or is failing to meet the standards contained in the rules or regulations in force pursuant to subsection (a) of this section, the [director] shall notify the [county assessor] of the fact and nature of the failure. The notice shall be in writing and shall be served upon the [county assessor] and the [county governing board].
(c) If within one year from the service of the notice the failure has not been remedied, the [director] may, at any time during the continuance of the failure, issue an order requiring the [county assessor] and [county governing board] to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, and shall set a time and place for a hearing with the [county assessor] and [county governing board] on the order, and after the hearing shall determine whether and to what extent the assessment function of the county shall be suspended.

(d) During the continuance of a suspension pursuant to subsection (c) of this section, the [division] shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform them. The exercise and performance shall be a charge on the suspended county. The suspension shall continue until the [division] finds that the conditions responsible for the failure to meet the minimum standards contained in the rules and regulations of the [division] have been corrected.

(e) Any county aggrieved by a determination of the [director] made pursuant to this section or alleging that its suspension is no longer justified may have a review of the determination or continued suspension [as provided in the state administrative procedures act] [by a court of appropriate jurisdiction].

SECTION 15. [County Assessor].

(a) On and after [January 1, 19I] the [county assessor] shall be appointed by the [county executive or governing board] and shall hold office [for an indefinite term] [for a term of five years]. No person shall be eligible for appointment as [county assessor] who does not hold an assessor's certificate issued by the [division] pursuant to Section 3 of this act.

(b) A [county assessor] may be removed from office by the [county executive or governing board] or by the [commissioner] of the [state tax agency]. The [county executive or governing board] may not remove the [assessor], except for cause. Upon specification in writing to the [assessor] and the [county governing board] the [commissioner] may remove the [assessor] for failure to comply with the orders of the [division]. [Add provision making appropriate statute relating to hearings and appeals applicable, or supply procedural detail.]

(c) Notwithstanding any provision of this section, any [county assessor] holding office on the effective date of this act by virtue of election by the people shall be entitled to complete the term for which he was elected.

[Optional Subsection.]

(d) If other statutes or provisions of local law do not affirmatively empower [county assessors] to assess, appraise, and classify property, use this subsection to confer such power.

SECTION 16. Governing Valuations. [Each local taxing unit] shall be bound by the assessed
valuations established by the [county assessor] for all property subject to its taxing power.

SECTION 17. Multicounty Assessment District.

(a) Any two or more contiguous counties may enter into an agreement for joint or cooperative performance of the assessment function.

(b) The agreement shall provide for:

(1) the division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(2) the financing of the joint or cooperative undertaking;

(3) the rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(4) the duration of the agreement and procedures for amendment or termination thereof; and

(5) any other necessary or appropriate matters.

(c) The agreement may provide for the suspension of the powers and duties of the office of [county assessor] in any one or more of the counties.

(d) Unless the agreement provides for the performance of the assessment function by the [assessor] of one county for, and on behalf of, all other counties party thereto, the agreement shall prescribe the manner of appointing the [assessor], and the employees of his office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing the [assessor]. Except to the extend made necessary by the multicounty character of the assessment agency, qualifications for employment as assessor or in the assessment agency, and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an [assessor] serving pursuant to an agreement made under this section and the employees of his assessment agency. As nearly as practicable, the inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for the [assessor] and employee coverage in county employee benefit programs.

(e) No agreement made pursuant to this section shall take effect until it has been approved in writing by the [head] of the [state tax agency] and the [attorney general].

(f) Copies of any agreement made pursuant to this section, and of any amendment thereto, shall be filed in the office of the [secretary of state] and the [state office of local government].

SECTION 18. State Performance of County Assessment Function. The [governing board] of a

1The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations. Furthermore, references to counties in this paragraph should be changed in states where other units of local government are the basic assessing jurisdictions.
county may, [by resolution], request the [state tax agency] to assume the county assessment function
and to perform the same in and for the county. If the [commissioner] of the [state tax agency]
finds that direct state performance of the function is necessary or desirable to the economic and
efficient performance thereof, he may direct the [division] to undertake its performance pursuant
to the request. Unless otherwise authorized by law, the [division] shall undertake and perform the
function only after the execution of a suitable agreement between the county and the [state tax
agency] on how costs will be met. During the performance of the county assessment function by
the [division], the office and functions of the [county assessor] shall be suspended, and the perform-
ance thereof by the [division] shall be deemed performance by the [county assessor].

SECTION 19. Discontinuance of Certain Assessors’ Offices. Assessment of property for
purposes of taxation on and after [date], unless pursuant to agreement as authorized in Section
17 of this act, shall be only by the county and state in accordance with law. However, any
[assessor] in office on [date] who is serving a fixed term as provided by statute or local law may
continue in office until the expiration of the term, and the jurisdiction of which he is the [assessor]
shall continue to have the assessment function previously conferred upon it until the office is
vacated or the [assessor’s] term expires.

SECTION 20. Tax Commissioner Revolving Fund Created. There is hereby created a fund to be
known as the [property tax revolving fund] to which shall be credited all moneys received by the
[division] for services performed for county and multicounty assessment districts as provided for
in this act. The county or multicounty assessment district shall be billed by the [division] for
services rendered as provided for in this act. Reimbursements to the [division] shall be credited to the
fund and expenditures shall be made, subject to legislative appropriation, only when such funds
are available. The [division] shall only bill for the actual amount expended in performing the service.

SECTION 21. Separability. [Insert separability clause.]

SECTION 22. Effective Date. [Insert effective date.]
The most formidable obstacle to the administration of the property tax in the United States has been the impossibility of securing uniformity in property assessment. Assessing should be a technical, ministerial task carried out according to recognized appraisal principles and without regard to the setting of a property tax rate or to the determination of which classes of property are subject to taxation. Disinterested professional studies of the assessment process have repeatedly concluded that the separation of the ministerial from the policy functions in property taxation is best accomplished by having responsible elected officials appoint assessors rather than have assessors directly elected.

The power of appointing assessors can be lodged with local elected officials or at the state government level. When local governing bodies appoint assessors, the state remains responsible for securing comparability in assessments from one jurisdiction to another. The locally appointed assessors may be technically competent yet still subject to the administrative direction of local officials who choose to maintain an assessment level in relation to market value that deviates from the level established in other jurisdictions or in the state as a whole. Many states maintain a state agency whose function it is to detect the variations in local assessment practices and to establish equalization factors on a statewide basis for tax and state aid purposes. This process usually operates on the average and fails to correct inequities that arise as among individual properties.

In its 1963 report on The Role of the State in Strengthening the Property Tax, the Advisory Commission on Intergovernmental Relations recommended that states adopt centralized administration of either of two varieties: (a) complete centralization of property tax administration with each local government levying the amount of taxes it wished and the state providing professional services for administering the tax or (b) complete centralization of assessment administration, with the valuations certified to local officials as the basis for their billing and collection of taxes. The first alternative is followed in Hawaii; the second has been adopted in recent years by Montana and Maryland.

The ACIR report went on to observe:

Any state which has demonstrated competence in its general administrative organization should be able to conduct the assessment function with satisfactory results; but the agency designated or created for this purpose should have stature in the state’s administrative organization that conforms with the importance and high professional requirements of the job, and should have the same kind of organization and control that safeguards the integrity of the other . . . agencies of the state. For assurance of continuing high quality performance the agency should be required to publish clearly informative statistical evaluations of the quality of its work, which should be subject to periodic independent audit.

The suggested legislation that follows provides for state assumption of all assessment functions and costs associated therewith. The draft legislation deals only in broad terms with the criteria for uniform assessment, appeals processes, and other aspects of the assessment function that are treated in detail in most state statutes. Because of the complexities of shifting from a local to a state system, especially the necessity of assuring fair treatment to officials and employees of the locally based system, provision is made in the draft for a phased transfer operation. These provisions are suggestive rather than exhaustive of the transition arrangements any state may have to consider when it assumes full responsibility for assessment administration.

Section 1 sets out the purpose of state assumption of responsibility and costs. Section 2 creates a state division of assessments within the state tax agency. Section 3 prescribes procedures for the appointment of field assessing staff. Sections 4 and 5 prescribe procedures for the transfer of personnel from local to state employment including the option of remaining under local salary, retirement, and health benefit systems if so desired. Section 6 provides for state assumption of assessment costs. Sections 7 and 8 comprise separability and effective date clauses respectively. The draft legislation is based on Laws of Maryland, Ch. 784.
of 1973 and Art. 81, Secs. 233-256 of the Maryland Code and on Montana, Ch. 4, Secs. 84-401 through 84-453.

Suggested Legislation

[STATE ASSUMPTION OF THE PROPERTY TAX ASSESSMENT FUNCTION]

(Be it enacted, etc.)

SECTION 1. Purpose. In order to provide uniform and equitable assessment of taxable property throughout the state, it is the intention of the [general assembly] that responsibility for the conduct of property tax assessment be assumed by the state and that the cost of maintenance, operation, and administration of the assessment system, including the provision of necessary personnel, facilities, and equipment, shall be borne exclusively by the state and shall be provided for in the [annual] state budget.

SECTION 2. Division of Assessments.

(a) There shall be in the [state tax agency] a division of assessments. The head of the division shall be the director, appointed by the [head of the state tax agency] in accordance with the provisions of the [state merit system law]. The director shall serve in accordance with provisions of the law. He shall have experience and training in the fields of taxation and property appraisal.

(b) The employees of the division shall be in the [state merit system]. The director may contract for the services of expert consultants to the division.

(c) The division shall administer and enforce all laws related to the assessment of property subject to ad valorem taxation. Its responsibilities shall include:

(1) certification on or before [date] of each year to the governing body of each county in the state the assessed value of each parcel of taxable real property lying within the county, the assessed value to constitute the basis upon which a property tax bill is rendered by the county governing body to the respective owners of taxable property;

(2) development and implementation of a system for [annually] adjusting property tax assessments to reflect changes in value resulting from such factors as market appreciation or depreciation, and obsolescence; and

(3) adoption and imposition of statistical standards and tests of the uniform application of assessment standards and practices which must be met annually prior to the certification of taxable values to county governments as provided above; [other appropriate specific responsibilities con-

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1This assumes that assessment areas previously are countywide with county performance of assessment for constituent municipalities, school districts, and other units of local government within the county. If this is not the case, the legislation would need to provide for state certification of assessed values to the intracounty subdivisions.

2Appeals by owners or local governments of assessments need to be provided for. This can be done by adapting already existing statutory provisions governing appeals to the new state administered assessment system.

3Alternatively, some state might prefer, as in Hawaii, the centralization of not only the assessment, but also the collection function, with the political subdivision certifying to the state agency the rate that is to be imposed.
cerning assessment policy and administration which a particular state wishes should be included at this point]. The director shall have rulemaking authority [in accordance with the state administrative procedures act].

SECTION 3. Appointment of Local Assessing Staff.

(a) The supervisor of assessments for each [county or district] and his assessing staff are agents of the [state tax agency] for the purpose of locating and providing the division a description of all taxable property within the [county or district], together with other pertinent information; and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The [county or district] supervisor of assessment and the assessors shall perform such other duties as may be prescribed by law.

(b) Qualifications for the position of [county or district] supervisor of assessments and for all grades of assessors shall be established by the [head of state merit system agency] in consultation with the division.

(c) The [director of personnel, director of finance, or other appropriate state agency] and the division shall establish the number of assessment positions to be required in the central office of the division and in each [county or district] of the state. Salary schedules shall be established in the same manner as for other state employees.

(d) Vacancies in the position of [county or district] supervisor of assessments and other grades of assessor shall be filled by appointment by the director of the division in accordance with the provisions of [state civil service or other statute].

SECTION 4. Transfer of Local Assessors and Assessing Staff to State Employment.

(a) All supervisors and assessors engaged in performing assessment functions shall, on and after, [date] be employees of the state, except to the extent otherwise provided herein.

(b) All supervisors and assessors, who on [date] have been so employed by any [county or district] for at least six months prior thereto, may elect, within 60 days after [date], to remain thereafter as a member of, or subject to, the merit, classification, or salary system, pension or retirement system, and health benefit system of the [county] and shall not be subject to the applicable system of the state.

(c) All assessors who elect under subsection (b) above to remain in a local salary system and subject to a local pension or retirement system, and health benefit system shall be eligible to receive any salary increases or change in benefits applicable after [date] to all employees in the local system, any salary increases or change in benefits applicable to less than all the employees in the local system which are applicable to supervisors and assessors shall be effective for them only upon approval of the increases or change in benefits by the [director of personnel]. Any supervisor or assessor who elects to remain in a local system shall be entitled to receive the benefits of that system, and shall not share in any benefit of a system provided for state employees.
(d) All supervisors and assessors who on [date] become subject to any of the provisions of the [state merit system law] under [chapters and sections] of this code shall become members of the employees retirement system on [date] and shall be placed in that position which is comparable or which closely compares with their former position, without further examination or qualification, and without diminution or loss of any benefits to which they are entitled prior to [date]. All assessors who were members of a local retirement system prior to becoming subject to the state employees pension system under [chapters and sections] of this code shall be credited with all prior service rendered by them to the [counties or districts] to which they were entitled prior to [date] for purposes of retirement and death benefits and rates of contribution under [statutory citation].

(e) All assessors who became so employed after [date], and prior to [date], shall be transferred to, and become part of, the state merit system under article [citation] and the state employees pension system under article [citation], with all of the rights and benefits provided under subsection (d) above.

(f) With respect to every employee described in subsection (a) who elects to remain under a local merit classification, leave, retirement, or health system, the local unit of government in question shall make whatever payments or contributions are required to be made by the local unit of government to, or for, the account or on the behalf of the employee, and the state shall periodically reimburse the local unit of government for any such payments made, provided that payments or contributions made by the local unit of government to the retirement or group insurance program of any such employee shall not be deemed to be salary with respect to the employee.

SECTION 5. Transfer of Local Clerical Employees. [Similar provisions to Section 4 above, or other appropriate provision.]

SECTION 6. Assessment Costs. Personnel and associated costs shall be provided in the state budget in the following manner:

(a) effective [date] the annual salaries of the [county or district] supervisors of assessment and such incidental expenses as they may occur; and

(b) effective [date] the annual salaries and administrative costs of assessors in each [county or district]; and

(c) effective [date] all remaining costs including personnel administration and data processing, relating to the administration and maintenance of the assessment system in each [county or district].

SECTION 7. Separability. [Insert separability clause.]

SECTION 8. Effective Date. [Insert effective date.]
Many states provide an elaborate hierarchy of administrative and judicial review and appeal agencies for the protection of property taxpayers. But actual protection frequently is illusory because:

- the property owner has no standard by which to compare his assessment with those on other properties;
- the tribunals to which the taxpayer must appeal frequently are ill constituted or staffed for the purpose; and
- the burden of proving his case is too onerous and costly.

In its 1963 report on The Role of the States in Strengthening the Property Tax, the Advisory Commission on Intergovernmental Relations recommended that states publish findings of annual assessment ratio studies and permit taxpayers to introduce them as evidence to prove discrimination in assessment. The Commission proposed further that states assure taxpayers of all the remedies to which they are entitled by providing machinery for assessment review and appeal, with state review in an appellate capacity and appeals on questions of law to the state supreme court.

The small taxpayer, in particular, is helpless if he has no simple, inexpensive, and dependable recourse. Numerous states have undertaken a variety of steps to improve assessment administration, but ignored the possibilities of self-policing through informing property owners of assessment standards and the procedure for assessment review and appeal. This suggested legislation would provide such procedures in order to facilitate the elimination of discriminatory assessment.

Under this bill, assessors would be required to inform property owners of the assessed value of their property as it appears on the roll and the latest assessment ratio findings of the state tax department. Protests would be heard by county assessors or local boards of property tax review. In the case of state assessed property, the commissioner of the state tax agency would hear the protest. Appeal could be taken from these initial review agencies to the state tax court, established by the suggested act.

Emphasis is placed on informality of procedure at each level of review. At the state tax court level a small claims procedure is established.

The legislation specifically provides that the parties to an assessment protest may make use of data contained in assessment ratio studies. In any proceeding relating to a protested assessment the court or other review agency is directed to accept as conclusive evidence of inequitable assessment a proven deviation of 10 percent or more from the relevant county assessment ratio and grant appropriate relief.

Since other provisions of the suggested legislation make assessment ratio studies freely available, the result should be a simplification of evidence gathering and presentation in litigation relating to assessments. The appeals procedure is patterned along the general lines of the Maryland and Massachusetts review system. The notification procedure is patterned along the general lines of the California requirement.2

Section 1 sets forth the purpose of the act. Section 2 requires the provision of specified information by assessors to property owners along with notification of the time and place for presentation of protests. Section 3 confers jurisdiction upon state and local tax agencies and the courts for hearing and determining protests.

Section 4 creates local boards of property tax review. Section 5 establishes procedures for the initiation of protests by taxpayers.

Section 6 establishes a state tax court and prescribes its jurisdiction. Section 7 sets forth rules and pro-

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2See also Arlington County, Virginia, Department of Real Estate Assessments, Assessment and Appeal Procedure of Real Property, February, 1975.
Procedures for the taking of testimony before the tax court. *Section 8* authorizes the tax court to establish a small claims procedure.

*Section 9* provides for appeal to the state supreme court, and *Section 10* specifies the conclusive nature of assessment ratio evidence.

*Sections 11 and 12* provide, respectively, for separability and effective date clauses.
[AN ACT PROVIDING FOR PROTESTS OF ASSESSMENTS, ESTABLISHING A STATE TAX COURT, AND FOR RELATED PURPOSES]

(\textit{Be it enacted, etc.})

\textbf{SECTION 1.} \textit{Purpose.} It is the purpose of this act to provide for a notification, review, and appeal procedure for assessments of real property for purposes of taxation.

\textbf{SECTION 2.} \textit{Information by Assessors.}

(a) The \textit{assessor} shall, upon, or prior to, completion of the local roll, inform each owner of real property of the assessed value of his real property as it shall appear on the completed local roll. The information given by the \textit{assessor} shall also include the most recent assessment ratio for the county as determined by the \textit{division of property taxation of the state tax agency}. The information shall be in a form substantially as follows:

The assessed value of your property is \$1. In its latest assessment ratio study the \textit{state tax agency} found that property in this county is being assessed generally at \% percent of its current market value. [\textit{In states where the law specifies an assessment level other than current market value the notice should also specify what this level is, e.g., "State law requires that property be assessed at \% percent of its current market value."}]

(b) The \textit{assessor} shall include a notification of the period during which assessment protests will be accepted and the place where they may be filed.

(c) This information shall be furnished by the \textit{assessor} to the property owner or his designee by regular United States mail directed to him at his latest address known to the \textit{assessor}. Neither the failure of the property owner to receive this information nor the failure of the \textit{assessor} to inform the property owner shall in any way affect the validity of any assessment or the validity of any taxes levied.

\textbf{SECTION 3.} \textit{Jurisdiction to Hear Protest.} A taxpayer who desires to protest an assessment of his property may protest in the manner provided by this act. Jurisdiction to hear and determine protest of assessments shall be only in the courts and agencies upon whom jurisdiction is conferred by this act.

\textbf{SECTION 4.} \textit{Assessors and Boards of Review.}

(a) In all counties of less than \_ \_ population, according to the last decennial census, there shall be a \textit{local board of property tax review} to consist of \textit{specify membership, method of appointment, and term}. The \textit{board} shall hear and determine assessment protests, and shall have power to alter or modify any protested assessment in order that it conform to law. The \textit{board} may review any and all
assessments and order increases and decreases thereof as may be necessary to bring such assessments
into substantial uniformity in terms of their relationship to market value. Whenever the [county
assessor] has in his regular employ [three] or more appraisers holding appraiser's certificates issued
by the [division of property taxation of the state tax agency], hereinafter called "[division]," one of
the appraisers shall sit with and advise the [board], but no appraiser shall sit with the [board] on its
hearing of, or advise the [board] concerning any protest of, an assessment of property previously ap-
praised by him.

(b) In counties of [ ] or more population, according to the last decennial census, the [county
assessor] shall have in his regular employ at least [three] appraisers holding appraiser's certificates
issued by the [division] and the [county assessor] shall have the functions and jurisdictions of a
[local board of property tax review] and there shall be no [board]. In hearing and determining a pro-
test of an assessment the [assessor] shall be assisted by an appraiser regularly employed in his office
who has not previously appraised the property in question.

(c) In a county in which the assessment function is performed by an [assessor] acting for and on
behalf of more than one county as provided in an agreement made pursuant to [cite appropriate sec-
tion of state statute authorizing multicounty assessment districts], a protest of assessment shall be
heard and determined by either the [assessor's] office functioning under the agreement if the office has
in its regular employ at least [three] appraisers who hold appraiser's certificates from the [division] or
a [local board of property tax review] established by the agreement.

(d) In the case of property assessed by the state, the protest shall be heard and determined
solely by the [head of the state tax agency].

(e) Review of determinations of a [local board of property tax review], a [county assessor] when
acting on a protest of assessment, and the [head of the state tax agency] when acting on a protest of
assessment, may be had only in the state [tax court or court of appropriate jurisdiction] as estab-
lished in Section 6 of this act.

SECTION 5. Initiation of Protests.

(a) Within [30] days of receipt of a notice of assessment or reassessment of property, the owner
may protest his assessment or reassessment. The protest shall be in writing on a form provided by
the [county assessor] [division]. The protest may include or be accompanied by a written statement
of the grounds for the protest, and may include a request for a hearing. The protest, together with
the accompanying statement, if any, shall be filed with the [county assessor] having jurisdiction to
hear the protest or the [local board of property tax review], as the case may be. Thereupon, the
[county assessor] [local board of property tax review], if a hearing has been requested, shall fix
the time and place where the protest shall be heard and shall notify the protesting taxpayer.

(b) At, or in connection with, any hearing held pursuant to this section, the protesting taxpayer
shall be entitled to the assistance of an agent and other persons as he may wish.

(c) Any agent who appears for or with a taxpayer at a hearing held pursuant to this section shall not be deemed to be engaged in the practice of any licensed trade or profession by reason of his appearance.

(d) If the taxpayer has requested a hearing, he may appear in person or by agent. An agent shall have power to appear for, and act on behalf of, the protesting taxpayer only if the protest clearly identifies the taxpayer’s agent.

SECTION 6. [Tax Court].

(a) There is hereby established the [state tax court] which, for administrative purposes only, shall be in the [state tax agency], but which shall be an independent administrative tribunal. The [court] shall consist of a chief judge and [four] associate judges, appointed from members of the bar by the governor [with the consent of the state [senate]] [with the consent of the state [legislature]]. The term of each judge of the [court] shall be [six] years. The initial appointments shall be as follows: the chief judge for a term of [six] years; one associate judge for a term of [two] years; one associate judge for a term of [three] years; one associate judge for a term of [four] years; and one associate judge for a term of [five] years. Vacancies on the [court] shall be filled for the unexpired term in the same manner as appointments to full terms. During his continuance in office neither the chief judge nor an associate judge shall have any other employment, but shall devote full time to his duties as judge.

(b) Subject only to review by the [state supreme court], the [state tax court] shall have jurisdiction to determine all appeals from determinations of the [local board of property tax review], the [county assessor], and the [head of the state tax agency] relative to protested assessments. The [state tax court] may affirm, reverse, or modify any determination of the [local board of property tax review], [county assessor] when acting on a protested assessment, or the [head of the state tax agency] when acting on a protested assessment.

(c) Any taxpayer dissatisfied with the disposition of his protested assessment by the [local board of property tax review], [county assessor], or [head of the state tax agency] may appeal it to the [state tax court] by filing with the [court] a written notice of appeal and serving on the appropriate [county assessor] or the [head of the state tax agency], as the case may be, a certified copy of the notice. In order to be valid and effective, the notice shall be filed and served within [30] days of the disposition from which the appeal is to be taken.

(d) Consistent with this act and [cite statutes applicable to proceedings of administrative tribunals], the [state tax court] shall provide by rule for practice before it and the conduct of its tribunals.

1States may wish to extend the jurisdiction of the tax court to all matters involving the administration of state taxes. Alternatively, states may wish to create a simple, efficient tax appeal process in an existing state judicial system.
proceedings.

(e) The [state tax court] may hear and determine all issues of fact and of law, but a determination of a [local board of property tax review], [county assessor], or the [head of the state tax agency] shall be affirmed unless contrary to substantial evidence.

(f) If a protested assessment cannot otherwise be brought into conformity with law, the [state tax court] may order such adjustments with respect to other assessments of property as are necessary to produce full conformity with law.

(g) The [state tax court] may allow a rehearing on the facts of its determinations.

(h) Appeals from determinations of the [state tax court] may be taken to the [state supreme court] only on questions of law.

SECTION 7. Taking of Testimony.

(a) Any judge of the [state tax court], or any employee of the [court], designated in writing for the purpose by the chief judge, may administer oaths, and the [court] may summon and examine witnesses and require by subpoena the production of any returns, books, papers, documents, correspondence, and other evidence pertinent to the matter under inquiry, at any designated place of hearing, and may authorize the taking of a deposition before any person competent to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction and the deposition shall then be subscribed by the deponent.

(b) The protesting taxpayer whose assessment is in question and the [county assessor] or [head of the state tax agency] may obtain an order of the [state tax court] summoning witnesses or requiring the production of any returns, books, papers, documents, correspondence, and other evidence pertinent to the matter under inquiry in the same manner in which witnesses may be summoned and evidence may be required to be produced for the purpose of trials in the [court of appropriate jurisdiction]. Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in the [court of appropriate jurisdiction].

SECTION 8. Small Claims.

(a) The [state tax court] shall established by rule a small claims procedure which, to the greatest extent practicable, shall be informal. The [court] shall take special care to provide all protesting taxpayers, wherever located within the state, reasonable and convenient access to the [court], and shall sit at the time and place as may be appropriate to promote accessibility.

(b) Any protesting taxpayer who, pursuant to the action on his protest by the [county assessor], [local board of property tax review], or [head of the state tax agency], would incur a tax liability of less than [$1,000] by reason of the protested assessment in the first year to which the assessment applies may elect to employ such procedure to appeal from the action on his protest upon payment of a [$2 ] filing fee.
(c) The appellant shall file with the [state tax court] a written statement of the facts in the case, together with a waiver of the right to appeal to the [state supreme court]. The [state tax court] shall cause notice of the appeal and a copy of the statement to be served on the [county assessor] or [head of the state tax agency] whose assessment is in question. If the sole defense offered is that the property was not overassessed, no further pleadings shall be required.

SECTION 9. Appeal to [State Supreme Court]. [Use this section to provide procedure for appeal of tax court determinations to state supreme court.]

SECTION 10. Effect of Assessment Ratio Evidence.

(a) Unless a party to the proceedings establishes that the assessment ratio for a county as published in reports of assessment ratio studies of the [division] is not supported by facts or was derived or established in a manner contrary to law, the [division's] ratio shall be conclusive evidence of what the reported ratio is in fact.

(b) In any proceeding relating to a protested assessment, a proven deviation of 10 percent or more from the relevant county assessment ratio shall be substantial evidence that the protested assessment is incorrect.

SECTION 11. Separability. [Insert separability clause.]

SECTION 12. Effective Date. [Insert effective date.]
3.106 PROPERTY TAX RELIEF FOR OVERBURDENED FAMILIES:
(The “Circuit Breaker”)

The property tax can quickly create a disproportionate claim on a family’s financial resources once retirement, the death or physical disability of the breadwinner, or unemployment reduces sharply the flow of family income. Local governments as a rule have neither the legal authority nor the fiscal capacity to alleviate the potential property tax overburden situations, but the states have both, and Wisconsin first demonstrated in 1964 what a state could do. Twenty-three states and the District of Columbia emulated Wisconsin’s example by providing a relief mechanism to avoid the special hardships frequently experienced by low income property owners. Low income elderly homeowners, and frequently renters, in these states can claim a state financed tax credit, rebate, or reduction in tax for that portion of their property tax liability deemed by the legislature to be excessive in relation to their household income. Because the program becomes effective when the property tax is high in relationship to income and thus prevents property tax overloads without cutting off the flow of revenue from those able to pay, this concept is known as the circuit breaker.

To the extent that landlords can shift the property tax to tenants, low income households in rented quarters also feel the pinch of extraordinary property tax burdens in relation to current income. Most of the circuit breaker states have recognized this by establishing a percentage of gross rent constituting property taxes accrued. This percentage serves as the property tax equivalent which renters may use in computing their credit or rebate.

As a means of presenting fiscal overburdens, the circuit breaker has unique advantages. Because this tax relief program is financed from state funds, it neither erodes the local tax base nor interferes in any way with the local assessment or rate setting processes. It can be designed to maximize the amount of aid extended to low income homeowners and renters while minimizing loss of revenue. It operates to reduce intergovernmental fiscal disparities between high and low income communities as well as reducing disparities between high and low income persons; because the poor tend to be clustered together, the major portion of the relief will redound to the benefit of both low income households and low income communities.

In a number of states, the homestead exemption, a durable byproduct of the 1930s Depression, offers some protection from undue property tax burdens on low income occupants of dwellings and farms. This method, however, bestows property tax relief on all homeowners, not just those with extraordinary property tax burdens in relation to income, and misses completely the low income families in rented properties. The policy of granting homestead exemptions involves a substantial amount of injustice among individual taxpayers and taxing jurisdictions at a large and usually unwarranted sacrifice of local property tax revenue. If the exemption privilege is restricted to low income households and the state reimburses local governments for the cost of this program, the more obvious defects of the exemption approach could be minimized. It is not, however, flexible enough to alleviate extraordinary tax burdens that may be experienced indirectly by low income households in rented quarters.

The suggested legislation in Section 4 contains two alternative methods of determining an extraordinary property tax burden. Both approaches use the Vermont method of defining the extraordinary burden as the amount in excess of a specified percentage or percentages of household income. A common alternative approach is the Minnesota method where the extraordinary burden is defined as a specified percentage (depending upon income size) of the property tax.

Most states limit their circuit breaker programs to the elderly; five (Oregon, Wisconsin, Michigan, Vermont, and the District of Columbia) impose no age limitations.

Some states specify the maximum amount of property taxes or rent constituting property taxes that can be used in claiming the credit or rebate. More often, states specify the maximum size of credit.

Section 8 contains three alternative methods of administering the property tax relief program. The in-

come tax credit approach, used by many states, provides that overburdened homeowners and renters file a claim with the state tax department and receive a credit against their state income tax liability. If the credit exceeds the income tax liability, the claimant receives a rebate from the state. The second approach, also used by many states, provides an outright rebate to those who qualify. As in the first approach, claimants file with a state agency and receive a rebate. Unlike the first approach, the process is distinct from the income tax. The third approach, suggested by Ohio practice, provides for a straightforward reduction in the tax bill. The claimant makes application with a local tax official who computes the amount of relief to which the claimant is entitled by law. The tax bill is then reduced by that amount and the local property tax collector bills the state for reimbursement of the revenue foregone.

The local abatement approach has the advantage of automatically providing timely relief, while the state administered system has the advantage of confidentiality. When the program is administered by the state tax department and the refund is sent through the mails, no more stigma attaches to it than when a Federal income taxpayer receives a tax reduction because he incurred extraordinary medical expenses. Local social welfare workers and county courthouse clerks are bypassed. Even when the circuit breaker is state administered, the state can provide that the applicant does not have to pay his property tax bill and then wait until income tax filing time to get his refund. The state can provide that as soon as the property tax bill arrives, the claimant may file a claim and receive his rebate before the property tax becomes due.

For purposes of this legislation, income means not only income as defined for income tax purposes but also social security, pension and annuity payments, non-taxable interest, workman’s compensation, and the gross amount of “loss of time” insurance. To protect the state against “doubling-up” on the charge against public funds, any person who is a recipient of public funds for the payment of taxes or rent during the period for which the claim is filed may not claim tax relief under the act.

Section 1 sets forth the purpose of the act, and Section 2 defines the terms used. Section 3 specifies the legal character of a claim filed under the act. Section 4 provides alternate methods for determining the existence of an extraordinary tax burden. Section 5 specifies filing date deadlines. Section 6 deals with settlement of tax liabilities; Section 7 limits claims to one per household. Section 8 sets forth three alternate methods of administering the program — income tax credit, cash rebate, and reduction in the property tax bill. Sections 9, 10, and 11 deal, respectively, with administration, proof, and audit of claims. Sections 12, 13, and 14 deal with denial of claims, rental determination, and appeals. Section 15 excludes public welfare recipients from participation. Section 16 requires disallowance of certain claims. Section 17 deals with extension of filing deadlines. Sections 18 and 19 provide for separability and effective date clauses, respectively.
[AN ACT TO PROVIDE STATE RELIEF TO HOUSEHOLDERS FOR EXTRAORDINARY PROPERTY TAX BURDENS]¹

(Be it enacted, etc.)

SECTION 1. Purpose. The purpose of this act is to provide property tax relief, through a system of tax credits and refunds and appropriations from the general fund, to certain persons who own or rent their homestead.

SECTION 2. Definitions. As used in this act:

(a) "Claimant" means a person, [age or over]? who has filed a claim under this act and was domiciled in this state for the entire calendar year for which he files claim for relief under this act. When two or more individuals of a household are able to meet the qualifications for a claimant, they may determine among them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the [tax commissioner] and his decision will be final.

(b) "Gross rent" means rent actually paid in cash or its equivalent solely for the right of occupancy [at arms-length] of a homestead, exclusive of charges for any utilities, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement. When a claimant occupies two or more homesteads in the year and does not own his homestead as of the levy date, gross rent shall mean the total rent paid for the homestead most recently rented multiplied by a number whose numerator is 12 and whose denominator is the number of months the homestead has been rented by the claimant.

If the landlord and tenant have not dealt with each other at arms-length, and the [tax commissioner] is satisfied that the gross rent charged was excessive, he may adjust the gross rent to a reasonable amount for purposes of this act.

(c) "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. ["Owned" includes a vendee in possession under a land contract and one or more joint tenants in common.] It does not include personal property such as furniture, furnishings, or appliances but a mobile home or a houseboat may be a homestead.

(d) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees,

¹For a short title, this act may be cited as the Extraordinary Property Tax Relief Act.
²Many states limit their circuit breaker statutes to the elderly.
tenants, or roomers and boarders on contract.

(e) "Household income" means all income received by all persons of a household in a calendar year while members of the household [less an amount equal to ($7501 multiplied by the number of persons who constitute the household. However, for purposes of this act, "household" income shall not be less than zero].

(f) "Income" means the sum of Federal adjusted gross income as defined in the Internal Revenue Code of the United States and all non-taxable income, including but not limited to the amount of capital gains excluded from adjusted gross income, alimony, support money, non-taxable strike benefits, cash public assistance and relief [not including relief granted under this act], the gross amount of any pension or annuity [including Railroad Retirement Act benefits and veterans disability pensions], all payments received under the Federal Social Security and state unemployment insurance laws, non-taxable interest received from the Federal government or any of its instrumentalities, workmen's compensation, and the gross amount of "loss of time" insurance. "Income" does not include gifts from non-governmental sources, or surplus foods or other relief in kind supplied by a public or private agency.

(g) "Property taxes accrued" means property taxes [exclusive of special assessments, delinquent interest, and charges for service] levied on a claimant's homestead in this state in [calendar year] or any calendar year thereafter. For purposes of this paragraph, property taxes are "levied" when the tax roll is delivered to the local [treasurer] for collection. If a claimant owns his homestead on the levy date, "property taxes accrued" means taxes levied on such levy date, even if the claimant does not own his homestead for the entire year.

When a household owns and occupies two or more different homesteads in this state in the same calendar year, property taxes accrued shall relate only to that property occupied by the household as a homestead on the levy date. If a homestead is an integral part of a large unit such as a farm, or a multipurpose or multidwelling building, property taxes accrued shall be the same percentage of the total property taxes accrued as percentage of the value of the homestead is of the total value. For purposes of this paragraph, "unit" refers to the parcel of property covered by a single tax statement of which the homestead is a part.

(h) "Rent constituting property taxes accrued" means [25] percent of the gross rent.

SECTION 3. Claim is Personal. The right to file a claim under this act shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. If a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to another member of the household as determined by the [tax commissioner]. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within two years of the filing
of the claim, the amount of the claim shall escheat to the state.

[Alternative 1.]

[SECTION 4. Claim as Income Tax Credit or Rebate. Subject to limitations provided in this act, a claimant may claim in any year as a credit against an income tax otherwise due on his income under [statutory citation], property taxes accrued, or rent constituting property taxes accrued, in the preceding calendar year. If the allowable amount of such claim exceeds the income taxes otherwise due on claimant's income, or if there are no income taxes due on claimant's income, the amount of the claim not used as an offset against income taxes, after certification by the [tax commissioner], shall be paid to claimant from balances retained by the [treasurer] for general purposes. No interest shall be allowed on any payment made to a claimant pursuant to this act.]

[OR]

[Alternative 2.]

[SECTION 4. Claim as Rebate from State Funds. Subject to the limitations provided in this act, a claimant may claim in any year a rebate for property taxes accrued or rent constituting property taxes accrued in the preceding year. The amount of the rebate, after audit or certification by the [tax commissioner] shall be paid to claimant from balances retained by the [treasurer] for general purposes.]

[OR]

[Alternative 3.]

[SECTION 4. Claim as Credit Against Property Tax. Subject to the limitations provided in this act, a claimant shall have his property tax liability reduced by the amount determined in Section 8. If claimant rents his homestead and does not own taxable property in the same tax jurisdiction, he shall file a claim with the [property tax collector] for relief due him with respect to rent constituting property taxes for that year. The [property tax collector] shall pay such claim from available funds. The [property tax collector] shall determine the amount of property tax collections foregone and the amount of payments to renters mandated by this act and shall certify same to the [state treasurer]. The [state treasurer] shall draw upon the general fund of the state and remit to the [property tax collector] a sum equal to such taxes foregone and payments to renters.]

[End of three alternatives.]

SECTION 5. Filing Date. No claim with respect to property taxes accrued or with respect to rent constituting property taxes accrued shall be paid or allowed, unless the claim is actually filed with, and in the possession of, the [tax department or property tax collector] on or before [date for filing initial claim]. Subject to the same conditions and limitations, claims may be filed on or before [income tax filing date or other specified date] with respect to property taxes accrued of the next preceding calendar year.
SECTION 6. Satisfaction of Outstanding Tax Liabilities. The amount of any claim otherwise payable under this act may be applied by the [tax department] against any liability outstanding on the books of the [department] against the claimant, or against his or her spouse who was a member of the claimant's household in the year to which the claim relates.

SECTION 7. One Claim per Household. Only one claimant per household per year shall be entitled to relief under this act.

SECTION 8. Computation of Credit. The amount of any claim made pursuant to this act shall be determined as follows:

[Alternative 1.]

[(a) (Based on previous Vermont statute.) For any taxable year, a claimant shall be entitled to a credit equal to [60]% of the amount by which the property taxes or rent constituting property taxes upon the claimant's homestead for the taxable year exceeds [5] percent of the claimant's total household income for that taxable year.]

[OR]

[Alternative 2.]

[(a) (Based on present Vermont statute.) For any taxable year, a claimant shall be entitled to a credit equal to [60]% of the amount by which the property taxes, or rent constituting property taxes, upon the individual's homestead for the taxable year exceeds a percentage of the individual's income for the taxable year determined according to the following schedule:]

<table>
<thead>
<tr>
<th>If Household Income (Rounded to the Nearest Dollar) is:</th>
<th>Then the Taxpayer is Entitled to Credit for Property Tax Paid in Excess of this Percent of that Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - 3,999.00</td>
<td>4.0%</td>
</tr>
<tr>
<td>4,000.00 - 7,999.00</td>
<td>4.5</td>
</tr>
<tr>
<td>8,000.00 - 11,999.00</td>
<td>5.0</td>
</tr>
<tr>
<td>12,000.00 - 15,999.00</td>
<td>5.5</td>
</tr>
<tr>
<td>16,000.00 and up</td>
<td>6.0</td>
</tr>
</tbody>
</table>

[The 1973 Michigan statute exemplifies the flexibility of the circuit-breaker. Two schedules are provided, one for the elderly and one for the non-elderly. For the elderly, the threshold ranges from 0 to 3.5 percent of income, depending upon the level of income with 100 percent of the property tax in excess of the threshold relieved by the state. For the non-elderly, the threshold is a constant 3.5 percent of income, regardless of income level, but the state relieves only 60 percent of the property 'Relieving only part of the "excess" property tax provided a form of co-insurance that assures the state will not have to finance all locally voted tax increases once the threshold amount has been reached.]

[Michigan relieves 60 percent of taxes in excess of 3.5 percent of income for the non-elderly. The elderly receive relief for all taxes in excess of various percentages of income, ranging from 0 up to 3.5 percent depending on income.]
tax above the threshold level. For both elderly and non-elderly renters, 17 percent of rent is defined as the property tax equivalent. In no case may the credit-rebate exceed $500.]

(b) No credit or grant under this act shall exceed [$500].

c) The [tax commissioner] shall prepare a table under which claims under this act shall be determined. The table shall be published in the [department's] official rules and shall be placed on the appropriate forms. The amount of claim as shown in the table for each bracket shall be computed only to the nearest dollar.

d) The claimant, at his election, shall not be required to record on his claim the amount claimed by him. The claim allowable to persons making this election shall be computed by the [department], which shall notify the claimant by mail of the amount of his allowable claim.

SECTION 9. Administration. The [tax commissioner] shall make available suitable forms with instructions for claimants, including a form which may be included with, or as part of, the individual income tax blank. The claim shall be in such form as the [tax commissioner] may prescribe.

SECTION 10. Proof of Claim. Every claimant under this act shall supply to the [department of taxation], in support of his claim, reasonable proof of rent paid, name and address of owner or managing agent of property rented, property taxes accrued, changes of homestead, and a statement that the property taxes accrued and used for purposes of this act have been or will be paid by him and that there are no delinquent property taxes on the homestead.

SECTION 11. Audit of Claim. If, on the audit of any claim filed under this act, the [tax commissioner] determines the amount to have been incorrectly determined, he shall redetermine the claim and notify the claimant of the redetermination and his reason for it. The redetermination shall be final unless appealed within 30 days of notice.

SECTION 12. Denial of Claim. If it is determined that a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment [as income taxes are assessed], and the assessment shall bear interest from the date of payment of the claim, until refunded or paid, at the rate of 1 percent per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, is guilty of a misdemeanor. If it is determined that a claim is excessive and was negligently prepared, 10 percent of the corrected claim shall be disallowed, and if the claim has been paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment [as income taxes are assessed], and the assessment shall bear interest at 1 percent per month from the date of payment until refunded or paid.
SECTION 13. Rental Determination. If a homestead is rented by a person from another person under circumstances deemed by the [tax commissioner] to be not at arms-length, he may determine rent constituting property taxes accrued as at arms-length, and, for purposes of this act, such determination shall be final.

SECTION 14. Appeals. Any person aggrieved by the denial in whole or in part of relief claimed under this act, except when the denial is based upon late filing of claim for relief or is based upon a redetermination of rent constituting property taxes accrued as at arms-length, may appeal the denial to the [appropriate state agency] by filing a petition within 30 days after such denial.

SECTION 15. Public Welfare Recipients Excluded. No claim for relief under this act shall be allowed to any person who is a recipient of public funds for the payment of the taxes or rent during the period for which the claim is filed.

SECTION 16. Disallowance of Certain Claims. A claim shall be disallowed, if the [department] finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under this act.

SECTION 17. Extension of Time for Filing Claims. In case of sickness, absence, or other disability, or if, in his judgement, good cause exists, the [tax commissioner] may extend for a period not to exceed six months the time for filing a claim.

SECTION 18. Separability. [Insert separability clause.]

SECTION 19. Effective Date. [Insert effective date clause.]
There are substantial reasons for abolishing the tax on tangible personal property in any state that can possibly raise revenue in another way. This tax is particularly difficult to administer and, when adequately administered, it is a poor means of measuring either the benefit of government services to an individual or business firm or their ability to pay taxes. On both these grounds, no other tax is as roundly condemned as this levy.

The concern for a favorable tax image has prompted a number of states to initiate business tax reform to maximize taxpayer certainty and evenhanded treatment, and to minimize those features of the tax system that are particularly discriminatory in character. Deemphasizing the personal property tax, especially on business inventories, is perhaps the most significant step states can take to improve both their business tax climate and their business tax structure. The major obstacle to outright repeal of the personal property tax on business is most frequently lack of available replacement revenue for local governments critically dependent upon property tax receipts.

In recent years Arizona, Connecticut, Florida, Michigan, Ohio, Oregon and Wisconsin have all reduced the local tax on business personalities. Utah completely phased out its tax in the period 1970-73.

When confronted with this issue of revenue replacement, the Oregon state legislature provided for a gradual scaling down of assessments on tangible personal property. The revenue loss to local governments is met from state revenue sources. Wisconsin earmarked a part of the revenue from a new sales tax for this same replacement purpose but phased downward the extent of reimbursement. New Jersey solved the local revenue replacement problem by reimbursing local governments with revenue derived from raising the state corporation income tax rate and by the enactment of state taxes on machinery and gross receipts.

The magnitude of state reimbursement to localities in 1972 was substantial in several states (California cities and counties, $4.4-million and $130.2-million, respectively, for a 30 percent exemption of assessed value of business inventories; Iowa, $29-million to local units; New Hampshire, $12.3-million and $7.9-million to cities and towns, respectively; New Jersey, $109-million to local units; Rhode Island, $1.6 million and $5.5-million to cities and towns, respectively.)

This suggested legislation is based on the New Jersey statute and on Wisconsin 91-400, Sec. 70.996 for the alternate distribution formula set forth in Section 6.

Section 1 identifies the laws to be repealed. Section 2 identifies the sources of replacement revenue. Sections 3 and 4 provide for a certification by the state tax agency of the estimated yield to local governments from the taxes repealed.

Section 5 allocates replacement revenue to local subdivisions. Section 6 (two alternatives) provides for payments by the state treasurer to subdivision. Section 7 specifies payment distribution dates. Section 8 provides for county equalization tables for adjusting assessed valuation. Section 9 specifies an appeals procedure. Section 10 authorizes the state tax agency to make rules for administering the act; and Sections 10 and 11 provide for separability and effective date clauses, respectively.

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Suggested Legislation

[REPEAL OF PROPERTY TAXES ON BUSINESS INVENTORIES]

(Be it enacted, etc.)

SECTION 1. Repeal of Tax. [Sections [identify those sections of the state law pertaining to the tax on business inventories] of the state property tax code are hereby repealed.]

SECTION 2. Replacement of Revenue. The taxes received from the following [insert taxes that are to be distributed to political subdivisions] shall be for the benefit of the [insert appropriate political subdivisions] of the state, in replacement of revenues derived by such [insert appropriate political subdivisions] from local taxation of [business inventories] as repealed in Section 1 of this act.

SECTION 3. Certification by [State Tax Agency]. The [state tax agency] shall determine the greatest amount received by each [appropriate political subdivisions] from the local levy upon [business inventories] for the three years prior to the repeal of the tax, and shall, on or before [insert date], certify to the [state treasurer] the amounts so determined for each [appropriate political subdivisions] and the total amount for all [appropriate political subdivisions].

SECTION 4. Additional Certification by [State Tax Agency]. The [state tax agency] shall, on or before [insert date] and on or before [insert date] annually thereafter, determine from the information then available the total amount of revenue (1) that will be raised during the 12 month period ending on or before [insert date] of that calendar year from the taxes set forth in Section 2 of this act and (2) that will be available by way of appropriation for the purposes of this act, and shall certify this amount to the [state treasurer].

The [state tax agency] shall, on or before [insert date] annually thereafter, certify to the [state treasurer] any changes or adjustments in the certification filed earlier in the year.

SECTION 5. Allocation of Revenue to [Appropriate Political Subdivisions]. If the amount determined by the [state tax agency] in Section 4 shall exceed the amount determined by the [state tax agency] in Section 3 hereof, the [state tax agency] shall allocate the excess amount among the [appropriate political subdivisions] of this state in accordance with the following formula:

There shall be allocated to each [appropriate political subdivisions] an amount as will be in the same ratio to the excess amount, as the local property tax levied in the [appropriate political subdivisions] in the preceding calendar year upon commercial, industrial, and farm real estate [excluding railroad property] is to the total taxes levied upon these types of property in all [appropriate political subdivisions] in the state in the same year.

In those states where exemption of personal property was optional, the state may choose to distribute funds on a per capita basis.
The [state tax agency] shall total the amounts allocated to each [appropriate political sub-
divisions] under the provisions of this section and shall certify this amount to the [state treasurer] on or before [insert date] and on or before [insert date] annually thereafter.

[Alternative 1.]

[SECTION 6. Payment by [State Treasurer].] The [state treasurer] annually, on or before the date set forth in Section 7 of the act, upon the certification of the [state tax agency] and upon the warrant of the [state comptroller] shall pay and distribute to each [appropriate political subdivisions] the amount determined in accordance with the provisions of Sections 3 and 5 of this act:

(a) from the moneys collected from the taxes described in Section 2 of this act; and

(b) from such other funds as may be appropriated by law for this purpose.]

[OR]

[Alternative 2.]

[SECTION 6. Payment by [State Treasurer].] (a) The [state treasurer] annually, on or before the date set forth in Section 7 of this act upon the certification of the [state tax agency] and upon the warrant of the [state comptroller] shall pay and distribute to each [appropriate political subdivisions] the amount determined in accordance with the provisions of Section 3 and 5 of this act:

(1) from the moneys collected from the taxes described in Section 2 of this act, and

(2) from such other funds as may be appropriated by law for this purpose.

(b) Beginning [one] year from the date of the initial distribution, subsequent payments shall be made annually on or before the date set forth in Section 8, according to the following schedule:

(1) [year], [90] percent of the first year’s payment

(2) [year], [80] percent of the first year’s payment

(3) [year], [70] percent of the first year’s payment

(4) [year], [60] percent of the first year’s payment

(5) [year], [ ] percent of the first year’s payment

(6) [year], [ ] percent of the first year’s payment.]

SECTION 7. Distribution Dates. The distribution required to be made by the [state treasurer] under this act shall be made as follows: the first installment shall be payable annually on [insert date] commencing on [insert date] and shall consist of one-half of the amount certified under Section 3 hereof; and the second installment shall be payable on the succeeding [insert date] of each year and shall consist of the balance of the amount certified under Section 3 hereof plus each [appropriate political subdivisions’] distributive share of the excess, if any, allocated under Section 5 thereof.

SECTION 8. County Equalization Tables. For the purpose of apportioning the amounts to be
raised in the respective taxing districts of the county, the [county board of taxation] shall, for each
taxing district, include in the equalization table for the county the assumed assessed value of the
property represented by the money received by each taxing district pursuant to the provisions of
this act.

Commencing with the tax year [insert date] and thereafter, the assumed value of such property
in each taxing district shall be determined by the [county board of taxation] in the following
manner:

(a) the amount of money received by each taxing district during the preceding tax year, pursuant
to the provisions of this act, shall be divided by the general tax rate of the taxing district for such
preceding tax year to obtain an assumed assessed value of such property;

(b) this assumed assessed value shall be divided by the fraction produced by dividing the ag-
gregate assessed value by the aggregate true value of the real property, exclusive of [centrally
assessed property] in the taxing district; and

(c) the resulting quotient shall be included in the net valuation of each taxing district on which
county taxes are apportioned.

SECTION 9. Appeals. When considering an appeal or review taken by any person or [appropri-
ate political subdivisions] with respect to any of the provisions of this act, the [review court] shall
not try or determine the case de novo except in the case of an arithmetical or typographical error
in the calculation of the distribution, but the facts shall be considered and determined exclusively
upon the record filed with the court. A finding, decision, or determination of the [state tax agency]
shall not be set aside or disturbed if it complies with the procedural requirements of this act and is
supported by substantial, reliable, or probative evidence.


(a) The [state tax agency] is authorized to make any rules and regulations, and to require any
facts and information from local tax assessors, [county boards of taxation] and agencies of the state
government as may be necessary to carry out the provisions of this act.

(b) The [state tax agency] may delegate to any officer or employee of the [state tax agency] any
powers as necessary to carry out efficiently the provisions of this act, and the person or persons
to whom such power has been delegated shall possess and may exercise all of the powers and per-
form all of the duties herein conferred and imposed upon the [state tax agency].

SECTION 11. Separability. [Insert separability clause.]

SECTION 12. Effective Date. [Insert effective date.]
3.2 Non-Property Taxes and Other Revenues
The personal income tax represents an essential major revenue source in the tax system of any state determined to pull its full weight in the American federal system. One-fifth of the states, including some in the most industrialized high income sections of the country, do not tax personal incomes at all, and one-third tax them at relatively low effective rates. The tax produced about $21-billion for the 40 states and various localities with income taxes at the end of 1974. State and local general sales taxes, by comparison produced about $28-billion and property taxes about $49-billion. In the aggregate, the personal income tax provides about 23 percent of all state and 15 percent of all state and local taxes. The ten states that do not tax personal income at all and other states that tax income at a relatively low effective rate could strengthen their tax systems by making use of the unique growth potential of this tax.

The personal income tax has many favorable attributes. It permits a larger share of the tax burden to be adjusted to the size of the family through an exemption system. It typically results in equal treatment of individuals and households with equal income, a characteristic that grows in importance as the margin between people's incomes and their expenditures for subsistence widens and as family homesteads become less and less indicative of taxpaying ability. The personal income tax also provides the most effective way for exempting the lowest income groups from some of the growing burden of state and local taxes. This attribute takes on increasing importance as the significance of the state and local sector in total government operations increases, and as the weight of national payroll taxes to finance social security programs grows heavier.

The national government now obtains over $120-billion from the personal income tax, about 40 percent of total revenue. Of the American people's annual tax payments on their personal incomes, 86 percent is to the Federal government and only 14 percent to state and local governments. The universality and dominance of the Federal income tax has already prompted most income tax states to conform their income tax laws to the Federal code in the interest of maximizing taxpayer convenience and minimizing administrative costs. The increased state use of income taxation further underscores the case for conforming state personal income tax laws to the Federal Internal Revenue Code.

The definition of net income derived from business and professional activity lends itself uniquely to Federal-state income tax conformity. The basic questions in this area are best resolved in accord with the rules of good business practice. The definition of net income from business operations is, in fact, largely an exercise in articulating the rules of accountancy. Because Federal law in this regard is already quite explicit, state independence with respect to the definition of net income can result in taxpayer inconvenience and administrative complexity. For this reason, the Advisory Commission on Intergovernmental Relations has recommended that the states endeavor to bring their income tax laws into harmony with the Federal definition of adjusted gross income.

Aside from the special treatment of income from government obligations required by the doctrine of intergovernmental tax immunities, the income portion of most taxpayers' state return could be completed by copying a single figure from the Federal return (line 15 of the 1974 Federal Form No. 1040), under the approach taken in this suggested legislation. States would, at the same time, retain the requisite flexibility with respect to determining personal deductions and exemptions as well as adjusted gross income modifications designed to promote tax equity, maximize the tax base, and minimize the likelihood of adverse effects on state tax revenues resulting from unforeseen changes in Federal tax policy.

To facilitate the adoption of a state income tax law conforming in all essential respects to appropriate Federal Internal Revenue Code provisions, this suggested legislation incorporates in one comprehensive act the provisions necessary to deal consistently with partnerships, estates, trusts, beneficiaries, and decedents, as well as individuals. The legislation includes the definition of residence (Section 1(b)) recommended by the Advisory Commission for adoption by all income tax states in order to preclude multiple taxation and to eliminate tax avoidance. It also contains a provision (Title II, Part I, Section 11) for crediting residents of the state for income tax paid another state, a practice now followed by nearly all of the income

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tax states in the interest of consistency with tax collection at the source and the avoidance of double taxation of the same income.

The ultimate objective of Federal-state income tax comity is a condition that would enable the taxpayer to satisfy both state and Federal filing requirements with a single tax return. In the mid-60s, the Commission recommended that, in order to encourage experimentation with Federal collection of state income taxes, the Congress authorize the Internal Revenue Service, and that the legislatures of states using personal income taxes authorize their governors to enter into mutually acceptable agreements for Federal collection of state income taxes. At least one state, Nebraska, has provided authority for its tax officials to negotiate with Federal authorities for the collection of the state’s income tax. Congress bypassed experimentation and authorized Federal Collection of state income taxes under specified circumstances in the State and Local Fiscal Assistance Act of 1972 (general revenue sharing statute).

Continuing revenue pressures, against the background of the recent substantial increases in property tax rates, are enhancing local government interest in other tax sources, including the income tax. Local governments in ten states (Alabama, Delaware, Indiana, Kentucky, Maryland, Michigan, Missouri, New York, Ohio, and Pennsylvania) may impose income taxes. All of the mentioned states also levy state personal income taxes, but the number of their localities using income taxes is quite limited (except in Maryland where all 23 counties and the City of Baltimore levy a supplement to the state personal income tax, and in Ohio, Pennsylvania, and Indiana). The states have a useful and significant coordinating role to play in the administration of local income taxes as well as in other non-property taxes, as noted elsewhere in the ACIR State Legislative Program. (See State Broad Based Sales Tax.)

While income taxes are preferable to sales and many other types of taxes because they can be structured to distribute their burden in conformity with ability to pay and with necessary regard to the taxpayer’s family obligations, they have important limitations for use at the local level. These limitations grow more compelling as the economies of the different sections of the country become more and more interdependent. Frequently, people live in one jurisdiction and work in another. People often supplement their wages and salaries from local sources with investment and other unearned income from other parts of the state and from other states. Yet, local jurisdictions that now use these taxes generally limit them to income from wages and salaries, the type of income most easily taxed. In doing so, they undercut ability to pay aspects of the income tax.

The Advisory Commission has recommended that states authorize counties and larger municipalities to impose local income taxes subject to several safeguards.1 (See Authorization for a Local Income Tax, 3.203).

The draft legislation that follows draws upon the income statutes of several states and upon technical assistance of the Federation of Tax Administrators, 1313 East 60th Street, Chicago, Illinois.

Following is a section by section index to the draft statute:

Section 1 — Imposition of Tax
Section 2 — Joint Return or Return of Surviving Spouse
Section 3 — Optional Tax
Section 4 — Meaning of Terms
Section 5 — Taxable Income
Section 6 — Modifications
Section 7 — Deduction
Section 8 — Standard Deduction
Section 9 — Itemized Deductions
Section 10 — Personal Exemptions and Credits
Section 11 — Credit for Income Tax Paid to Another State
Section 12 — Dual Residence; Reduction of Tax
Section 13 — Non-Resident Individuals — Taxable Income
Section 14 — Husband and Wife
Section 15 — Adjusted Gross Income From Sources in This State

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Section 67 — Burden of Proof in Proceedings Before the [Tax Commissioner]
Section 68 — Evidence of Related Federal Determination
Section 69 — Mathematical Error
Section 70 — Waiver of Restriction
Section 71 — Assessment of Tax
Section 72 — Limitations on Assessment
Section 73 — Recovery of Erroneous Refund
Section 74 — Interest on Underpayments
Section 75 — Failure to File Tax Returns
Section 76 — Failure to Pay Tax
Section 77 — False Information with Respect to Withholding Allowance
Section 78 — Authority to Make Credits or Refunds
Section 79 — Abatements
Section 80 — Limitations on Credit or Refund
Section 81 — Interest on Overpayment
Section 82 — Refund Claim
Section 83 — Notice of Denial
Section 84 — Refund Claim Deemed Disallowed
Section 85 — Review of Determination of [Tax Commissioner]
Section 86 — Judicial Review Exclusive Remedy in Deficiency Proceedings
Section 87 — Assessment Pending Review — Review Board
Section 88 — Proceedings After Review
Section 89 — Suit for Refund
Section 90 — No Suit Prior to Filing Claim
Section 91 — Limitation on Suit for Refund
Section 92 — Judgment for Taxpayer
Section 93 — Timely Mailing
Section 94 — Collection Procedures
Section 95 — Issuance of Warrant
Section 96 — Lien of Tax
Section 97 — Extension; Release of Lien
Section 98 — Taxpayer Not a Resident
Section 99 — Action for Recovery of Taxes
Section 100 — Income Tax Claims of Other States
Section 101 — Order to Compel Compliance
Section 102 — Transferees
Section 103 — Jeopardy Assessments
Section 104 — Bankruptcy or Receivership
Section 105 — Attempt to Evade or Defeat Tax
Section 106 — Failure to Collect or Pay Over
Section 107 — Failure to File Return, Supply Information, Pay Tax
Section 108 — False Statements
Section 109 — Limitations
Section 110 — General Powers
Section 111 — Closing Agreements
Section 112 — Governor May Contract with Secretary of the Treasury for Collection of State Tax
Section 113 — Governor May Contract with Secretary of the Treasury for State Administration of Federal Tax
Section 114 — Armed Forces Relief Provisions
Section 115 — Effective Date
Section 116 — Separability
Section 117 — Disposition of Revenues
Suggested Legislation

[PERSONAL INCOME TAX ACT]

Title I

PERSONAL INCOME TAX

(Be it enacted, etc.)

SECTION 1. Imposition of Tax.

(a) A tax is hereby imposed for each taxable year on the entire taxable income of every resident of
this state and on the taxable income of every nonresident which is derived from sources within this
state. The amount of the tax shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>If the taxable income is:</th>
<th>The tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $</td>
<td>$ percent of the taxable income</td>
</tr>
<tr>
<td>Over $ but not over $</td>
<td>$ plus $ percent of the excess over $</td>
</tr>
<tr>
<td>Over $ but not over $</td>
<td>$ plus $ percent of the excess over $</td>
</tr>
</tbody>
</table>

(b) Resident and Non-Resident Defined. For purposes of this act:

(1) A resident of this state means an individual who is domiciled in this state unless he maintains
no permanent place of abode in this state and does maintain a permanent place of abode elsewhere
and spends in the aggregate not more than 30 days of the taxable year in this state; or who is not
domiciled in this state but maintains a permanent place of abode in this state and spends in the
aggregate more than 183 days of the taxable year in this state.

(2) A non-resident means an individual who is not a resident of this state.

(c) Cross references. For application of the tax to estates and trusts, see Title V; for application
to partnerships, see Title VI.

SECTION 2. Joint Return or Return of Surviving Spouse. In the case of a joint return of a hus-
band and wife, the tax imposed by Section 1 shall be twice the tax which would be imposed if the
taxable income were cut in half. For purposes of this section, Section 3 (Optional Tax), and Section 8
(Standard Deduction), a return of a surviving spouse shall be treated as a joint return of husband
and wife.

SECTION 3. Optional Tax.

(a) Option to Elect in Lieu of Tax. In lieu of the tax imposed by Section 1, there is hereby im-
posed for each taxable year on the taxable income of every individual whose adjusted gross income
for such year is less than $5,000, or in the case of a married couple filing a joint return for such
year whose adjusted gross income is less than $10,000, and who has elected for such a year to pay
the tax imposed by this section, a tax as follows: [Insert appropriate tax tables]

(b) Manner of Election. The election referred to in subsection (a) shall be made in the manner
provided in regulations prescribed by the [tax commissioner].

(c) Separate Returns. A husband or wife may not elect to pay the optional tax imposed by this
section if the tax of the other spouse is determined under Section 1 on the basis of taxable income
computed without regard to the standard deduction.

(d) Optional Tax Does Not Apply. The optional tax imposed by this section does not apply to
any individual who is ineligible to elect the optional tax provided in the Internal Revenue Code of the
United States, nor to estates or trusts.

(e) Determination of Taxable Income. In the case of a taxpayer who makes the election referred
to in this section, taxable income means adjusted gross income as modified by Section 6 less the stand-
ard deduction provided in Section 8 and the deduction for personal exemptions provided in Section
10.

[Alternative 1.]

SECTION 4. Meaning of Terms. Any term used in this act shall have the same meaning as when
used in a comparable context in the laws of the United States relating to Federal income taxes, unless
a different meaning is clearly required. Any reference in this act to the laws of the United States shall
mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other
provisions of the laws of the United States relating to Federal income taxes, as the same may be or
become effective at any time or from time-to-time, for the taxable year.]

[OR]

[Alternative 2.]

SECTION 4. Meaning of Terms. Any term used in this act shall have the same meaning as
when used in a comparable context in the laws of the United States relating to Federal income taxes,
unless a different meaning is clearly required. Any reference in this act to the laws of the United States
shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, in effect
on [December 31, 19 ] and other provisions of the laws of the United States relating to Federal
income taxes in effect on [December 31, 19 ], or at the option of the taxpayer it shall mean the
provisions of the Internal Revenue Code of 1954 and amendments thereto and other provisions of
the laws of the United States relating to Federal income taxes as they may be in effect for the taxable
year. As used in this act the terms "he," "his," and "him," are meant to include "she," "hers" and
her."

1Alternate form — to avoid invalidity on the ground of illegal delegation.
SECTION 5. Taxable Income. The entire taxable income of a resident of this state shall be his Federal adjusted gross income as defined in the laws of the United States with the modifications and less the deductions and personal exemptions provided in this part.

SECTION 6. Modifications.

(a) Additions. There shall be added to Federal adjusted gross income:

(1) interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof (other than this state and its political subdivisions and authorities); and

(2) interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from Federal income tax but not from state income taxes.

(b) Subtractions. There shall be subtracted from Federal adjusted gross income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includible in gross income for Federal income tax purposes but exempt from state income taxes under the laws of the United States, provided that the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses including amortizable bond premiums are deductible in determining Federal adjusted gross income.

(c) Fiduciary Adjustment. There shall be added to or subtracted from Federal adjusted gross income, as the case may be, the taxpayer’s share of the fiduciary adjustment determined under Section 34.

(d) Cross Reference. For modifications required to be made by a partner relating to items of income, gain, loss, or deduction of a partnership, see Title VI.

SECTION 7. Deduction. The deduction of a resident individual shall be his standard deduction unless he elects to itemize his deductions as provided in Section 9.

SECTION 8. Standard Deduction. The standard deduction of a resident individual or of a resident husband and wife who file a joint return shall be 10 percent of his or their adjusted gross income as modified by this part, or [$1,000,] whichever is less. The standard deduction of a married
person who files a separate return shall not exceed [$500].

SECTION 9. Itemized Deductions.

(a) General. If a resident individual has itemized his deductions from adjusted gross income in determining his Federal taxable income, he may elect in determining his taxable income under this act to deduct the sum of such itemized deductions (other than deductions for personal exemptions):

(1) reduced by any amount thereof representing

(i) income taxes imposed by this state or any other taxing jurisdiction, and

(ii) interest or expenses incurred in the production of income exempt from tax under this act; and

(2) increased by the amount of interest or expense incurred in the production of income taxable under this act but exempt from Federal income tax (and which has not been deducted in determining Federal adjusted gross income).

(b) Husband and Wife. A husband and wife, both of whom are required to file returns under this act, shall be allowed to itemize their deductions only if both elect to do so. The total of itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose taxable incomes are determined separately for purposes of this act, may be taken by either or divided between them as they may elect.

SECTION 10. Personal Exemptions and Credits.

(a) Personal Exemptions. A resident shall be allowed an exemption of [$750] for each exemption to which he is entitled for the taxable year for Federal income tax purposes.

(b) A Credit for Sales Tax Paid on Food [and Drugs].

(1) General. There shall also be allowed to resident individuals as a credit against the tax imposed by this act, a food [and drug] sales tax credit equal to $ multiplier by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. A refund shall be allowed to the extent that the food [and drug] sales tax credit exceeds the income tax payable by the resident individual for the taxable year.

(2) Limitation on Claim. No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food [and drug] sales tax credit or refund for himself. If a food [and drug] sales tax credit or refund is claimed on more than one return for the same individual, the [tax commissioner] is authorized to determine the individual entitled to claim the credit or refund provided herein.

(3) Exemptions Prorated. If personal exemptions are prorated under other provisions of this act, then the food [and drug] sales tax credit or refund shall be proportionately prorated.

\[^{1}\text{For example, $6 where sales tax is 2 percent; $9 where sales tax is 3 percent; $12 where sales tax is 4 percent.}\]
(4) Sales Tax Presumed Paid. Any individual, other than a person who for more than six months of the taxable year is a patient or inmate of a public institution or of a private institution exempt from tax as a charitable organization, who maintains a permanent place of abode within this state, spending in the aggregate more than six months of the taxable year within this state, shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food [and drug] sales tax credit allowable.

(5) Procedure for Credit of Refund of Tax. The credits or refunds for sales taxes allowed by this section shall be claimed on the income tax returns provided for in this act, or, in the case of an individual not having taxable income in this state, on such forms or claims for refunds as the [tax commissioner] shall prescribe.

SECTION 11. Credit for Income Tax Paid to Another State.

(a) Resident Individual. A resident individual shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax imposed on him for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to tax under this act.

(b) Limitation on Credit. The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to his entire adjusted gross income as modified by this part.

SECTION 12. Dual Residence: Reduction of Tax. If the taxpayer is regarded as a resident both of this state and another jurisdiction for purposes of personal income taxation, the [tax commissioner] shall reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence, provided that the other taxing jurisdiction allows a similar reduction. The reduction shall be in an amount equal to that portion of the lower of the two taxes applicable to the income taxed twice which the tax imposed by this state bears to the combined taxes of the two jurisdictions on the income taxed twice.

PART II

NON-RESIDENT INDIVIDUALS — TAXABLE INCOME

SECTION 13. Non-Resident Individuals — Taxable Income. The taxable income of a non-resident individual shall be that part of his Federal adjusted gross income derived from sources within this state determined by reference to Section 15 less the deductions and personal exemptions provided in this part.

(a) Separate Federal Return. If the Federal taxable income of a husband or wife (both non-
residents of this state) is determined on a separate Federal return, their taxable incomes in this
state shall be separately determined.

(b) Joint Federal Return. If the Federal taxable income of a husband and wife (both non-
residents) is determined on a joint Federal return, their tax shall be determined in this state on their
joint taxable income.

(c) One Spouse a Non-Resident. If either husband or wife is a non-resident and the other a
resident, separate taxes shall be determined on their separate taxable incomes in this state on such
forms as the [tax commissioner] shall prescribe unless both elect to determine their joint taxable
income in this state as if both were residents. If a husband and wife file a Joint federal income tax
return but determine their taxable income in this state separately, they shall compute their taxable
incomes in this state as if their Federal adjusted gross incomes had been determined separately.

SECTION 15. Adjusted Gross Income From Sources in This State.

(a) General. The adjusted gross income of a non-resident derived from sources within this state
shall be the sum of the following:

(1) the net amount of items of income, gain, loss, and deduction entering into his Federal
adjusted gross income which are derived from or connected with sources in this state, including:

(i) his distributive share of partnership income and deductions determined under
Section 43, and

(ii) his share of estate or trust income and deductions determined under Section 39; and

(2) the portion of the modifications described in Sections 6(a) and (b) which relate to income
derived from sources in this state, including any modifications attributable to him as a partner.

(b) Attribution. Items of income, gain, loss, and deduction derived from or connected with sources
within this state are those items attributable to:

(1) the ownership or disposition of any interest in real or tangible personal property in this
state; and

(2) a business, trade, profession, or occupation carried on in this state.

(c) Intangibles. Income from intangible personal property, including annuities, dividends, inter-
est, and gains from the disposition of intangible personal property, shall constitute income derived
from sources within this state only to the extent that such income is from property employed in a
business, trade, profession, or occupation carried on in this state.

(d) Deductions for Losses. Deductions with respect to capital losses, net long term capital gains,
and net operating losses shall be based solely on income, gains, losses, and deductions derived from
or connected with sources in this state, under regulations to be prescribed by the [tax commissioner]
but otherwise shall be determined in the same manner as the corresponding Federal deductions.

(e) Small Business Corporation. For a non-resident individual who is a shareholder of a corporation which is an electing small business corporation for Federal income tax purposes, the undistributed taxable income of such corporation shall not constitute income derived from sources within this state and a net operating loss of such corporation shall not constitute a loss or deduction connected with sources in this state.

(f) Apportionment and Allocation. If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment and allocation under regulations to be prescribed by the [tax commissioner].

(g) Service in Armed Forces. Compensation paid by the United States for service in the armed forces of the United States performed by a non-resident shall not constitute income derived from sources within this state.

SECTION 16. Standard Deduction. The standard deduction of a non-resident individual or husband and wife who file a joint return shall be [10] percent of his or their adjusted gross income from sources within this state or [1,000], whichever is less. The standard deduction of a non-resident married person who files a separate return shall not exceed [500].

SECTION 17. Itemized Deductions.

(a) General. If the Federal taxable income of a non-resident individual is determined by itemizing deductions from his Federal adjusted gross income, he may elect to deduct his itemized deductions connected with income derived from sources within this state in lieu of taking the standard deduction. Subject to the limitation in subsection (b), the itemized deductions of a non-resident individual shall be the same as for a resident individual determined under Section 9. A husband and wife both of whom are required to file returns under this act shall be allowed to itemize deductions connected with income derived from sources within this state only if both elect to itemize their deductions.

(b) Limitation. If the amount of adjusted gross income a non-resident individual would be required to report under Section 5 if he were a resident exceeds by more than $100 the amount of adjusted gross income he receives from sources within this state, his itemized deductions shall be limited by the percentage which his adjusted gross income from sources within this state is to the adjusted gross income he would be required to report if he were a resident. For purposes of this appointment, a non-resident individual may elect to treat his Federal adjusted gross income as adjusted gross income from sources within this state unless the amount of the modifications increasing Federal adjusted gross income under Section 6 would exceed $100.

SECTION 18. Personal Exemptions. A non-resident individual shall be allowed the same person-
al exemptions allowed to resident individuals under Section 10(i).

Title III
WITHHOLDING OF TAX

SECTION 19. Employer to Withhold Tax from Wages.

(a) General. Every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this act to a resident or non-resident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from employee under this act with respect to the amount of such wages included in his adjusted gross income during the calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the [tax commissioner].

(b) Withholding Exemptions. For purposes of this section:

(1) an employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he is entitled for Federal income tax withholding purposes. An employer may rely upon the number of Federal withholding exemptions claimed by the employee, except where the employee claims a different number of withholding exemptions in this state; and

(2) The amount of each exemption in this state shall be [$750] whether the individual is a resident or a non-resident.

(c) Withholding Agreements. The [tax commissioner] may enter into agreements with the tax departments of other states (which require income tax to be withheld from the payment of wages and salaries) so as to govern the amounts to be withheld from the wages and salaries of residents of such states under provisions of this chapter. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld, and, under regulations prescribed by the [tax commissioner], may relieve employers in this state from withholding income tax on wages and salaries paid to non-resident employees. The agreements authorized by this subsection are subject to the condition that the tax departments of such other states grant similar treatment to residents of this state.

SECTION 20. Information Statement for Employee. Every employer required to deduct and withhold tax under this act from the wages of an employee, or who would have been required so to deduct
and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish

to each such employee in respect to the wages paid by such employer to such employee during the
calendar year on or before February 15 of the succeeding year, or, if his employment is terminated
before the close of such calendar year, within 30 days from the date on which the last payment of
wages is made, a written statement as prescribed by the [tax commissioner] showing the amount of
wages paid by the employer to the employee, the amount deducted and withheld as tax, and such
other information as the [tax commissioner] shall prescribe.

SECTION 21. Credit for Tax Withheld. Wages upon which tax is required to be withheld shall be
taxable under this chapter as if no withholding were required, but any amount of tax actually deducted
and withheld under this chapter in any calendar year shall be deemed to have been paid to the [tax
commissioner] on behalf of the person from whom withheld, and such person shall be credited with
having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year
of less than 12 months, the credit shall be made under regulations of the [tax commissioner].

SECTION 22. Employer’s Return and Payment of Tax Withheld.

(a) General. Every employer required to deduct and withhold tax under this act shall, for each
calendar quarter, on or before the 15th day of the month following the close of such calendar quarter,
file a withholding return as prescribed by the [tax commissioner] and pay over to the [tax commis-
ioner], or to a depositary designated by the [tax commissioner], the taxes so required to be deducted
and withheld, except that for the fourth quarter of the calendar year, the return shall be filed and the
taxes paid on or before January 31 of the succeeding year. Where the aggregate amount required to be
deducted and withheld by any employer for a calendar month exceeds [$500], the employer shall by
the 15th day of the succeeding month pay over such aggregate amount to the [tax commissioner].
The amount so paid shall be allowed as a credit against the liability shown on the employer’s quarter-
ly withholding return required by this section. Where the aggregate amount required to be deducted
and withheld by any employer is less than [$100] in a calendar quarter, the [tax commissioner]
may by regulation permit an employer to file a withholding return on or before July 31 for the semi-
annual period ending on June 30 and on or before January 31 of the succeeding year for the semi-
annual period ending on December 31. The [tax commissioner] may, if he believes such action neces-
sary for the protection of the revenue, require any employer to make such return and pay him the tax
deducted and withheld at any time, or from time-to-time. Where the amount of wages paid by an
employer is not sufficient under this chapter to require the withholding of tax from the wages of
any of his employees, the [tax commissioner] may by regulation permit such employer to file an
annual return on or before January 31 of the succeeding calendar year.

(b) Deposit in Trust for [Tax Commissioner]. Whenever any employer fails to collect, truthfully
account for, pay over the tax, or make returns of the tax as required by this section, the [tax com-
missioner] may serve a notice requiring such employer to collect the taxes which became collectible after service of such notice, to deposit such taxes in a bank approved by the [tax commissioner], in a separate account, in trust for and payable to the [tax commissioner], and to keep the amount of such tax in such account until paid over to the [tax commissioner]. Such notice shall remain in effect until a notice of cancellation is served by the [tax commissioner].

SECTION 23. Employer's Liability for Withheld Taxes. Every employer required to deduct and withhold tax under this act is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the [tax commissioner], and any additions to tax, penalties, and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this act shall be held to be a special fund in trust for the [tax commissioner]. No employee shall have any right of action against his employer in respect to any money deducted and withheld from his wages and paid over to the [tax commissioner] in compliance or in intended compliance with this act.

SECTION 24. Employer's Failure to Withhold. If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any additions to tax, penalties, or interest otherwise applicable in respect to such failure to deduct and withhold.

Title IV
ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

SECTION 25. Period for Computation of Taxable Income.
(a) General. For purposes of the tax imposed by this act, a taxpayer's taxable year shall be the same as his taxable year for Federal income tax purposes.

(b) Change of Taxable Year. If a taxpayer's taxable year is changed for Federal income tax purposes, his taxable year for purposes of the tax imposed by this act shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, the standard deduction and the deduction for personal exemption allowed by this act shall be prorated under regulations prescribed by the [tax commissioner].

(c) Termination of Taxable Year for Jeopardy. Notwithstanding the provisions of subsections (a) and (b), if the [tax commissioner] terminates the taxpayer's taxable year under Section 103 (relating to tax in jeopardy), the tax shall be computed for the period determined by such action.
SECTION 26. Methods of Accounting.

(a) Same as Federal. For purposes of the tax imposed by this act, a taxpayer's method of accounting shall be the same as his method of accounting for Federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this act shall be computed under such method that in the opinion of the [tax commissioner] fairly reflects income.

(b) Change of Accounting Methods. If a taxpayer's method of accounting is changed for Federal income tax purposes, his method of accounting for purposes of this act shall similarly be changed.

SECTION 27. Adjustments. In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the [tax commissioner], to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

SECTION 28. Limitation on Additional Tax.

(a) Change Other Than to Installment Method. If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(b) Change From Accrual to Installment Method. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the [tax commissioner].

Title V

ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

Part I

GENERAL

SECTION 29. Imposition of Tax. The tax imposed by this act on individuals shall apply to
taxable income of estates and trusts.

SECTION 30. Computation and Payment. The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided by this subchapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

SECTION 31. Tax Not Applicable.

(a) Associations Taxable as Corporations. An association, trust, or other unincorporated organization which is taxable as a corporation for Federal income tax purposes shall not be subject to tax under this act.

(b) Exempt Associations, Trusts, and Organizations. An association, trust, or other unincorporated organization which by reason of its purposes or activities is exempt from Federal income tax shall be exempt from the tax imposed by this act except with respect to its unrelated business taxable income.

Part II

RESIDENT ESTATES AND TRUSTS

SECTION 32. Resident Estate or Trust Defined. A resident estate or trust means:

(a) the estate of a decedent who at his death was domiciled in this state;

(b) a trust created by will of a decedent who at his death was domiciled in this state; or

(c) a trust created by, or consisting of property of, a person domiciled in this state.

SECTION 33. Taxable Income of Resident Estate or Trust. The taxable income of a resident estate or trust means its Federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under Section 34.

SECTION 34. Fiduciary Adjustment.

(a) Fiduciary Adjustment Defined. The fiduciary adjustment shall be the net amount of the modifications described in Section 6 (including subsection (c) if the estate or trust is a beneficiary of another estate or trust) which relates to items of income or deduction of an estate or trust.

(b) Shares of Fiduciary Adjustment. The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, non-resident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of Federal distributable net income of the estate or trust. If the estate or trust has no Federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.
(c) Alternate Attribution of Adjustment. The [tax commissioner] may by regulation authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the [tax commissioner] may require.

SECTION 35. Credit for Income Tax of Another State. A resident estate or trust shall be allowed the credit provided in Section 11 (relating to an income tax imposed by another state) except that the limitation shall be computed by reference to the taxable income of the estate or trust.

SECTION 36. Credit to Beneficiary for Accumulation Distribution.

(a) General. A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in Section 665 of the United States Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this act for all or a proportionate part of any tax paid by the trust under this act for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in Section 666 of the Internal Revenue Code.

(b) Limitation on Credit. The credit under this section shall not reduce the tax otherwise due from the beneficiary under this act to an amount less than would have been done if the accumulation distribution or his part thereof were excluded from his adjusted gross income.

Part III

NON-RESIDENT TRUSTS AND ESTATES

SECTION 37. Non-Resident Estate or Trust Defined. A non-resident estate or trust means an estate or trust which is not a resident.

SECTION 38. Taxable Income of a Non-Resident Estate or Trust.

(a) General Rules. For purposes of this part:

(1) items of income, gain, loss, and deduction mean those derived from or connected with sources in this state;

(2) items of income, gain, loss, and deduction entering into the definition of Federal distributable net income includes such items from another estate or trust of which the first estate or trust is a beneficiary; and

(3) the source of items of income, gain, loss, or deduction shall be determined under regulations prescribed by the [tax commissioner] in accordance with the general rules in Section 15 as if the estate or trust were a non-resident individual.

(b) Determination of Taxable Income. The taxable income of a non-resident estate or trust con-
sists of:

1. its share of items of income, gain, loss, and deduction which enter into the Federal definition of distributable net income;
2. increased or reduced by the amount of any items of income, gain, loss, or deduction which are recognized for Federal income tax purposes but excluded from the Federal definition of distributable net income of the estate or trust;
3. less the amount of the deduction for its Federal exemption.

SECTION 39. Share of a Non-Resident Estate, Trust, or Its Beneficiaries in Income from Sources in this State.

(a) General Rule. The share of a non-resident estate or trust of items of income, gain, loss, and deduction entering into the definition of distributable net income and the share for purpose of Section 15 of a non-resident beneficiary of any estate or trust in estate or trust income, gain, loss, and deduction shall be determined as follows.

(1) To the amount of items of income, gain, loss, and deduction which enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications described in Section 6 to the extent they relate to items of income, gain, loss, and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income.

(2) The amount determined under the preceding paragraph shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of Federal distributable net income. The amounts so allocated shall have the same character as for Federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for Federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(3) If the estate or trust has no Federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under subsection (a) (1) of this section shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such incomes, distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(b) Alternate Methods. The tax commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be appro-
priate and equitable.

SECTION 40. Credit to Beneficiary for Accumulation Distribution. A non-resident beneficiary of a trust whose adjusted gross income derived from sources in this state includes all or part of an accumulation distribution by such trust, as defined in Section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this act, computed in the same manner and subject to the same limitation as provided by Section 36 with respect to a resident beneficiary.

Title VI

PARTNERS AND PARTNERSHIPS

SECTION 41. Entity Not Taxable. A partnership as such shall not be subject to the tax imposed by this act. Persons carrying on business as partners shall be liable for the tax imposed by this act only in their separate or individual capacities.

SECTION 42. Resident Partner — Adjusted Gross Income.

(a) Modification in Determining the Adjusted Gross Income of a Resident Partner. Any modification described in Section 9 which relates to an item of partnership income, gain, loss, or deduction shall be made in accordance with the partner's distributive share, for Federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for Federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for Federal income tax purposes, of partnership taxable income, gain, loss generally.

(b) Character of Items. Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under this act as it has for Federal income tax purposes. Where an item is not characterized for Federal income tax purposes, it shall have the same character for a partner as if realized directly for the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(c) Tax Avoidance or Evasion. Where a partner's distributive share of an item of partnership income, gain, loss, or deduction is determined for Federal income tax purposes by a special provision in the partnership agreement with respect to such item, and the principal purpose of such provision is the avoidance or evasion of tax under this act, the partner's distributive share of such item and any modification required with respect thereto shall be determined in accordance with his distributive share of the taxable income or loss of the partnership generally (that is, exclusive of those items requiring separate computation under the provisions of Section 702 of the Internal Revenue Code.)

SECTION 43. Non-Resident Partner — Adjusted Gross Income From Sources in This State.
(a) General. In determining the adjusted gross income of a non-resident partner of any partnership, there shall be included only that part derived from, or connected with, sources in this state of the partner’s distributive share of items of partnership income, gain, loss, and deduction entering into his Federal adjusted gross income, as such part is determined under regulations prescribed by the [tax commissioner] in accordance with the general rules in Section 15.

(b) Itemized Deductions. If a non-resident partner of any partnership elects to itemize his deductions in determining his taxable income in this state, there shall be attributed to him his distributive share of partnership items of deduction from Federal adjusted gross income which are deductible by him under Section 17.

(c) Special Rules as to Sources in This State. In determining the sources of a non-resident partner’s income, no effect shall be given to a provision in the partnership agreement which:

(1) characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this state, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (e); or

(2) allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than his proportionate share, for Federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (e).

(d) Partner’s Modifications. Any modification described in subsections (a) and (b) of Section 6, which relates to an item of partnership income, gain, loss, or deduction, shall be made in accordance with the partner’s distributive share, for Federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

(e) Alternate Methods. The [tax commissioner] may, on application, authorize the use of such other methods of determining a non-resident partner’s portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(f) Application of Rules for Resident Partners to Nonresident Partners. A non-resident partner’s distributive share of items of income, gain, loss, or deduction shall be determined under subsection (a) of Section 42. The character of partnership items for a non-resident partner shall be determined under subsection (b) of Section 42. The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (c) of this section, having as a principal purpose the avoidance or evasion of tax under this act shall be determined under subsection (c) of Section 42.
Title VII

RETURNS, DECLARATION, AND PAYMENTS

Part I

INCOME TAX RETURNS

SECTION 44. Persons Required to Make Returns of Income. An income tax return with respect to the tax imposed by this act shall be made by the following;

(a) every resident individual,

(1) who is required to file a Federal income tax return for the taxable year, or

(2) who has adjusted gross income of more than [$750] if single or more than [$1,500] if married, or

(3) who having attained the age of 65 before the close of his taxable year has adjusted gross income of more than [$1,500] if single and more than [$2,250] if married and his spouse has not attained the age of 65 and more than [$3,000] if both have attained the age of 65 before the close of the taxable year;

(b) every non-resident individual,

(1) who has adjusted gross income from sources in this state of more than [$750] if single and [$1,500] if married, or

(2) who having attained the age of 65 before the close of his taxable year has adjusted gross income from sources within this state of more than [$1,500] if single and more than [$2,250] if married and his spouse has not yet attained the age of 65 and more than [$3,000] if both have attained the age of 65 before the close of the taxable year;

(c) every resident estate or trust which is required to file a Federal income tax return;

(d) every non-resident estate which has gross income of [$750] or more for the taxable year from sources within this state; and

(e) every non-resident trust which for the taxable year has from sources within this state,

(1) any taxable income,

(2) gross income of [$750] or more regardless of the amount of taxable income.

SECTION 45. Joint Return by Husband and Wife.

(a) General. A husband and wife may make a joint return with respect to the tax imposed by this act even though one of the spouses has neither gross income nor deductions except that:

(1) no joint return shall be made under this act if the spouses are not permitted to file a joint Federal income tax return;
(2) if the Federal income tax liability of either spouse is determined on a separate Federal return their income tax liabilities under this act shall be determined on separate returns;
(3) if the Federal income tax liabilities of husband and wife, other than a husband and wife described in subsection (b) of this section, are determined on a joint Federal return, they shall file a joint return under this act and their tax liabilities shall be joint and several; or
(4) if neither spouse is required to file a Federal income tax return and either or both are required to file an income tax return under this act, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several.

(b) One Spouse a Non-Resident. If either husband or wife is a resident and the other is a non-resident, they shall file separate income tax returns in this state on such forms as may be required by the [tax commissioner] in which event their tax liabilities shall be separate; but they may elect to determine their joint taxable income as if both were residents and in such case, their liabilities shall be joint and several.

SECTION 46. Returns by Fiduciaries.
(a) Decedents. An income tax return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with the care of his property. A final return of a decedent shall be due when it would have been due if the decedent had not died.
(b) Individuals Under a Disability. An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his duly authorized agent, his committee, guardian, conservator, fiduciary or other person charged with the care of his person or property other than a receiver in possession of only a part of the individual's property.
(c) Estates and Trusts. The income tax return of an estate or trust shall be made and filed by the fiduciary thereof.
(d) Joint Fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.
(e) Cross Reference. For provisions relating to information returns by partnerships, see Section 59.

SECTION 47. Notice of Qualification as Receiver. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, shall give notice of his qualification as such to the [tax commissioner], as may be required by regulation.

SECTION 48. Change of Status as Resident or Non-Resident During Year. If an individual changes his status during his taxable year from resident to non-resident or from non-resident to resident, the [tax commissioner] may by regulation require him to file one return for the portion of the year during which he is a resident and one for the portion of the year during which he is a non-resident.
SECTION 49. Taxable Income as Resident and Non-Resident.

(a) Except as provided in subsection (b) of this section, the taxable income of the individual shall be determined as provided in Section 5 for residents and Section 13 for non-residents as if the individual's taxable year for Federal income tax purposes were limited to the period of his resident and non-resident status respectively.

(b) There shall be included in determining taxable income from sources within or without this state, as the case may be, income, gain, loss, or deduction accrued prior to the change of status even though not otherwise includible or allowable in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change.

SECTION 50. Minimum Tax and Prorating of Exemptions. Where two returns are required to be filed as provided in Section 48:

(a) personal exemptions and the standard deduction shall be prorated between the two returns, under regulations prescribed by the [tax commissioner], to reflect the proportions of the taxable year during which the individual was a resident and a non-resident, and

(b) the total of the taxes due thereon shall not be less than would be due if the total of the taxable incomes reported on the two returns were includible in one return.

SECTION 51. Time and Place for Filing Returns and Paying Tax. The income tax return required by this act shall be filed on or before the 15th day of the fourth month following the close of the taxpayer's taxable year. A person required to make and file a return under this act shall, without assessment notice or demand, pay any tax due thereon to the [tax commissioner] on or before the date fixed for filing such return [determined without regard to any extension of time for filing the return]. The [tax commissioner] shall prescribe by regulation the place for filing any return, declaration, statement or other document required pursuant to this chapter and for the payment of any tax.

SECTION 52. Declarations of Estimated Tax.

(a) Requirement of Declaration. Every resident and non-resident individual shall make a declaration of his estimated tax for the taxable year, in such form as the [tax commissioner] may prescribe if his adjusted gross income (in the case of a non-resident from sources within this state), other than from wages on which tax is withheld under this act, can reasonably be expected to exceed [$SO01 plus the sum of the personal exemptions to which he is entitled.

(b) Estimated Tax Defined. The term "estimated tax" means the amount which the individual estimates to be his income tax under this act for the taxable year less the amount which he estimates to be the sum of any credits allowable for tax withheld.

(c) Joint Declaration of Husband and Wife. If they are eligible to do so for Federal tax purposes, a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in
which case the liability with respect to the estimated tax shall be joint and several. If a joint declara-
tions is made but husband and wife elect to determine their taxes under this chapter separately, the
estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be
divided between them, as they may elect.

(d) Amendment of Declaration. An individual may amend a declaration under regulations pre-
scribed by the [tax commissioner].

(e) Return or Declaration as Amendment. If on or before January 31 (or February 15 in the
case of an individual referred to in subsection (b) of Section 53) of the succeeding taxable year, an
individual files his return for the taxable year for which the declaration is required, and pays in full
the amount shown on the return as payable, such return

(1) shall be considered as his declaration if no declaration was required to be filed during
the taxable year, but is otherwise required to be filed on or before January 15, or

(2) shall be considered as the amendment permitted by subsection (d) to be filed on or
before January 15 if the tax shown on the return is greater than the estimated tax shown in a decla-
ration previously made.

(f) Short Taxable Year. An individual having a taxable year of less than 12 months shall make
a declaration in accordance with regulations of the [tax commissioner].

(g) Declaration for Individual Under a Disability. The declaration of estimated tax for an in-
dividual under a disability shall be made and filed in the manner provided in subsection (b) of Sec-
tion 46 for an income tax return.

SECTION 53. Time for Filing Declaration of Estimated Tax.

(a) Time for Filing. A declaration of estimated tax of an individual other than a farmer shall
be filed on or before April 15 of the taxable year, except that if the requirements of Section 52 are first
met:

(1) after April 1 and before June 2 of the taxable year, the declaration shall be filed on or
before June 15; or

(a) after June 1 and before September 2 of the taxable year, the declaration shall be filed on
or before September 15; or

(3) after September 1 of the taxable year, the declaration shall be filed on or before January
15 of the succeeding year.

(b) Declaration by Farmer. A declaration of estimated tax required by Section 52 from an indi-
vidual having an estimated adjusted gross income from farming in this state for the taxable year
which is at least two-thirds of his total estimated adjusted gross income taxable in this state for the
taxable year, may be filed at any time on or before January 15 of the succeeding taxable year, in lieu of
the time otherwise prescribed.
(c) **Declaration of Estimated Tax of [$50] or Less.** A declaration of estimated tax of an individual having a total estimated tax for the taxable year of [$50] or less may be filed at any time on or before January 15 of the succeeding taxable year under regulations prescribed by the [tax commissioner].

(d) **Fiscal Year.** In the application of this section and the preceding section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section and the preceding section, the months which correspond thereto.

SECTION 54. **Payments of Estimated Tax.**

(a) **General.** The estimated tax with respect to which a declaration is required under this act shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in Section 53 (including cases in which an extension of time for filing the declaration has been granted), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in Section 53, and the remaining installments shall be paid at the time at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) **Farmers.** If an individual referred to in subsection (b) of Section 53 (relating to income from farming) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time
of the filing of the declaration.

(c) Amendments of Declaration. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) Application to Short Taxable Years. The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the [tax commissioner].

(e) Fiscal Years. In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(f) Installments Paid in Advance. At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(g) Payment of Account. Payment of the estimated income tax or any installment thereof, shall be considered payment on account of the income tax imposed under this act for the taxable year.

SECTION 55. Extension of Time for Filing and Payment.

(a) General. The [tax commissioner] may grant a reasonable extension of time for payment of tax or estimated tax or any installment thereof, or for filing any return, declaration, statement, or other document required pursuant to this chapter, on such terms and conditions as he may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement, or document, shall exceed six months.

(b) Security. If any extension of time is granted for payment of any amount of tax, the [tax commissioner] may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the [tax commissioner] may prescribe by regulation.

SECTION 56. Change of Election. Any election expressly authorized by this act may be changed on such terms and conditions as the [tax commissioner] may prescribe by regulation.

SECTION 57. Signing of Returns and Other Documents.

(a) General. Any return, declaration, statement, or other document required to be made pursuant to this act shall be signed in accordance with regulations or instructions prescribed by the [tax commissioner]. The fact that an individual’s name is signed to a return, declaration, statement, or other document shall be prima facie evidence for all purposes that the return, declaration, statement, or other document was actually signed by him.

(b) Partnerships. Any return, statement, or other document required of a partnership shall be signed by one or more partners. The fact that a partner’s name is signed to a return, statement, or
other document shall be *prima facie* evidence for all purposes that such partner is authorized to
sign on behalf of the partnership.

(c) *Certifications.* The making or filing of any return, declaration, statement, or other document
or copy thereof required to be made or filed pursuant to this act, including a copy of a Federal return,
shall constitute a certification by the person making or filing such return, declaration, statement, or
other document or copy thereof that the statements contained therein are true and that any copy
filed is a true copy.

Part II

INFORMATION RETURNS


The [tax commissioner] may prescribe regulations as to the keeping of records, the content and form
of returns and statements, and the filing of copies of Federal income returns and determinations.
The [tax commissioner] may require any person, by regulation or notice served on such person, to
make such returns, render such statements, or keep such records, as the [tax commissioner] may
deem sufficient to show whether or not such person is liable under this act for tax or for the collection
of tax.

SECTION 59. *Partnership Return.* Every partnership having a resident partner or having any
income derived from sources in this state, determined in accordance with the applicable rules of Section
15 as in the case of a non-resident individual, shall make a return for the taxable year setting forth all
items of income, gain, loss, and deduction, and the names and addresses of the individuals whether
residents or non-residents who would be entitled to share in the net income if distributed and the
amount of the distributive share of each individual and such other pertinent information as the
[tax commissioner] may prescribe by regulations and instructions. Such return shall be filed on or
before the 15th day of the fourth month following the close of each taxable year. For purposes of
this section, **"taxable year"** means a year or period which would be a taxable year of the partnership
if it were subject to tax under this act.

SECTION 60. *Information Returns.* The [tax commissioner] may prescribe regulations and in-
structions requiring returns of information to be made and filed on or before February 28 of each
year by any person making payment or crediting in any calendar year the amounts of [$600] or more
([$10] or more in the case of interest or dividends) to any person who may be subject to the tax im-
posed under this act. Such returns may be required of any person, including lessees or mortgagors of
real or personal property, fiduciaries, employers, and all officers and employees of this state or of any
municipal corporation or political subdivision of this state, having the control receipt, custody, disposal
or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remun-
erations, emoluments, or other fixed or determinable gains, profits, or income, except interest coupons
payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished
by an employer to an employee, shall constitute the return of information required to be made under
this section with respect to such wages.

SECTION 61. Report of Change in Federal Taxable Income. If the amount of a taxpayer’s
Federal taxable income reported on his Federal income tax return for any taxable year is changed
or corrected by the United States Internal Revenue Service or other competent authority, or as the
result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report
such change or correction in Federal taxable income within 90 days after the final determination of
such change, correction, or renegotiation, or as otherwise required by the [tax commissioner], and
shall concede the accuracy of such determination or specify wherein it is erroneous. Any taxpayer
filing an amended Federal income tax return shall also file within 90 days thereafter an amended
return under this act, and shall give such information as the [tax commissioner] may require. The
[tax commissioner] may by regulation prescribe such exceptions to the requirements of this section as
he deems appropriate.

Title VIII

PROCEDURE AND ADMINISTRATION

Part I

DEFICIENCIES

SECTION 62. Examination of Return.

(a) Deficiency or Overpayment. As soon as practical after the return is filed, the [tax commission-
er] shall examine it to determine the correct amount of tax. If the [tax commissioner] finds that the
amount of tax shown on the return is less than the correct amount, he shall notify the taxpayer of
the amount of the deficiency proposed to be assessed. If the [tax commissioner] finds that the tax
paid is more than the correct amount, he shall credit the overpayment against any taxes due under
this act by the taxpayer and refund the difference.

(b) No Return Filed. If the taxpayer fails to file an income tax return, the [tax commissioner]
shall estimate the taxpayer’s taxable income and the tax thereon from any available information
and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(c) Notice of Deficiency. A notice of deficiency shall set forth the reason for the proposed
assessment. The notice may be mailed by certified or registered mail to the taxpayer at his last known
address. In the case of a joint return, the notice of deficiency may be a single joint notice except that
if the [tax commissioner] is notified by either spouse that separate residences have been established
he shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a no-
tice of deficiency may be mailed to his last known address unless the [tax commissioner] has received
notice of the existence of a fiduciary relationship with respect to such taxpayer.

SECTION 63. Assessment Final if No Protest. Ninety days after the date on which it was
mailed [150 days if the taxpayer is outside the United States], a notice of proposed assessment of
a deficiency shall constitute a final assessment of the amount of tax specified together with inter-
est, additions to tax, and penalties except only for such amounts as to which the taxpayer has
filed a protest with the [tax commissioner].

SECTION 64. Protest by Taxpayer. Within 90 days [150 days if the taxpayer is outside the
United States] after the mailing of a deficiency notice, the taxpayer may file with the [tax commis-
sioner] a written protest against the proposed assessment in which he shall set forth the grounds
on which the protest is based. If a protest is filed, the [tax commissioner] shall reconsider the assess-
ment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his auth-
orized representatives an oral hearing.

SECTION 65. Notice of Determination After Protest. Notice of the [tax commissioner’s] deter-
mination shall be mailed to the taxpayer by certified or registered mail and such notice shall set
forth briefly the [tax commissioner’s] findings of fact and the basis of decision in each case decided
in whole or in part adversely to the taxpayer.

the taxpayer’s protest is final upon the expiration of 90 days from the date when he mails notice of
his action to the taxpayer unless within this period the taxpayer seeks judicial review of the
[tax commissioner’s] determination.

SECTION 67. Burden of Proof in Proceedings Before the [Tax Commissioner]. In any pro-
ceeding before the [tax commissioner] under this act the burden of proof shall be on the taxpayer
except for the following issues, as to which the burden of proof shall be on the [tax commission-
er]:

(a) whether the taxpayer has been guilty of fraud with attempt to evade tax;

(b) whether the petitioner is liable as the transferee of property of a taxpayer (but not to show
that the taxpayer was liable for the tax);

(c) whether the taxpayer is liable for any increase in a deficiency where such increase is asserted
initially after the notice of deficiency was mailed and protest under Section 64 filed, unless such in-
crease in deficiency is the result of a change or correction of federal taxable income required to be
reported under Section 61, and of which change or correction the [tax commissioner] had no notice at the time he mailed the notice of deficiency.

SECTION 68. Evidence of Related Federal Determination. Evidence of a Federal determination relating to issues raised in a proceeding under Section 64 shall be admissible, under rules established by the [tax commissioner].

SECTION 69. Mathematical Error. In the event that the amount of tax is understated on the taxpayer’s return due to a mathematical error, the [tax commissioner] shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been asserted. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right or protest of appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this act.

SECTION 70. Waiver of Restriction. The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the [tax commissioner].

SECTION 71. Assessment of Tax.

(a) Date of Assessment. The amount of tax which is shown to be due on the return (including revisions for mathematical errors) shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the [tax commissioner] shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of deficiency shall be deemed to be assessed on the date provided in Section 63 if no protest is filed; or, if a protest is filed then upon the date when the determination of the [tax commissioner] becomes final. If an amended return or report filed pursuant to Section 61 concedes the accuracy of a Federal change or correction, any deficiency in tax under this act resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of this act. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provision of this act.

(b) Other Assessment Powers. If the mode or time for the assessment of any tax under this act, including interest, additions to tax, and penalties, is not otherwise provided for, the [tax commissioner] may establish the same by regulation.

(c) Supplemental Assessment. The [tax commissioner] may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of Section 62
where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(d) Cross Reference. For assessment in case of jeopardy, see Section 103.

SECTION 72. Limitations on Assessment.

(a) General. Except as otherwise provided in this act, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within three years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the three year period or the period otherwise fixed.

(b) Omission of More Than 25 Percent of Income. If the taxpayer omits from gross income an amount properly includable therein which is in excess of 25 percent of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within six years after the return was filed. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the [tax commissioner] of the nature and the amount of such item.

(c) No Return Filed or Fraudulent Return. If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this act, a notice of deficiency may be mailed to the taxpayer at any time.

(d) Failure to Report Federal Change. If a taxpayer fails to comply with the requirement of Section 61 by not reporting a change or correction increasing his Federal taxable income, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for Federal income tax purposes, or in not filing an amended return, a notice of deficiency may be mailed to the taxpayer at any time.

(e) Report of Federal Change or Correction. If the taxpayer shall, pursuant to Section 61, report a change or correction or file an amended return increasing his Federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for Federal income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed.

(f) Extension by Agreement. Where, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the [tax commissioner] and the taxpayer shall have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

(g) Time Return Deemed Filed. For purposes of this section an income tax return filed before
the last day prescribed by law or regulation promulgated pursuant to law for the filing thereof, shall
be deemed to be filed on such last day. If a return or withholding tax for any period ending with or
within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be
deemed to be filed on April 15 of such succeeding calendar year.

SECTION 73. *Recovery of Erroneous Refund.* An erroneous refund shall be considered an un-
derpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous
refund may be made at any time within two years from the making of the refund, except that the
assessment may be made within five years from the making of the refund if it appears that any part
of the refund was induced by fraud or the misrepresentation of a material fact.

SECTION 74. *Interest on Underpayments.*

(a) *General.* If any amount of tax imposed by this act, including tax withheld by an employer,
is not paid on or before the last date prescribed for payment, interest on such amount at the rate of
6 percent per annum shall be paid for the period from such last date to date paid. No interest shall
be imposed if the amount due is less than one dollar nor shall this section apply to any failure to pay
estimated income tax under Section 54.

(b) *Last Date Prescribed for Payment.* For purposes of this section, the last date prescribed for
the payment of tax shall be determined without regard to any extension of time.

(c) *Suspension of Waiver of Restrictions.* If the taxpayer has filed a waiver of restrictions on the
assessment of a deficiency and if notice and demand by the [tax commissioner] for payment of such
deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed
on such deficiency for the period beginning immediately after such 30th day and ending with the date
of notice and demand.

(d) *Interest Treated as Tax.* Interest prescribed under this section on any tax including tax with-
held by an employer shall be paid on notice and demand and shall be assessed, collected, and paid in
the same manner as taxes. Any reference in this act to the tax imposed by this act shall be deemed
also to refer to interest imposed by this section on such tax.

(e) *Interest on Penalties, or Additions to Tax.* Interest shall be imposed under this section in
respect to any penalty, or addition to tax only if such penalty or addition to tax is not paid within ten
days of the notice and demand therefor, and in such case interest shall be imposed only for the
period from the date of the notice and demand to the date of payment.

(f) *Payments Made Within Ten Days After Notice and Demand.* If notice and demand is made for
the payment of any amount due under this act and if such amount is paid within ten days after the
date of such notice and demand, interest under this section on the amount so paid shall not be im-
posed for the period after the date of such notice and demand.

(g) *Satisfaction by Credits.* If any portion of a tax is satisfied by credit of an overpayment, then
no interest shall be imposed under this section on the portion of the tax so satisfied for any period
during which, if the credit had not been made, interest would have been allowable with respect to
such overpayment.

(h) Interest on Erroneous Refund. Any portion of the tax imposed by this act or any interest,
penalty, or addition to tax which has been erroneously refunded and which is recoverable by the
tax commissioner shall bear interest at the rate of 6 percent per annum from the date of payment of
the refund.

(i) Limitation on Assessment and Collection. Interest prescribed under this section may be
assessed and collected at any time during the period within which the tax, penalty, or addition to
tax to which such interest relates may be assessed and collected respectively.

Part II

ADDITIONS TO TAX AND PENALTIES

SECTION 75. Failure to File Tax Returns.

(a) Failure to File Tax Return. In case of failure to file any return required under this act on the
date prescribed therefore (determined with regard to any extension of time for filing), unless it is
shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added
to the amount required to be shown as tax on such return 5 percent of the amount of such tax if
the failure is not for more than one month, with an additional 5 percent for each additional month or
fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. For
purposes of this section, the amount of tax required to be shown on the return shall be reduced by
the amount of any part of the tax which is paid on or before the date prescribed for payment of the
tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Failure to File Certain Information Returns. In case of each failure to file a statement of pay-
ment to another person required under the authority of this act including the duplicate statement of
tax withheld on wages on the date prescribed therefor (determined with regard to any extension of
time for filing), unless it is shown that such failure is due to a reasonable cause and not to willful
neglect, there shall be paid upon notice and demand by the tax commissioner and in the same
manner as by the person so failing to file the statement a penalty of [$2.00] for each statement not so
filed, but the total amount imposed on the delinquent person for all such failures during any calen-
dar year shall not exceed [$2,000].

SECTION 76. Failure to Pay Tax.

(a) Deficiency Due to Negligence. If any part of a deficiency is due to negligence or intentional
disregard of rules and regulations (but without intent to defraud) there shall be added to the tax an
amount equal to 5 percent of the deficiency.

(b) Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50 percent of the deficiency. This amount shall be in lieu of any amount determined under subsection (a).

(c) Failure by Individual to File Declaration or Underpayment of Estimated Tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of any tax, he shall be deemed to have made an underpayment of estimated tax. The [tax commissioner] may prescribe by regulation the method for determining the amount of the underpayment and the period of the underpayment.

(d) Non-Willful Failure to Pay Withholding Tax. If any employer, without intent to evade or defeat any tax imposed by this act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of this act such employer shall be liable for such taxes and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to, or collected from, the employee by the employer. The [tax commissioner] shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer as are now prescribed by this act for the collection of tax against an individual taxpayer.

(e) Willful Failure to Collect and Pay Over Tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this act who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subsections (a) or (b) of this section shall be imposed for any offense to which this subsection applies.

(f) Additional Penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign, or certify any return or declaration of estimated tax, or to supply any information within the same time required by or under this act, shall be liable to a penalty of not more than [$1,000], in addition to any other amounts required under this act, to be imposed, assessed, and collected by the [tax commissioner].

(g) Additions Treated as Tax. The additions to tax and penalties provided by this act shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in this act to income tax or the tax imposed by this act shall be deemed also to refer to additions to the tax, and penalties provided by this section. For purposes of the deficiency procedures provided in Section 62, this subsection shall not apply to:

(1) any addition to tax under subsection (a) of Section 75 except as to that portion attribut-
able to a deficiency;

(2) any addition to tax for failure to file a declaration or underpayment of estimated tax as provided in subsection (c) of this section;

(3) any additional penalty under subsection (f) of this section.

(h) Determination of Deficiency. For purposes of subsections (a) and (b) related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(i) Person Defined. For purposes of subsections (e) and (f) the term person includes an individual, corporation, or partnership, or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SECTION 77. False Information with Respect to Withholding Allowance. In addition to any other penalty provided by law, if any individual in claiming a withholding allowance states:

(a) as the amount of the wages shown on his return for any taxable year an amount less than such wages actually shown; or

(b) as the amount of the itemized deductions referred to in Section 9 shown on the return for any taxable year an amount greater than such deductions actually shown, he will pay a penalty of $50 for such statement, unless

(1) such statement did not result in a decrease in the amounts deducted and withheld, or

(2) the taxes imposed with respect to the individual under this act for the succeeding taxable year do not exceed the sum of

(i) the credits against such taxes; and

(ii) the payments of estimated tax which are considered payments on account of such taxes.

Section 62 relating to deficiency procedure shall not apply in respect to the assessment or collection of any penalty imposed by this section.

Part III

CREDITS AND REFUNDS

SECTION 78. Authority to Make Credits or Refunds.

(a) General Rule. The [tax commissioner] within the applicable period of limitations may credit an overpayment of income tax and interest on such overpayment against any liability in respect of
any tax imposed by the tax laws of this state on the person who made the overpayment, and the
balance shall be refunded by the [treasurer] out of the proceeds of the tax retained by him for such
general purposes.

(b) *Excessive Withholding.* If the amount allowable as a credit for tax withheld from the tax-
payer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) *Overpayment by Employer.* If there has been an overpayment of tax required to be deducted
and withheld under Section 19, refund shall be made to the employer only to the extent that the
amount of the overpayment was not deducted and withheld by the employer.

(d) *Credits Against Estimated Tax.* The [tax commissioner] may prescribe regulations providing
for the crediting against the estimated income tax for any taxable year of the amount determined to
be an overpayment of the income tax for a preceding taxable year.

(e) *Assessment and Collection After Limitation Period.* If any amount of income tax is assessed
or collected after the expiration of the period of limitations properly applicable thereto, such amount
shall be considered an overpayment.

SECTION 79. *Abatements.*

(a) *General Rule.* The [tax commissioner] is authorized to abate the unpaid portion of the assess-
ment of any tax or any liability in respect thereof, which

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitations properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) *No Claim by Taxpayer.* No claim for abatement shall be filed by a taxpayer in respect of an
assessment of any tax imposed under this act.

(c) *Small Tax Balance.* The [tax commissioner] is authorized to abate the unpaid portion of
assessment of any tax, or any liability in respect thereof, if he determines under uniform rules pre-
scribed by him that the administration and collection costs involved would not warrant collection
of the amount due.

SECTION 80. *Limitations on Credit or Refund.*

(a) *General.* A claim for credit or refund of an overpayment of any tax imposed by this act shall
be filed by the taxpayer within three years from the time the return was filed or two years from the
time the tax was paid whichever of such periods expires later; or, if no return was filed by the tax-
payer, within two years from the time the tax was paid. No credit or refund shall be allowed or made
after the expiration of the period of limitation prescribed in this subsection for the filing of a claim
for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(b) *Limit on Amount of Claim or Refund.* If the claim is filed by the taxpayer during the three
year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the por-
tion of the tax paid within the three years immediately preceding the filing of the claim plus the
period of any extension of time for filing the return. If the claim is not filed within such three year
period, but is filed within the two year period, the amount of the credit or refund shall not exceed
the portion of the tax paid during the two years immediately preceding the filing of the claim. If no
claim is filed, the credit or refund shall not exceed the amount which would be allowable under either
of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is
allowed.

(c) Extension of Time by Agreement. If an agreement for an extension of the period for assess-
ment of income taxes is made within the period prescribed in subsection (a) for the filing of a claim
for credit or refund, the period for filing claim for credit or for making credit or refund if no claim
is filed shall not expire prior to six months after the expiration of the period within which an assess-
ment may be made pursuant to the agreement of any extension thereof. The amount of such credit
or refund shall not exceed the portion of the tax paid after the execution of the agreement and before
the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of
the tax paid within the period which would be applicable under subsection (a) if a claim had been
filed on the date the agreement was executed.

(d) Notice of Change or Correction of Federal Income. If a taxpayer is required by Section 61 to
report a change or correction in Federal taxable income reported on his Federal income tax return, or
to report a change or correction which is treated in the same manner as if it were an overpayment
for Federal income tax purposes, or to file an amended return with the [tax commissioner], claim for
credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years
from the time the notice of such change or correction or such amended return was required to be filed
with the [tax commissioner]. If the report or amended return required by Section 61 is not filed within
the 90 day period therein specified, interest on any resulting refund or credit shall cease to accrue after
such 90th day. The amount of such credit or refund shall not exceed the amount of the reduction in
tax attributable to such Federal change, correction, or items amended on the taxpayer’s amended Federal
income tax return. This subsection shall not affect the time within which, or the amount for which, a
claim for credit or refund may be filed apart from this subsection.

(e) Special Rules. The following rules shall apply.

(1) If the claim for credit or refund relates to an overpayment of tax on account of the
deductibility by the taxpayer of a debt as a debt which became worthless or a loss from worthless-
ness of a security or the effect that the deductibility of a debt or of a loss has on the application to
the taxpayer of a carryover, the claim may be made, under regulations prescribed by the [tax com-
missioner], within seven years from the date prescribed by law for filing the return for the year
with respect to which the claim is made.
(2) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, the claim may be made, under regulations prescribed by the [tax commissioner], within the period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which resulted in such carryback or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later.

SECTION 81. Interest on Overpayment.

(a) General. Under regulations prescribed by the [tax commissioner], interest shall be allowed and paid at the rate of 6 percent per annum upon any overpayment in respect of the tax imposed by this act. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Date of Return or Payment. For purposes of this section:

(1) any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the 15 day of the fourth month following the close of his taxable year to which such amount constitutes a credit or payment.

(c) Return and Payment of Withholding Tax. For purposes of this section with respect to any withholding tax:

(1) if a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year;

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April 15 of the succeeding year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) Refund Within Three Months. If any overpayment of tax imposed by this act is refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

SECTION 82. Refund Claim. Every claim for refund shall be filed with the [tax commissioner] in writing and shall state the specific grounds upon which it is founded. The [tax commissioner] may grant the taxpayer or his authorized representatives an opportunity for an oral hearing if the taxpayer so requests.

SECTION 83. Notice of Denial. If the [tax commissioner] disallows a claim for refund, he shall notify the taxpayer accordingly. The action of the [tax commissioner] denying a claim for refund is fi-
nal upon expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks judicial review of the [tax commissioner’s] determination.

SECTION 84. Refund Claim Deemed Disallowed. If the [tax commissioner] fails to mail a notice of action on any refund claim within six months after the claim is filed, the taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

Part IV
JUDICIAL REVIEW – SUITS FOR REFUNDS

SECTION 85. Review of Determination of [Tax Commissioner]. A determination by the [tax commissioner] on a taxpayer’s protest against the proposed assessment of a deficiency shall be subject to judicial review at the instance of any taxpayer affected thereby [either in the manner provided by law for the review of final decisions or determinations of administrative agencies of this state or by a de novo review in [a court of jurisdiction]].¹

SECTION 86. Judicial Review Exclusive Remedy in Deficiency Proceedings. The review of a determination of the [tax commissioner] provided by Section 85 shall be the exclusive remedy available to any taxpayer for the judicial review of the action of the [tax commissioner] in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under this act.

SECTION 87. Assessment Pending Review – Review Bond. The [tax commissioner] may assess a deficiency after the expiration of the period specified in Section 66 notwithstanding that an application for judicial review in respect for such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the [tax commissioner] the amount of the deficiency or has filed with the [tax commissioner] a bond in the amount of the deficiency being contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this state to act as surety, conditioned upon the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

SECTION 88. Proceedings After Review.
(a) Credit, Refund of Abatements. If the amount of a deficiency determined by the [tax commissioner] is disallowed in whole or in part by the [court of review], the amount so disallowed...

¹These provisions will have to be drafted to be consistent with judicial remedies available in comparable proceedings.
shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

(b) Deficiency Disallowed — Costs. If the deficiency determined by the [tax commissioner] is disallowed, the taxpayer shall have his costs. If the deficiency is disallowed in part, the [court] in its discretion may award the taxpayer a proportion of his costs.

(c) Assessment Final. An assessment of a proposed deficiency by the [tax commissioner] shall become final upon the expiration of the period specified in Section 63 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided; or if the protest provided in Section 64 has been filed, upon the expiration of time provided for filing an application for judicial review, or upon the final judgement of [the reviewing court] or upon the rendering by the [tax commissioner] of a decision pursuant to the mandate of the [reviewing court]. Notwithstanding the foregoing, for the purpose of making an application for the review of a determination of the [tax commissioner], the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in Section 65.

SECTION 89. Suit for Refund. Except in cases involving the proposed assessment of a deficiency, any taxpayer who claims that the tax he has paid under this act is void in whole or in part may bring an action, upon the grounds set forth in his claim for refund, against the [tax commissioner] for the recovery of the whole or any part of the amount paid. Such suit against the [tax commissioner] may be instituted in the [court of appropriate jurisdiction where the taxpayer resides or in the capital city]. [If necessary, insert appropriate provision for defense of action either by the attorney general or counsel for the tax commissioner.]

SECTION 90. No Suit Prior to Filing Claim. No suit shall be maintained for the recovery of any tax imposed by this act alleged to have been erroneously paid until a claim for refund has been filed with the [tax commissioner] as provided in Section 82 and the [tax commissioner] has denied the refund or has failed to mail a notice of action on the claim within six months after the claim was filed.

SECTION 91. Limitation on Suit for Refund. The action authorized in Section 90 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after the denial of a claim for refund by the [tax commissioner], or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the [tax commissioner] to mail a notice of action within six months after the claim was filed, whichever period expires later.

SECTION 92. Judgement for Taxpayer. In any action for a refund, the [court] may render judgement for the taxpayer for any part of the tax, interest, penalties, or other amounts found to be erroneously paid, together with interests on the amount of the overpayment. The amount of any
judgement against the [tax commissioner] shall first be credited against any taxes, interest, penalties or other amounts due from the taxpayer under the tax laws of this state and the remainder refunded by the [state treasurer].

Part V

MISCELLANEOUS ENFORCEMENT PROVISIONS

SECTION 93. Timely Mailing. If any claim, statement, notice, petition, or other document including to the extent authorized by the [tax commissioner], a return or declaration of estimated tax required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of this act is, after such period or such date, delivered by United States mail to the [tax commissioner] or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the [tax commissioner], office, officer, or person therein with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the [tax commissioner], or the office, officer, or person to which or to whom it is addressed. To the extent that the [tax commissioner] shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the [tax commissioner].

When the last day prescribed under the authority of this act, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in this state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

SECTION 94. Collection Procedures.

(a) General. The tax imposed by this act shall be collected by the [tax commissioner], and he may establish the mode of time for the collection of any amount due under this act if not otherwise specified. The [tax commissioner] shall, on request, give a receipt for any amount collected under this act. The [tax commissioner] may authorize the incorporated banks or trust companies which are depositaries or fiscal agents of this state to receive and give a receipt for any tax imposed under this act, in such manner, at such times, and under such conditions as he may prescribe; and the [tax commissioner] shall prescribe the manner, times, and conditions under which the receipt of tax by
such banks and trust companies is to be treated as payment of tax to the [tax commissioner].

(b) Notice and Demand. The [tax commissioner] shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, additional amount, penalty, or interest, which has been assessed but remains unpaid, stating the amount and demanding within ten days of the date of the notice and demand payment thereof. Such notice shall be left at the dwelling place or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the [tax commissioner] determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Cross Reference. For requirements of payment without assessment, notice or demand of amount shown to be due on return, see Section 51.

SECTION 95. Issuance of Warrant. If any person liable to pay any tax, addition to tax, penalty, or interest imposed under this act neglects or refuses to pay the same within ten days after notice and demand, the [tax commissioner] may issue a warrant directed to the [sheriff] of any county of this state or to his own representative commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing warrant, and to return such warrant to the [tax commissioner] and to pay him the money collected by virtue thereof within 60 days after receipt of the warrant. If the [tax commissioner] finds that collection of the tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the [tax commissioner] and upon failure or refusal to pay such tax the [tax commissioner] may issue a warrant without regard to the ten day waiting period provided in this section.

SECTION 96. Lien of Tax. If any tax imposed by this act is not paid when due, the [tax commissioner] may file in the office of any [county recorder] a certificate specifying the amount of tax, addition to tax, penalty, and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the [tax commissioner] has complied with all the provisions of this act in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all property of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. The lien provided therein has the same force, effect, and priority as a judgement lien and continues for ten years from the date of recording unless sooner released or otherwise discharged.

SECTION 97. Extension; Release of Lien. Within ten years from the date of the recording or within ten years from the date of the last extension of the lien in the manner provided herein, the lien may be extended by recording in the office of the [county recorder] of any county a new certificate. The [tax commissioner] may, at any time, release all or any portion of the property subject to any lien provided for in this act or subordinate the lien to other liens if he determines that the taxes
are sufficiently secured by a lien on other property of the taxpayer or that the release or subordina-
tion of the lien will not endanger or jeopardize the collection of the taxes.

SECTION 98. *Taxpayer Not a Resident.* When notice and demand for the payment of a tax is
given to a non-resident and it appears to the [tax commissioner] that it is not practicable to locate
property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy
of the certificate provided for in Section 96 to the taxpayer at his last known address together with
a notice that such certificate has been filed with the [county recorder]. Thereafter, the [tax commis-
sioner] may authorize the institution of any action or proceeding to collect or enforce such claim
in any place and by any procedure that a civil judgement of a court of record of this state could be
collected or enforced. The [tax commissioner] may also, in his discretion, designate agents or retain
counsel outside this state for the purpose of collecting outside this state any taxes due under this act
from taxpayers who are not residents of this state; and he may fix the compensation of such agents
and counsel to be paid out of money appropriated or otherwise lawfully available for payment there-
of and he may require of them bonds or other security for the faithful performance of their duties.
The [tax commissioner] is authorized to enter into agreements with the tax departments of other states
and the District of Columbia for the collection of taxes from persons found in this state who are
delinquent in the payment of income taxes imposed by those states or the District of Columbia on
condition that the agreeing states and the District of Columbia afford similar assistance in the col-
lection of taxes from persons found in those jurisdictions who are delinquent in the payment of
taxes imposed under this act.

SECTION 99. *Action for Recovery of Taxes.* The [tax commissioner] within six years after the
assessment of any tax may bring an action in any court of competent jurisdiction within or without
this state in the name of the people of this state to recover the amount of any taxes, additions to tax,
penalties, and interest due and unpaid under this act. In such action, the certificate of the [tax com-
missioner] showing the amount of the delinquency shall be *prima facie* evidence of the levy of the
tax, of the delinquency, and of the compliance by the [tax commissioner] with all the provisions of
this act in relation to the assessment of the tax.

SECTION 100. *Income Tax Claims of Other States.* The courts of this state shall recognize and
enforce liabilities for personal income taxes lawfully imposed by any other state which extends a
like comity to this state, and the duly authorized officer of any such state may sue for the collection
of such a tax in the courts of this state. A certificate by the [secretary of state] of such other state that
an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conven-
dence proof of such authority. For the purposes of this section, the word "‘taxes’" shall include
additions to tax (interest and penalties, and liability for such taxes). Interest, and penalties shall be
recognized and enforced by the courts of this state to the same extent that the laws of such other state
permit the enforcement in its courts of liability for such taxes, additions to tax, interest, and penalties due this state under this act.

SECTION 101. Order to Compel Compliance.

(a) Failure to File Tax Return. If any person willfully refuses to file an income tax return required by this act, the [tax commissioner] may apply to a judge of the [court of appropriate jurisdiction] for an order directing such person to file the required return. If a person fails or refuses to obey such an order, he shall be guilty of contempt of court.

(b) Failure to Furnish Records or Testimony. If any person willfully refuses to make available any books, papers, records, or memoranda for examination by the [tax commissioner] or his representative or willfully refuses to attend and testify, pursuant to the powers conferred on the [tax commissioner] by Section 110(c) of this act, the [tax commissioner] may apply to a judge in the [court of appropriate jurisdiction] for the county where such person resides, for an order directing that person to comply with the [tax commissioner’s] request for books, papers, records, or memoranda or for his attendance and testimony. If the books, papers, records, or memoranda required by the [tax commissioner] are in the custody of a corporation, the order of the court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such order, he shall be guilty of contempt of court.

SECTION 102. Transferees.

(a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, addition to tax, penalty, or interest due the [tax commissioner] under this act, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates except as hereinafter provided in this section. The term transferee includes donee, heir, legatee, devisee, and distributee.

(b) Period of Limitation. In the case of the liability of an initial transferee, the period of limitation for assessment of any liability is within one year after the expiration of the period of limitation against the transferor; in the case of the liability of a transferee of a transferee, within one year after the expiration of the period of limitation against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the original transferor; except that if before the expiration of the period of limitation for assessment of the liability of the transferee, a proceeding for the collection of the liability has been begun against the initial transferor of the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the proceeding is terminated.

(c) Extension by Agreement. If before the expiration of the time provided in this section for the assessment of the liability, the [tax commissioner] and the transferee have both consented in
writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon or an extension thereof. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee of overpayments of tax made by the transferor of which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement or extension referred to in subsection (c) of Section 80. If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee arises, then in applying the limitations under subsection (b) of Section 80 on the amount of the credit or refund, the period specified in subsection (a) of Section 80 shall be increased by the period from the date of such expiration to the date of the agreement.

(d) Transferor Deceased. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect had death not occurred.

SECTION 103. Jeopardy Assessments.

(a) Filing and Notice. If the [tax commissioner] finds that the assessment or the collection of a tax or deficiency for any year, current or past, will be jeopardized in whole or in part by delay, he may mail or issue notice of his finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including additions to tax, interest, and penalties.

(b) Termination of Taxable Year. In the case of a tax for a current period, the [tax commissioner] shall declare the taxable period of the taxpayer immediately terminated and his notice and demand for a return and immediate payment of the tax shall relate to the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period.

(c) Collection. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or other security in the amount of the assessment including additions to tax, penalties, and interest as to which the stay of collection is sought. If a request for reassessment, accompanied by a bond or other security on the appropriate amount, is not filed within the ten day period, the assessment becomes final.

(d) Proceeding on Reassessment. If a request for reassessment, accompanied by a bond or other security, is filed within the ten day period, the [tax commissioner] shall reconsider the assessment and, if the taxpayer has so requested in his petition, the [tax commissioner] shall grant him or his authorized representatives an oral hearing. The [tax commissioner's] action on the request for reassessment becomes final upon the expiration of 30 days from the date when he mails notice of his action.
to the taxpayer, unless within that 30 day period, the taxpayer files an application to seek judicial re-
view of the [tax commissioner's] determination.

(e) Presumptive Evidence of Jeopardy. In any proceeding brought to enforce payment of taxes
made due and payable by this section, the finding of the [tax commissioner] under subsection (a)
of this section is for all purposes presumptive evidence that the assessment or collection of the
tax or deficiency was in jeopardy.

(f) Abatement if Jeopardy Does Not Exist. The [tax commissioner] may abate the jeopardy
assessment if he finds that jeopardy does not exist.

SECTION 104. Bankruptcy or Receivership.

(a) Immediate Assessment. Upon the adjudication of bankruptcy of any taxpayer in any bank-
ruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding
before any court of the United States or any state or territory or of the District of Columbia, any
deficiency (together with additions to tax and interest provided by law) determined by the [tax
commissioner] may be immediately assessed.

(b) Adjudication of Claims. Claims for the deficiency and such additions to tax and interest may
be presented, for adjudication in accordance with law, to the court before which the bankruptcy
or receivership proceeding is pending, despite the pendency of a protest before the [tax commis-
sioner] under Section 64. No protest against a proposed assessment shall be filed with the [tax com-
missioner] after the adjudication of bankruptcy or appointment of the receiver.

(c) Cross Reference. For the requirement of notice to the [tax commissioner] of the qualifica-
tion of a trustee in bankruptcy, receiver, assignee for the benefit of creditors, or other like judici-
ary, see Section 47.

Part VI

CRIMINAL OFFENSES

SECTION 105. Attempt to Evade or Defeat Tax. Any person who willfully attempts in any man-
ner to evade or defeat any tax imposed by this act or the payment thereof shall, in addition to other
penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not
more than [$5,000], or imprisoned not more than [five] years, or both, together with the costs of
prosecution.

SECTION 106. Failure to Collect or Pay Over. Any person required under this act to collect,
truthfully account for, and pay over any tax imposed by this act who willfully fails to collect or
truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be
guilty of a felony and, upon conviction thereof, shall be fined not more than [$5,000], or impris-
SECTION 107. Failure to File Return, Supply Information, Pay Tax. Any person required under this act to pay any tax or estimated tax, or required by this act or regulation prescribed thereunder to make a return [other than a return of estimated tax], keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than [$5,000], or imprisoned not more than [one] year, or both, together with the costs of prosecution.

SECTION 108. False Statements. Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, or willfully aids or procures the preparation or presentation in a matter arising under the provisions of this act of a return, affidavit, claim, or other document which is fraudulent or is false as to any material matter, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than [$5,000], or imprisoned not more than [three] years, or both, together with the costs of prosecution.

SECTION 109. Limitations. Any prosecution under this act shall be instituted within three years after the commission of the offense, provided that if such offense is the failure to do an act required by or under the provisions of this act to be done before a certain date, a prosecution for such offense may be commenced not later than [three] years after such date. The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the principal office of the [tax commissioner]. Any prosecution under this act may be conducted in any county where the person or corporation to whose liability the proceeding relates resides, or has a place of business, or in any county in which such crime is committed. The [attorney general] shall have concurrent jurisdiction with the [district attorney] in the prosecution of any offense under this act.

Part VII

POWERS OF [TAX COMMISSIONER]

SECTION 110. General Powers.
(a) Rule Making and Field Administration. The [tax commissioner] shall administer and enforce the tax imposed by this act and he is authorized to make such rules and regulations and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of this act. The [tax commissioner] may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.
(b) Returns and Forms. The [tax commissioner] may prescribe the form and contents of any return or other document required to be filed under the provisions of this act.

(c) Examination of Books and Witnesses. The [tax commissioner] for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(d) Secrecy of Returns and Information. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the [tax commissioner] or any officer or employee of the [tax department], any person engaged or retained by such [department] on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act. The officer charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the [tax commissioner] in an action or proceeding under the provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this act when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the [attorney general] or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year, or both, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he shall be dismissed from office and be ineligible to hold any public office in this state for a period of five years thereafter.
Reports and Returns Preserved. Reports and returns required to be filed under this act shall be preserved for [three] years and thereafter until the [tax commissioner] orders them to be destroyed.

Cooperation with the United States and Other States. Notwithstanding the provisions of subsection (d), the [tax commissioner] may permit the Secretary of the Treasury of the United States or his delegates, or the proper officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect the income tax returns of any individuals, or may furnish to such officer or his authorized representative an abstract of the return of income of any individual, or supply him with information concerning an item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted only if the statutes of the United States, or of such other state, as the case may be, grant substantially similar privileges to the [tax commissioner] of this state as the officer charged with the administration of the tax imposed by this act.

Cooperation with Other Tax Officials of This State. The [tax commissioner] may permit other tax officials of this state to inspect the tax returns and reports filed under this act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the [tax commissioner].

SECTION 111. Closing Agreements.

(a) [Tax Commissioner] Authorized. The [tax commissioner], or any person authorized in writing by him, is authorized to enter into an agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect to the tax imposed by this act for any taxable period.

(b) Finality. If such agreement is approved by the [state auditor] within such time as may be stated in such agreement or later agreed to, such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) the case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(2) in any suit, action, or proceeding under such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SECTION 112. Governor May Contract with Secretary of the Treasury for Collection of State Tax. Pursuant to this act and to the State and Local Fiscal Assistance Act of 1972, P.L. 92-512 and regulations thereunder, the governor or his delegate is authorized, in his discretion, to enter into an agreement with the Secretary of the Treasury of the United States or his delegate, under which, to the extent provided by the terms of the agreement, the Secretary or his delegate will administer,
enforce, and collect such income tax in behalf of the state. [The cost of the services performed by
the Secretary or his delegate in administering, enforcing, or collecting an income tax under the
terms of such an agreement may be paid from the appropriations for the general operations of the
tax department.]

SECTION 113. Governor May Contract with Secretary of the Treasury for State Adminis-
tration of Federal Tax. The governor or his delegate is authorized in his discretion to enter into
an agreement with the Secretary of the Treasury of the United States or his delegate under which,
to the extent provided by the terms of the agreement, the governor or his delegate will undertake
to conduct on behalf of the United States any administrative, enforcement, or collection function
in respect to the Federal income tax on individuals. Such agreement shall make provision for the
payment by the United States of cost of the services performed on its behalf.

SECTION 114. Armed Forces Relief Provisions.

(a) Time of Performance. The period of service in the armed forces of the United States in
combat zones plus any period of continuous hospitalization outside this state attributable to such
service plus the next 180 days shall be disregarded in determining, under regulation to be promul-
gated by the [tax commissioner], whether any act required by this act was performed by a taxpayer
or his representative within the time prescribed therefor.

(b) Death Attributable to Service in Combat Zone. In the case of any individual who dies during
an induction period while in active service as a member of the armed forces of the United States,
if such death occurred while the individual was serving in a combat zone or as a result of wounds,
disease, or injury incurred while so serving, the tax imposed by this act shall not apply with respect
to the taxable year in which falls the date of his death, or with respect to any prior taxable year
ending on or after the first day he so served in a combat zone.

SECTION 115. Effective Date. This act shall take effect immediately and shall be applicable with
respect to items of income, deduction, loss, or gain accruing in taxable years ending on or after
[January 1, 19 ] but only to the extent such items have been earned, received, incurred, or accrued on
or after [January 1, 19 ]. For the purpose of facilitating the administration of the tax imposed by
this act during the transitional period, the [tax commissioner] shall provide by regulation for the
filing of returns in respect to taxable periods of less than 12 calendar months ending after
[January 1, 19 ] and prior to [December 31, 19 ].

SECTION 116. Separability. [Insert separability clause.]

SECTION 117. Disposition of Revenues. [Insert appropriate language, if needed, for disposi-
tion of revenues.]
The retail sales tax ranks behind the property tax as the most widely used of the major tax sources in the state-local tax system. As of early 1975, the state sales tax was producing about 17 percent of total state-local tax revenue in the United States. Less than 2 percent of the nation's population resides in the handful of states that do not levy a sales tax (as of January, 1975: Alaska, Delaware, Montana, Oregon, and New Hampshire). But, interstate variations in sales tax rates and coverage still loom large, indicating considerable untapped sales tax potential. Both a higher rate and a more inclusive tax base will increase the yield of the sales tax. The Advisory Commission on Intergovernmental Relations for a long while has urged a more intensive state use of both sales and income taxes, noting that the sales tax is capable of producing between 20 and 25 percent of total state-local tax revenue (in contrast to the present 17 percent) without imposing an undue burden on low income families, so long as food and drugs are exempted, or if covered, compensated for by a credit-rebate arrangement.

The rationale for the retail sales tax rests on the belief that consumption is an appropriate basis on which to distribute a substantial part of the state tax load. Most state sales taxes, however, fall far short of carrying this philosophy into practice. While the vast bulk of sales of tangible personal property are taxed, many states tax a limited number of services. Utility services and the rental of rooms to transients represent the services most frequently taxed. Only a few state sales taxes include other consumer services such as laundering and dry cleaning and automotive repairing despite evidence that expenditures of this kind bulk larger each year in aggregate consumer spending.

In general, the following suggested legislation attempts to achieve the closest possible relationship between the tax base and consumer spending - consistent with administrative feasibility. A broader base will require a lower nominal rate to obtain a desired yield. It will provide maximum responsiveness of sales tax receipts to economic growth. It will also simplify administration by avoiding the necessity for vendors and the state to distinguish between taxable and nontaxable goods and services.

The percentage of income expended on services tends to rise as incomes rise; taxation of services therefore tends to make the sales tax less regressive. The inclusion of services in the base also makes the tax yield more responsive to growth in economic activity. In addition, the sale of taxable commodities often involves services which are difficult to account for separately. Sales tax compliance and administration are therefore far simpler where the entire price is taxable than where the service and commodity elements must be segregated. The draft legislation which follows extends the sales tax base to many services rendered to individuals by firms that would frequently be sales tax collectors in any case. State sales tax statutes that include a wider variety of services thus contribute to equity, revenue productivity, and administrative ease.

The tax base encompassed in this legislation differs from many state sales tax statutes in another important respect - sales of items subject to specific excises, e.g., cigarettes, motor fuel, and alcoholic beverages, are taxed. This treatment accords more closely to the underlying rationale for the sales tax as a general levy applicable broadly to all items of consumer spending which may be supplemented by special excise taxes. States that now subject certain items to special taxation and exempt them from the general sales tax should reverse the pattern on grounds of both sales tax logic and administrative ease.

From the very beginning of the sales tax movement, this levy encountered criticism because, in concept at least, it applied to such necessities as food, clothing, shoes, and drugs. This indictment proved strong enough in many states to secure exemptions for food, drug, and other commodities as the political price for enactment. Seventeen of the 45 sales tax states now exempt purchases of food for home consumption; the District of Columbia taxes food at a preferential low rate. Twenty-nine states and the District of Columbia

provide complete or partial sales tax exemption for purchases of prescription drugs.

Studies have shown that a food exemption may cut sales tax collections by as much as 25 percent. Part of this loss stems from a “leakage” problem now that supermarkets sell toasters as well as loaves of bread. While the exemption of food sales reduces the regressive impact of the sales tax, several states achieve a similar result without sacrificing as much revenue. The technique, a tax credit against the state’s personal income tax, almost squares the revenue circle — that of maximizing consumer tax yields while minimizing the burden which these levies impose on low income families. The following suggested legislation allows for this approach.¹

Exemptions and exclusions from tax in this legislation are thus less numerous than in most state sales tax statutes. Sales for resale and sales of commodities that are intended to become ingredients or component parts of other commodities must, of course, be exempted to avoid sales tax pyramiding. When the tax applies to producers’ goods, the result may be a multiple burden on the final product. It is argued that this can both retard economic growth and force certain entrepreneurs to absorb a tax not intended to rest on them. Because it is not easy to distinguish between goods intended for producer or consumer use — fuel and electricity, rugs and furnishings, typewriters and many other office supply and equipment items — the exclusion of producers’ goods must be confined to clearly identifiable products. The guidelines provided in this legislation exclude from taxable sales: (a) the sale of tangible personal property that is consumed, destroyed, or loses its identity in the manufacture of other property for later sale; and (b) the sale of specific machinery and processing equipment designed exclusively and made for and specifically used in the manufacture of a product or the rendering of a taxable service.

The form of the following legislation is a tax on the vendor for the privilege of selling at retail. This approach has several advantages over the other forms (a tax on the sale, the receipts from sales, or on the consumer, with the vendor being made responsible for collection and payment of the tax to the state). While clearly defining the liability, it also avoids the necessity of exempting small sales (vending machine sales) and the useless and time consuming requirement of accounting for every penny collected under a tax imposed on the consumer. The statute expresses a legislative intent that the burden be passed on to the consumer as an item separate from the price of the product, and by appropriate provisions seeks to achieve this result in a manner that has been found generally acceptable to retailers.

Several of the recent state sales tax enactments provide for a small percentage-of-tax allowance to vendors for collecting the tax from consumers. While this increases retailer acceptance of the tax, it is criticized on the grounds that a flat percentage allowance fails to account for differences in retailer compliance costs. A number of states allow retailers the right to retain “breakage,” that is, the amount collected under the bracket system in excess of the amount due the state, as a means of helping them meet their compliance burden. Proponents of this method contend that under it retailers in the same line are similarly benefitted and therefore no competitive disturbance results. They argue that breakage is usually greatest in those businesses with large numbers of small sales where highest compliance costs occur. Percentage allowances, in contrast, constitute arbitrary payments that may or may not bear a reasonable relationship to actual ratios of compliance cost to taxes paid. The “breakage” method of compensating retailers has been provided in this legislation.

The Virginia sales tax law enacted in 1966 has been used as the framework for this suggested legislation. Following is a list of section numbers and titles contained in the draft bill:

Section 1 Purpose
Section 2 Definitions
Section 3 Imposition of Sales Tax
Section 4 Imposition of Use Tax
Section 5 Exclusions and Exemptions
Section 6 Credit for Taxes Paid in Another State

¹State Legislative Program of the Advisory Commission on Intergovernmental Relations (Washington, D.C.). State personal income tax legislation developed by the Advisory Commission on Intergovernmental Relations provides for a food tax credit and authorizes per capita tax rebates to low income families who would not benefit from an income tax credit.
Section 7  Applicability or Inapplicability of Use Tax in Certain Cases
Section 8  Moving Residence or Business into State: Use Tax
Section 9  Diversion of Tangible Personal Property to Personal Use
Section 10  Dealers
Section 11  Contractors
Section 12  Certificates of Registration
Section 13  Exemption Certificates
Section 14  Collection
Section 15  Absorption of Tax Prohibited
Section 16  Returns by Dealers
Section 17  Payment to Accompany Dealer’s Return
Section 18  Returned Goods
Section 19  Repossessions
Section 20  Bad Debts
Section 21  Extensions
Section 22  Civil Penalties
Section 23  Assessment Based on Estimate
Section 24  Records
Section 25  Sale of Business
Section 26  Bond
Section 27  Jeopardy Assessment
Section 28  Direct Payment Permits
Section 29  Vending Machine Sales
Section 30  Tax Warrants
Section 31  Erroneous Assessments
Section 32  Period of Limitations
Section 33  Violation of Act by Dealer a Misdemeanor
Section 34  Administration
Section 35  Rules and Regulations
Section 36  Administration of Oaths
Section 37  Secrecy of Information
Section 38  Exchange of Information with Other Tax Officials
Section 39  Personnel, Supplies, Equipment, Other Expenses
Section 40  Separability
Section 41  Effective Date of Tax
Suggested Legislation

[RETAIL SALES AND USE TAX ACT]

(\textit{Be it enacted, etc.})

SECTION 1. \textit{Purpose}. It is the purpose of this act to impose a retail sales and use tax.

SECTION 2. \textit{Definitions}. The following words, terms, and phrases shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(a) "Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit, or advantage, either direct or indirect.

(b) "Commissioner" means the state tax commissioner.

(c) "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in subsection (n) of this section without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(d) "Distribution" includes the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted the property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this act.

(e) "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price in subsection (n) of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

(f) "Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this act, without any deduction whatsoever of any kind or character, except as provided in this act. "Gross sales" do not include the Federal retailers' excise tax if this excise tax is billed to the purchaser separately from the selling price of the article, or the retail sales or use tax, or any sales tax imposed by any county or city.

(g) "Import" and "imported" apply to tangible personal property imported into this state from other states as well as from foreign countries, and the words "export" and "exported" apply to tangible personal property exported from this state to other states as well as to foreign countries.

(h) "In this state" or "in the state" means within the exterior limits of the state of [ ] and includes all territory within these limits owned by or ceded to the United States of America.
(i) "Lease or rental" means the leasing or renting of tangible personal property and the possession
or use thereof by the lessee or rentee for a consideration, without transfer of the title to the property.

(j) "Person" means any individual, firm, copartnership, cooperative, non-profit membership
corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy,
receiver, auctioneer, syndicate, assignee, club, society, or other group combination acting as a unit,
body politic, or political subdivision, whether public or private, or quasipublic, and the plural as well
as the singular number.

(k) "Retailer" means every person engaged in the business of making sales of tangible personal
property and taxable services as defined in this act.

(1) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose
other than for resale in the form of tangible personal property or services taxable under this act, and
includes any such transaction as the commissioner upon investigation finds to be in lieu of a sale; but
sales for resale must be made in strict compliance with rules and regulations made under this act. Any
person making a sale for resale which is not in strict compliance with such rules and regulations shall
himself be liable for and pay the tax. "Retail sale" and a "sale at retail" include:

(1) the sale or charges for any room or rooms, lodging, or accommodations furnished to
transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other
place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a
consideration. A transient is a person who occupies rooms, lodgings, or accommodations for less than
a period of 90 continuous days;

(2) sales of tangible personal property to persons for resale if, because of the operation of the
business, or its very nature, or the lack of a place of business in which to display a certificate of
registration, or the lack of a place of business in which to keep records, or the lack of adequate
records, or because the persons are minors or transients, or because the persons are engaged in
essentially service businesses, or for any other reason, there is likelihood that the state will lose tax
funds due to difficulty of policing the business operations. The commissioner may promulgate rules
and regulations requiring vendors of or sellers to such persons to collect the tax imposed by this act
on the cost price of the tangible personal property to such persons and may refuse to issue certificates
of registration to such persons;¹

(3) the sale or charge of admissions;

(4) the charge or consideration for the service of repairing, altering, mending, pressing,
fitting, dyeing, laundering, dry cleaning, or cleaning tangible personal property, or applying or
installing tangible personal property as a repair or replacement part of other personal property for a

¹Louisiana requires wholesalers to collect and prepay a portion of the sales tax liability of certain vendors who then merely remit the
difference between the total liability and the amount they prepaid through wholesalers.
consideration, whether or not the services are performed directly or by means of coin operated equip-
ment or by any other means, and whether or not any tangible personal property is transferred in con-
junction with the service, except such services as are rendered in the construction, remodeling, repair,
or maintenance of real estate and such services as are rendered directly in conjunction with the
processing, manufacturing, refining, or conversion of products for sale or resale;
(5) the charge for the service of printing or imprinting, photographing, or copying by any
means whatsoever for a consideration for persons who furnish either directly or indirectly the
materials used in conjunction with the rendition of the service;
(6) the charge for barber and beauty services to persons and animals for a consideration
whether or not any tangible personal property is transferred in conjunction with the performance of
the service;
(7) the charge for motor vehicle parking service or parking space in privately owned parking
lots or garages and the charge for docking or storage space for boats in privately owned boat docks or
marinas;
(8) all charges for work relating to motor vehicles and boats of another whether or not any
tangible personal property is transferred in conjunction with services performed; and
(9) the furnishing of intrastate telephonic and telegraphic communications and services.
(m) "Sale" means any transfer of title or possession, or both, exchange, barter, lease, or rental,
conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property
and any rendition of a taxable service for a consideration, and includes the fabrication of tangible
personal property for consumers who furnish, either directly or indirectly, the materials used in
fabrication; and the furnishing, preparing, or serving for a consideration of any tangible personal
property consumed on the premises of the person furnishing, preparing, or serving such tangible
personal property. A transaction whereby the possession of property is transferred but the seller
retains title as security for the payment of the price shall be deemed a sale.
(n) "Sales price" means the total amount for which tangible personal property or services are sold,
including any services that are a part of the sale, valued in money, whether paid in money or other-
wise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the
dealer, without any deduction therefrom on account of the cost of the property sold, the cost of
materials used, labor or service costs, losses or any other expenses whatsoever; but cash discount
allowed and taken on sales are not included in the sales price; nor shall the sales price include finance
charges, carrying charges, service charges or interest from credit extended on sales of tangible personal
property under conditional sales contracts or other conditional contracts providing for deferred pay-
ments of the purchase price or transportation charges separately stated. If used articles are taken in
trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax
levied by this act shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

(o) "Storage" means any keeping or retention of tangible personal property for use, consumption, or distribution in this state, or for any purpose other than the sale at retail in the regular course of business.

(p) "Tangible personal property" means personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" does not include stocks, bonds, notes, insurance, or other obligations or securities.

(q) "Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.

(r) "Use tax" means the tax imposed upon the use, consumption, distribution, and storage of tangible personal property as herein defined.

SECTION 3. Imposition of Sales Tax. There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this state, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this act, or who leases or rents such property within this state, the same to be collected in the amount to be determined by applying the rate of [ ] percent to:

(a) the sales price of each item or article if tangible personal property when sold at retail or distributed in this state, the tax to be computed on gross sales;

(b) the gross proceeds derived from the lease or rental of tangible personal property, as defined in this act, where the lease or rental of such property is an established business, or part of an established business, or is incidental or germane to the business;

(c) the cost price of each item or article of tangible personal property stored in this state for use or consumption in this state;

(d) the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in paragraph (l)(1), Section 2 of this act;

(e) the gross sales of all services taxable under this act. No services are taxable under this act except those expressly enumerated and made taxable.

SECTION 4. Imposition of Use Tax. There is levied and imposed, in addition to all other taxes and fees of every kind except the tax imposed under Section 3 of this act, a tax upon the use or consumption of tangible personal property in this state, to be collected in the amount determined by applying the rate of [ ] percent to the cost price of each item or article of tangible personal
property used or consumed in this state; provided that tangible personal property which has been
acquired after the effective date of this act for use outside this state and subsequently becomes subject
to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought
within this state for use within six months of its acquisition; but if so brought within this state six
months or more after its acquisition, the property shall be taxed on the basis of the current market
value, but not in excess of the cost price of the property at the time of its first use within this state;
provided, further, that the tax shall be based on such proportion of the cost price or current market
value as the duration of time of use within this state bears to the total useful life of the property but it
shall be presumed in all cases that the property will remain within this state for the remainder of its
useful life unless convincing evidence is provided to the contrary.

SECTION 5. Exclusions and Exemptions. "Retail sale" or "sale at retail" do not include the sale of:

(a) tangible personal property which becomes an ingredient, or component part of, or is consumed
or destroyed or loses its identity in the manufacture of tangible personal property for later sale but
does include fuel and electricity;

(b) specific machinery and processing equipment and repair parts, or replacement thereof,
exclusively designed and made for and specifically used in the manufacture of a product or the
rendering of a taxable service;

(c) materials, containers, labels, sacks, cans, boxes, drums or bags, and other packing, packaging,
or shipping materials for use in packing, packaging, or shipping tangible personal property;

(d) tangible personal property delivered pursuant to bona fide written contracts entered into
before the date of the enactment of this act, provided delivery is made within 90 days after the effective
date of this act; and building supplies, fixtures, or equipment that enter into or become a part of a
building or other kind of structure in this state, where plans, specifications, and the construction
contract for a specific project have been entered into prior to the date of the enactment of this act,
provided delivery is made within the time specified in such contract for the completion of such
specific project;

(e) commercial feeds, seed, plants, fertilizers, liming materials, breeding and other livestock,
semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel for drying or curing
crops, containers for fruits and vegetables, or farm machinery, and all other agricultural supplies
provided they are sold to and purchased by farmers for use in agricultural production for market;

(f) tangible personal property sold or leased to a public utility for use or consumption by the

1This legislation takes the approach that exclusions and exemptions should be held to a minimum consistent with the need to avoid
tax pyramiding. As the introductory statement notes, there is ample justification for reducing the regressivity of the sales tax either
by providing exemption for food and drugs or by adopting the income tax credit-tax rebate approach. There is no similar compelling
justification for exempting sales to state and local governments or to nonprofit educational, religious, and charitable organizations.
Accordingly, this section makes no provision for any of the foregoing exemptions.
utility directly in the rendition of it public service;

(g) school lunches sold and served to pupils and employees of schools and subsidized by govern-
ment, and school textbooks sold by a local school board or authorized agency thereof, and school
textbooks sold by a college or other institution of learning, not conducted for profit, for use of
students attending the institution of learning;

(h) tangible personal property not held or used by a seller in the course of an activity for which he
is required to hold a certificate of registration, sometimes referred to as "casual sales;"

(i) tangible personal property for future use by a person for taxable lease or rental as an estab-
lished business or part of an established business, or incidental or germane to the business, including a
simultaneous purchase and taxable leaseback;

(j) tangible personal property and taxable services for use or consumption by the United States;
but this exclusion shall not apply to sales and leases to privately owned financial and other privately
owned corporations chartered by the United States;

(k) delivery of tangible personal property outside this state for use or consumption outside this
state.

SECTION 6. Credit for Taxes Paid in Another State. A credit shall be granted against the taxes
imposed by this act with respect to a person's use in this state of tangible personal property purchased
by him in another state. The amount of the credit shall be equal to the tax paid by him to another
state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use
of the property. The amount of the credit shall not exceed the tax imposed by this act.

SECTION 7. Applicability or Inapplicability of Use Tax in Certain Cases. The use tax does not
apply to tangible personal property owned or acquired in this state or imported into this state, or held
or stored in this state, prior to the effective date of this act. The use tax does apply to all tangible
personal property imported or caused to be imported into this state on or after the effective date of this
act except as provided in this act, unless the property has previously been subject to a sales or use tax
in another state or political subdivision equal to or greater than the tax imposed by this act for which
credit is given under Section 9, or unless proof is furnished that the tangible personal property
imported or caused to be imported into this state was owned or acquired prior to the effective date of
this act, or otherwise is exempt under this act, but the use tax does not apply to the use of any article
or tangible personal property brought into the state by a non-resident individual for his personal use
while visiting within the state.

SECTION 8. Moving Residence or Business into State; Use Tax. The use tax does not apply to
tangible personal property purchased outside this state for use outside this state by a then non-
resident natural person or a business entity not actually doing business within this state who or which
later brings the tangible personal property into this state in connection with his establishment of a
permanent residence or business in this state, provided that the property was purchased more than six
months prior to the date it was first brought into this state or prior to the establishment of the
residence or business, whichever first occurs. This section does not apply to tangible personal
property temporarily brought into this state for the performance of contracts for the construction,
reconstruction, installation, repair, or for any other service with respect to real estate or fixtures
thereon.

SECTION 9. Diversion of Tangible Personal Property to Personal Use. The use tax applies to
tangible personal property and taxable services of persons holding themselves out as sellers of goods
and services when tangible personal property or taxable services are diverted to the personal use of the
person, his family, or his employees.

SECTION 10. Dealers. The tax levied in Section 3 and Section 4 shall be collected from “dealers.”
For the purpose of this act, “dealer” means:
(a) any person physically located in this state who:

(1) manufactures or produces tangible personal property for sale at retail for use, consump-
tion, or distribution, or for storage to be used or consumed in this state;
(2) imports or causes to be imported into this state tangible personal property from any state
or foreign country for sale at retail for use, consumption, or distribution, or for storage to be used or
consumed in this state;
(3) sells at retail, or offers for sale at retail, or has in possession for sale at retail or for use,
consumption, or distribution, or for storage to be used or consumed in this state, tangible personal
property and taxable services as defined in this act;
(4) has sold at retail, or used, consumed, or distributed, or stored for use or consumption in
this state, tangible personal property or who has performed taxable services, and who cannot prove
that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or
storage of such tangible personal property or the charge for the rendition of taxable services;
(5) leases or rents tangible personal property, as defined in this act, for a consideration,
permitting the use or possession of the property without transferring title thereto; and

(b) every other person who:

(1) maintains or has within this state, directly, or by an agent or a subsidiary, an office,
distributing house, sales room, or house, warehouse, or other place of business;
(2) solicits business in this state either by employees, independent contractors, agents, or other
representatives and by reason thereof makes sales to persons within this state of tangible personal
property, the use of which is taxed by this act; and any other person making sales to persons within
this state of tangible personal property, the use of which is taxed by this act, who may be authorized
by the commissioner to collect such tax;
(3) as a representative, agent, or solicitor for an out-of-state principal, solicits, receives, and accepts orders from persons in this state for future delivery and whose principal refuses to register under this act;

(4) shall become liable to and shall owe this state any amount of tax imposed by this act, whether or not he holds, or is required to hold, a certificate of registration under this act.

SECTION 11. Contractors.

(a) Any person who contracts orally, in writing, or by purchase order to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon and in connection therewith to furnish tangible personal property or taxable services, shall be deemed to have purchased the tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for the person shall collect the tax to the extent required by this act.

(b) Any person who contracts to perform services in this state and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and if a sale or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title, or interest in the tangible personal property becomes vested in the contractor; but this subsection does not apply to the sale of tangible personal property which becomes an ingredient, or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale or governmental exclusion set out in Section 5 of this act.

(c) Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipmentental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

(d) Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section.

(e) Nothing in this section shall be construed to affect or limit the resale exclusion provided for in this act, nor shall anything contained herein be construed to impose any sales or use tax with respect to the use, in the performance of contracts with the United States or this state and its political subdivisions, of tangible personal property owned by a governmental body which actually is not used or
 consumed in the performance thereof.

SECTION 12. Certificates of Registration.

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business in this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) When the required application had been made the commissioner shall issue to each applicant a separate certificate of registration for each place of business within this state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

(d) Whenever any person fails to comply with any provision of this act or any rule or regulation of the commissioner relating thereto, the commissioner, upon hearing after giving such person ten days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by certified mail directed to the last known address of the person. A dealer whose certificate of registration has been previously suspended or revoked shall pay the commissioner a fee of $[ ] dollars for the renewal or reissuance of a certificate of registration.

(e) Any person who engages in business as a dealer in this state without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business is guilty of a misdemeanor; each day's continuance in business in violation of this section is a separate offense.

(f) If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate expires; and the holder shall inform the commissioner in writing within 30 days after he has ceased to conduct the business at that place, but if the holder of a certificate of registration desires to change his place of business to another place in this state, he shall so inform the commissioner in writing, and his certificate shall be revised accordingly.

(g) This section also applies to any person who engages in the business of furnishing any of the things or services taxable under this act. Also, it applies to any person who is liable only for the collection of the use tax, but that person may be issued a certificate of registration in relevant form.
SECTION 13. Exemption Certificates.

(a) All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the person who makes the sale, distribution, lease, or storage, unless he takes from the purchaser or lessee a certificate to the effect that the transaction is exempt under this act.

(b) The certificate mentioned in this section relieves the person who takes the certificate from any liability for the payment or collection of the tax, except upon notice from the commissioner that the certificate is no longer acceptable. The certificate shall be signed by and bear the name and address of the purchaser or lessee, indicate the number of the certificate of registration, if any, issued to the purchaser, or lessee, indicate the general character of the taxable service rendered or tangible personal property sold, distributed, leased, or stored [or to be sold, distributed, leased, or stored under a blanket exemption certificate], and be substantially in such form as the commissioner prescribes.

(c) If a purchaser or lessee who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding property for resale, distribution, or lease in the regular course of business, the use shall be deemed a taxable sale by the purchaser or lessee as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the purchaser shall pay the tax on the cost of the property to him and when the property is sold shall collect and pay the tax on the difference between the cost of the property to him and the rental sales price.

(d) If a purchaser gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distribution from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

SECTION 14. Collection. The tax levied by this act shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add the tax to the sales price or charge; and thereafter, the tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable by law in the same manner as other debts, but no action by law or suit in equity under this act may be maintained in this state by any dealer who is not registered under this act, or is delinquent in the payment of the taxes imposed under this act.

To eliminate separate statement of the amount of tax in fractions of one cent, dealers shall add to the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may be
prescribed by the commissioner to carry out the purposes of this section.

Notwithstanding any exemption from taxes which any dealer enjoys under the constitution or laws of this or any other state, or of the United States, the dealer shall collect the tax from the purchaser, consumer, or lessee and shall pay it over to the commissioner as herein provided.

Any dealer who neglects, fails, or refuses to collect the tax upon each and every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and the dealer shall not thereafter be entitled to sue for or recover in this state any part of the purchase price or rental from the purchaser until the tax is paid.

Also, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a misdemeanor.

SECTION 15. Absorption of Tax Prohibited. No person shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of the tax, except as authorized under Section 31. Any person who violates this section is guilty of a misdemeanor.

SECTION 16. Returns by Dealers. Every dealer required to collect or pay the sales or use tax, on or before the [28th] day of the month following the month in which the tax shall become effective, shall transmit to the commissioner, upon a form prescribed, prepared, and furnished by him, a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this act during the preceding calendar month; and thereafter a like return shall be prepared and transmitted to the commissioner by every dealer on or before the [28th] day of each month, for the preceding calendar month. The return also shall contain a statement showing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by this act, or if the form so provides, the total amount thereof without specifying each class. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the commissioner may make rules and regulations for reporting consistent with the accounting period. When the tax for which any dealer is liable under this act does not exceed $1 dollars in any month, or $1 dollars in any annual reporting period, the commissioner may permit a dealer upon written application to file an annual return and pay the amount of tax due on the last day of the month following the end of the annual reporting period. When the tax for which any dealer is liable under this act does not exceed $1 dollars in any month, or $1 dollars in any annual reporting period, the commissioner may permit a dealer upon written application to file a quarterly return and pay the amount of tax due on the last day of the month following the end of the quarterly period.

SECTION 17. Payment to Accompany Dealer's Return. At the time of transmitting to the commissioner the return required under Section 16, the dealer shall remit to the commissioner there-
adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as
provided in Sections 18, 19, and 20. The tax imposed by this act for each month becomes delinquent
on the day following the [28th] day of the succeeding month if not theretofore paid.

SECTION 18. Returned Goods. If purchases are returned to the dealer by the purchaser or
consumer after the tax imposed by this act has been collected or charged to the account of the
purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by him, in
the manner prescribed by the commissioner, but the amount of tax so reimbursed to the dealer shall
not include the tax paid upon any cash retained by the dealer after the return of merchandise; and if
the tax has not been remitted by the dealer, the dealer may deduct it in submitting his return. The
dealer shall be issued a refund by the commissioner equal to the net amount remitted by the dealer for
the tax collected if the dealer can establish that the tax was not due.

SECTION 19. Repossessions. A dealer who has paid the tax on tangible personal property sold
under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him
upon the unpaid balance due him when he repossesses the property, the credit to be administered by
the commissioner in the same manner as provided for returned purchases under Section 18. When
repossessed property is resold, the sale is subject in all respects to this act.

SECTION 20. Bad Debts. In any return filed under the provisions of this act, the dealer, under
rules and regulations prescribed by the commissioner, may credit against the tax shown to be due on
the return the amount of sales or use tax previously returned and paid on accounts which during the
period covered by the current return have been found to be worthless and actually charged off for
income tax purposes; except that if any accounts so charged off are thereafter in whole or in part paid
to the dealer, the amount paid shall be included in the first return filed after the collection and the tax
paid accordingly.

SECTION 21. Extensions. The commissioner may grant an extension upon written application
therefor to the end of the calendar month in which any tax return is due hereunder or for a period not
exceeding 30 days, and no interest or penalty shall be charged, assessed, or collected by reason of the
granting of the extension, except that when an extension is granted beyond the end of the calendar
month in which any tax return is due, interest on the tax at the rate of 0.5 percent per month, or frac-
tion thereof, shall be charged.

SECTION 22. Civil Penalties. When any dealer fails to make any return and pay the full amount
of the tax required by this act, there shall be imposed, in addition to other penalties provided herein, a
specific penalty to be added to the tax in the amount of [$10] and [10] percent of the tax due if the
failure is for not more than 30 days, with an additional [5] percent for each additional 30 days, or
fraction thereof, during which the failure continues, not to exceed [25] percent in the aggregate; but,
if the failure is due to providential cause shown to the satisfaction of the commissioner, the return
with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this act, a specific penalty of [50] percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this act shall be payable by the dealer and collectible by the commission as if they were a part of the tax imposed.

SECTION 23. Assessment Based on Estimate.

(a) If any dealer fails to make a return as provided by this act, or makes a grossly incorrect return, or a return that is false or fraudulent, the commissioner shall make an estimate for the taxable period of the retail sales or distributions of the dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption in the state or storage by the dealer of tangible personal property to be used or consumed in the state, and assess the tax, plus penalties. The commissioner shall give the dealer ten days' notice in writing requiring the dealer to appear before him or an assistant with such books, records, and papers as he requires relating to the business of the dealer for the taxable period; and the commissioner may require the dealer or the agents and employees of the dealer to give testimony or to answer interrogatories under oath administered by the commissioner or his assistants respecting the sale, distribution, lease, use, consumption, or storage of tangible personal property or taxable services, or the failure to make a return thereof as provided in this act. If any dealer fails to make any return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of an investigation relating to the sale, distribution, lease, use, consumption, or storage of tangible personal property or taxable services, the commissioner may make the assessment based upon information available to him and issue a warrant for the collection of the taxes and penalties found to be due. The assessment shall be deemed prima facie correct.

(b) If the dealer has imported the tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this act, the commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent they have accrued, on the true sales price as ascertained by him. The assessment shall be deemed prima facie correct.

(c) In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgement of the commissioner, does not represent the true or actual consideration, the commissioner may fix it and assess and collect the tax thereon as above provided, with penalties as have accrued. The assessment shall be deemed prima facie correct.


(a) Every dealer required to make a return and pay or collect any tax under this act shall keep and
preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this act, and other books of account as necessary to determine the amount of tax due hereunder, and other pertinent information as required by the commissioner; and every dealer shall keep and preserve for a period of four years all invoices and other records of goods, wares, and merchandise, or other subjects of taxation under this act, and all the books, invoices, and other records shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In order to aid in the administration and enforcement of the provisions of this act, all wholesalers and jobbers in this state shall keep a record of all sales of tangible personal property, whether the sales be for cash or on terms of credit. The records required to be kept by all wholesalers and jobbers shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of four years and shall be open to the inspection of the commissioner or his authorized agents at all reasonable hours during the day. The failure of any wholesaler or jobber in this state to keep the records, or the failure of any wholesaler or jobber in this state to permit an inspection of the records by the commissioner as aforesaid, is a misdemeanor. Moreover, if any person who is both a retailer and a wholesaler or jobber fails to keep proper records showing wholesale sales and retail sales separately, he shall pay the tax as a retailer on both classes of his business.

(c) For the purpose of enforcing the collection of the tax levied by this act, the commissioner through his authorized agents may examine at all reasonable hours during the day the books, records, and other documents of all transportation companies, agencies, firms, or persons that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If the transportation company, agency, firm, or person refuses to permit an examination of its or his books, records, and other documents by the commissioner, it or he shall be deemed guilty of a misdemeanor. Moreover, the commissioner may proceed by citing the transportation company, agency, firm, or person to show cause before any court of record why the books, records, and other documents should not be examined pursuant to the injunction of the court, and why a bond should not be required with proper security in the penalty of not more than [$2,000] conditioned upon compliance with the provisions hereof for a period of not more than one year.

SECTION 25. Sale of Business. If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. The return shall include any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the
former owner produces a receipt from the commissioner showing that they have been paid or a certifi-
cate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of
goods fails to withhold the purchase money as above provided, he shall be personally liable for the
payment of the taxes, penalties, and interest due and unpaid on account of the operation of the
business by any former owner. Nothing herein shall be deemed to qualify or limit the exemption as to
such a sale as is covered by Section 5.

SECTION 26. Bond. The commissioner, if necessary and advisable in order to secure the collec-
tion of the tax levied by this act, may require any person subject to the tax to file with him a bond of a
surety company authorized to do business in this state as surety, in such reasonable amount as the
commissioner fixes, to secure the payment of any tax, penalty, or interest due or which may become
due from the person. In lieu of a bond, securities approved by the commissioner may be deposited with
the [state treasurer] which securities shall be kept in the custody of the [state treasurer], and shall be
sold by him, at the request of the commissioner, at public or private sale, without notice to the
depositor thereof, if necessary, in order to recover any tax, penalty, or interest due the state under this
act. Upon the sale, the surplus, if any, above the amounts due under this act, shall be returned to the
person who deposited the securities.

SECTION 27. Jeopardy Assessment. If the commissioner deems that the collection of any tax or
any amount of tax, required to be collected and paid under this act, may be jeopardized by delay, he
shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a
notice of the assessment to the taxpayer together with a demand for immediate payment of the tax or
the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current
period, the commissioner may declare the taxable period of the taxpayer immediately terminated and
shall cause notice of the finding and declaration to be mailed or issued to the taxpayer together with a
demand for immediate payment of the tax based on the period declared terminated and the tax shall be
immediately due and payable, whether or not the time otherwise allowed by law for filing a return and
paying the tax has expired. Assessments provided for in this section shall become immediately due
and payable, and if any tax, penalty, or interest is not paid upon demand of the commissioner, he
shall proceed to collect it by legal process, or, in his discretion, he may require the taxpayer to file a
bond sufficient to protect the interest of the state.


(a) Notwithstanding any other provision of this act, the commissioner may authorize:

(1) a manufacturer, mine operator, or public service corporation that is a user, consumer,
distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are
made under circumstances which normally make it impossible at the time thereof to determine the
manner in which the property will be used by the person; or
(2) any person who stores tangible personal property in this state for use both within and outside this state, to pay any tax levied by this act directly to this state and waive the collection of the tax by the dealer; but no such authority shall be granted or exercised except upon application to the commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment permit is granted, payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof, shall be made directly to the commissioner by the permit holder.

(b) On or before the [28th] day of each month every permit holder shall make and file with the commissioner a return for the preceding month in the form prescribed by the commissioner showing the total value of the tangible personal property used, the amount of tax due from the permit holder [which amount shall be paid to the commissioner with such return] and such other information as the commissioner deems necessary. The commissioner, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on the tax at the rate of 0.5 percent per month, or fraction thereof, shall be charged on every extended payment.

(c) It is the duty of every permit holder required to make a return and pay tax under this section to keep and preserve suitable records of purchases, together with invoices of purchases, bills of lading, and other pertinent records and documents in the form the commissioner requires by regulation. All records and other documents shall be open during business hours to the inspection of the commissioner or his duly authorized agents and shall be preserved for a period of four years, unless the commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(d) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the commissioner.

(e) Persons who hold a direct payment permit which has not been cancelled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the commissioner. Upon receipt of the notice, the dealer shall be absolved from all duties and liabilities imposed by this act for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to the permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each purchaser may be ascertained.

(f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act shall thereafter apply to the person who previously held the permit, and the person shall promptly notify
in writing dealers from whom purchases, leases, and storage of tangible personal property are made of
the cancellation or surrender. Upon receipt of the notice, the dealer shall be subject to the provisions of
this act, with respect to all sales, distributions, leases, or storage of tangible personal property there-
after made to the person.

SECTION 29. Vending Machine Sales. Whenever a dealer makes sales of tangible personal
property through vending machines or in any other manner making collection of the tax impractical,
the commissioner may authorize the dealer to prepay the tax and waive collection from the purchaser
and may require the dealer to furnish bond sufficient to secure prepayment of the tax. The dealer shall
be required to print upon the property sold or post on the vending machine a statement to the effect
that the tax has been paid in advance. The terms and conditions of this section are inapplicable unless
the dealer makes application to the commissioner for the authority herein contained, and unless the
commissioner finds that the collection of the tax in the manner otherwise provided in this act is
impractical.

SECTION 30. Tax Warrants. The commissioner, when any tax becomes delinquent under this
act, may issue a warrant for the collection of the tax, penalty, and interest from each delinquent
taxpayer.

SECTION 31. Erroneous Assessments. Upon any claim of an erroneous or illegal assessment or
collection, the taxpayer shall have his remedy under the [cite applicable statutes]. The sections cited are
applicable to all sales and use taxes imposed under this act.

SECTION 32. Period of Limitations. The taxes imposed by this act shall be assessed within three
years from December 31 of the year in which the taxes became due and payable; but in the case of a
false or fraudulent return with intent to evade payment of the taxes imposed by this act, or a failure to
file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be
begun without assessment at any time within six years from December 31 of the year in which the
taxes became due and payable.

SECTION 33. Violation of Act by Dealer a Misdemeanor. Any dealer subject to the provisions of
this act who fails or refuses to furnish any return herein required to be made, or fails or refuses to
furnish a supplemental return or other data required by the commissioner, or who makes a false or
fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim
for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who
violates any other provision of this act, punishment for which is not otherwise provided, is guilty of a
misdemeanor.

SECTION 34. Administration. The commissioner shall administer and enforce the assessment
and collection of the taxes and penalties imposed by this act. He shall design, prepare, print, and
furnish to all dealers, or make available to them, all necessary forms for filing returns together with
instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment of the tax at the time and in the manner herein provided.

SECTION 35. Rules and Regulations. The commissioner may make and publish reasonable rules and regulations not inconsistent with this act, other applicable laws, or the constitution of this state, or of the United States, for enforcement of the provisions of this act and the collection of the revenue hereunder.¹

SECTION 36. Administration of Oaths. The commissioner and such other officers or employees of the [department of taxation] as the commissioner authorizes in writing may administer oaths for the purpose of enforcing and administering the provisions of this act.

SECTION 37. Secrecy of Information. Except in accordance with proper judicial order, or as provided by law, it is unlawful for the commissioner or any agent, auditor, or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any other particulars set forth or disclosed in any return required by this act. Nothing in this act shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representative of this state of the report or return of any taxpayer who applies for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this act.

SECTION 38. Exchange of Information with Other Tax Officials. The commissioner may furnish to the tax officials of any other state and its political subdivisions, the political subdivisions of this state, the District of Columbia, and the United States and its territories, any information contained in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this state, or in the report of an audit investigation made with respect thereto, provided that said jurisdictions grant similar privileges to this state and that the information is to be used only for tax purposes.

SECTION 39. Personnel, Supplies, Equipment, Other Expenses. The commissioner may employ all necessary personnel and purchase supplies and purchase or rent equipment and incur other expenses necessary for the administration of this act. All the costs and expenses shall be paid out of appropriations made to the [department of taxation].

SECTION 40. Separability. If any provision of this act be held unconstitutional or invalid by a

¹States with personal income tax statutes may wish to add a provision as follows: The commissioner shall promulgate and publish sales tax deduction guides for the purpose of aiding the taxpayer in calculating allowable deductions, relevant to income taxes, which guides shall be based on the following factors: size of income, size of family, and rate of tax. The guides so promulgated shall not preclude any taxpayer from claiming as a deduction the amount of taxes, levied under the provisions of this act, actually paid by him.
court of competent jurisdiction the same shall not affect the remaining provisions of this act but all
such provisions not held unconstitutional or invalid shall remain in full force and effect.

SECTION 41. Effective Date of Tax. The taxes imposed by this act shall be in full force and
effect on and after [insert date].
3.203 AUTHORIZATION FOR A LOCAL INCOME TAX

In the aggregate, local governments of all sizes and types raised $2.5-billion from local income taxes, or approximately 4.5 percent of total tax revenues in 1974. Most of the local income tax revenue was generated by cities ($2-billion), with county governments accounting for an additional $200-million. Among the nation's 48 largest cities (excluding Washington, D.C.), 13 utilize the local income tax and raised $1.4-billion in 1974 from this revenue source. Relative reliance on this tax source ranged from a low of 14.2 percent of total taxes in Baltimore to 78.2 percent in Columbus, Ohio.

Although local income taxes are imposed by 4,200 local jurisdiction in ten states, widespread coverage of the population by the local income tax is restricted to three states – Maryland, Ohio, and Pennsylvania. Moreover, the great bulk of the 4,000 plus jurisdictions are located in Ohio (335 municipalities) and Pennsylvania (3,765 municipalities, townships, and school systems). As the large number of local jurisdictions in both Ohio and Pennsylvania indicates, the local income tax is used by some of the very smallest jurisdictions as well as some of the largest cities. Despite the fact that most of the local governments using the income tax are “small,” there is a “big city” dimension to this tax. Following Philadelphia (1939), Toledo was the next big city (over 50,000 population) to levy a local income tax (1946), one of 11 such cities to adopt the tax between 1946 and 1959. An additional 11 large cities imposed local income taxes during the decade of the 1950s. The local income tax movement picked up additional momentum during the 1960s with 26 “big city” adoptions. In the 1970s, only Birmingham, Alabama, among cities of 50,000 or more population, has adopted a local income tax though 34 Indiana counties adopted the tax in 1973.

In its 1974 report, *Local Revenue Diversification*, the Advisory Commission on Intergovernmental Relations recommended that state governments permit counties and larger cities (25,000 and over) to levy local income and sales taxes provided certain safeguards are met: (a) collection by a state agency — as a supplement to the state income tax in those states (40) using that tax; (b) restriction to counties and larger cities or use by counties with sharing among its constituent municipalities; (c) utilization in such a way as not to widen interlocal fiscal disparities; and (d) arrangements for sharing taxes on earned income by non-residents where both jurisdiction of residence and of employment levy the tax.

The suggested legislation that follows includes the foregoing safeguards. *Section 1* specifies the purpose of the act, and *Section 2* sets forth definitions used. *Section 3* authorizes all counties and all cities of 25,000 or over to impose a local income tax of a specified percent of state income tax liability. To avoid layering, if the county desires to use the tax it must do so on a countywide basis and share the revenue with all its municipalities. If the county does not levy the tax, cities of 25,000 or more are empowered to enact it subject to subsequent preemption by the county.

*Section 4* provides for 120 day advance notice to the state administering agency for imposition or repeal of the tax. *Section 5* provides for state administration for deducting administrative costs from the proceeds, and determination of tax liability as between resident and non-resident local jurisdictions.

*Section 6* deals with reciprocal credits for taxes paid another local government on income subject to the tax authorized by the act.

*Section 7* sets forth the procedure for distribution of the proceeds to the appropriate local governments.

The suggested legislation is based in part on Maryland statutes and on Indiana, P.L. 50, *Laws of 1973*.

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Suggested Legislation

[UNIFORM LOCAL INCOME TAX LAW]

(Be it enacted, etc.)

SECTION 1. Purpose. It is the purpose of this act to authorize counties and certain cities of the state to levy a local income tax under certain conditions.

SECTION 2. Definitions.

(a) An "eligible city" is a city of at least 25,000 population as of the effective date of the tax.
(b) A "non-resident" is anyone who is not a resident.
(c) "Persons." [To be defined in conformity with the state income tax code.]
(d) A "resident" of a county or eligible city is an individual who is domiciled in that jurisdiction unless he maintains no permanent place of abode in the county or city and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than [30] days of the taxable year in the city or county; or who is not domiciled in the county or city but maintains a permanent place of abode in the county or city and spends in the aggregate more than [183] days of the taxable year in the county or city.
(e) "Taxable year." [To be defined in conformity with the state income tax code.]

SECTION 3. Authorization.

(a) Any county is authorized to impose a local income tax on its residents and on all other persons earning or receiving income from economic activities carried out in the county or eligible city at a rate not less than [ ] percent of the state income tax liability nor more than [ ] percent of the state income tax liability, provided that the rate adopted is evenly divisible by five. The county shall have the right to preempt a city income tax by adopting a countywide income tax provided that the revenues so raised by the county are shared with all cities [of at least [ ] population in the county].
(b) The share for all cities shall be equal to the fraction which total tax revenue raised by all cities within the county represents of the total tax revenue raised by the county and its cities. The share for each city shall be determined by the ratio of the city population multiplied by the fraction represented by the ratio of the county equalized, full value assessment to the city equalized, full value assessment.

If the county does not adopt the tax, the authority to enact local income taxes is extended to all eligible cities within the county subject to the conditions set forth in subsection (a) above and to subsequent

1If the state does not impose an income tax, counties and cities could be authorized to apply the local tax rates to the Federal income tax base, thereby maximizing taxpayer convenience. Also, for those states not imposing an income tax, a section requiring employer withholding of local income taxes may need to be added to the legislation. Withholding provisions are contained in the ACIR suggested legislation, *State Personal Income Tax Bill.*

2If equalized property tax assessment data are not readily available some other measure of fiscal ability such as income, tax effort, or fiscal capacity might be used.
preemption by the county.


(a) Any county or eligible city enacting an income tax pursuant to this act, shall certify at least [120] days in advance to the [state tax commissioner] the effective date of the ordinance imposing an income tax, the rate of the tax for the entire tax year, and the date when the enactment becomes effective.

(b) A county or eligible city imposing an income tax within the provisions of this act may repeal its income tax only after first giving at least [120] days notice of the contemplated repeal of its income tax to the [state tax commissioner]. The withdrawal shall be effective from and after the first day of the next calendar year.

SECTION 5. State Administration of the Local Income Tax. The income tax authorized under the provisions of this act in any county or eligible city shall be administered by the [state tax commissioner].

(a) Revenues collected under local income taxes shall be accounted for separately and shall be paid into a separate fund to be distributed to the county and eligible cities imposing such taxes after deducting an amount to cover expenditures incurred by the [state tax commissioner] in administering the local income taxes. The rules and regulations promulgated in accordance with the state income tax shall apply to the local income taxes except when, in the judgment of the [state tax commissioner], such rules would be inconsistent or not feasible of proper administration. The [state tax commissioner] is authorized to make any refunds to taxpayers pursuant to this act.

(b) In the case of the withholding of local income taxes from wages of a non-resident, the local income tax shall be credited solely to the place of employment provided such jurisdiction imposes a local income tax and the place of residence in this state does not impose a local income tax. If both the jurisdiction of employment and of residence impose local income taxes, an amount equal to one-half of the tax a non-resident would owe if such person worked in his jurisdiction of residence in this state shall be credited by the [state tax commissioner] to the non-resident’s place of residence in this state.

SECTION 6. Credit for Income Tax Paid to a Political Subdivision of Another State. A resident individual shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax required to be paid by him during the taxable year to a political subdivision of another state of the United States on income derived from sources therein and which is also subject to tax.

1Intercounty equalization of revenues can be dealt with by state grant programs designed to bring all below average county income tax yields per capita (adjusted for differences in rates) up to the average for the state.

2If the state does not impose an income tax, the state (central finance agency, comptroller, or department of local affairs) might be selected to administer the tax.
SECTION 7. Distribution of Collection Among Local Governments. All sums collected pursuant to this act shall be credited to a special local income tax fund which is hereby established in the [state treasury]. After deducting the amount of refunds made, a reserve for expected or anticipated refunds, and the costs of administering the tax, the remaining sums shall be returned by [appropriate state official] to the county or eligible city of origin by the [15th day of the month following the month during which such sums were collected].

SECTION 8. Separability. [Insert separability clause.]

SECTION 9. Effective Date. [Insert effective date.]
The first local sales tax was adopted by New York City in 1934, closely followed by a New Orleans levy, initially adopted in 1936, and made into a general tax in 1938. Despite this early experience, the local sales tax "movement" is distinctly a product of the postwar period. California and Illinois authorized local sales taxes in the late 1940s and early 1950s but the "movement" really picked up speed in the years 1963-70. During this seven year period, 13 states authorized local sales taxes for at least some of their local jurisdictions, thereby doubling the number of states that gave their local governments access to this tax instrument. As of January 1, 1973, 26 states permitted one or more of their local governments to levy a local sales tax. In 1972, local sales taxes raised approximately $3.7-billion and while running a distinct second to the property tax, sales taxes are nonetheless the second most lucrative individual source of tax revenue to local governments.

More than 4,300 local jurisdictions of all types presently employ a local sales tax; the vast majority, 3,780, are municipalities. In addition, 614 counties, 13 parishes (all in Louisiana), five boroughs (all in Alaska), 47 school districts (again all in Louisiana), as well as rapid transit districts in the San Francisco Bay Area, St. Louis, and in Georgia also levy local sales taxes. Despite the increase in the number of states authorizing local sales taxes and the number of local governments actually using them, the local sales tax is heavily concentrated in five states. The largest number of such taxes occurs in Illinois, where 1,245 municipalities and 100 counties impose the tax. The local sales tax is widely used in Texas (737 municipalities), California (380 municipalities, 58 counties, and one rapid transit district), Oklahoma (300 municipalities), and Alabama (206 municipalities and 25 counties). Twenty-six of the 48 largest cities in the country used the local sales tax in 1972. Relative reliance on the sales tax ranged from a low of 5.6 percent of total city taxes in Kansas City to 55.5 percent in Tulsa.

In its 1974 report on Local Revenue Diversification, the Advisory Commission on Intergovernmental Relations recommended that states permit counties and larger cities to use a local sales tax subject to several safeguards: (a) utilization of the state sales tax base and collection by the state tax agency; (b) county option to preempt the tax, sharing the return with constituent municipalities to avoid a widening of interlocal fiscal disparities; (c) use of the point-of-sale rule for determining tax liability; and (d) prohibiting local use taxes on in-state purchases.

The suggested legislation which follows empowers local utilization of sales taxes and use taxes on out-of-state purchases and imposes safeguards along the lines of the above.

Section 1 sets forth the purpose of the act. Section 2 defines an eligible city as one of 25,000 or over in population.

Section 3 authorizes counties to impose a sales tax within a specified rate range and requires sharing of the proceeds with constituent municipalities above minimum size. Eligible cities are authorized to levy the tax in the absence of county utilization.

Section 4 requires conformity to the state sales and use tax codes. Section 5 mandates state administration.

Sections 6 provides for distribution of the revenue derived.

Sections 7 and 8 provide for separability and effective date clauses, respectively.

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3.204 AUTHORIZATION FOR A LOCAL SALES TAX

SECTION 1. Purpose. The purpose of this act is to authorize counties and certain cities to impose a local sales tax and a use tax on out-of-state purchases under certain conditions.

SECTION 2. Definitions. An "eligible city" is a city of at least 25,000 population as of the effective date of the tax.

SECTION 3. Authorization.

(a) Any county is authorized to impose a local sales tax and a use tax on out-of-state purchases at a rate not less than \[ \text{percent} \] nor more than \[ \text{percent} \]. The county shall have the right to preempt a city sales tax by adopting a countywide sales and use tax provided that the revenues so raised by the county are shared with all cities [of at least \[ \text{population} \] ] population in the county.

(b) The share for all cities shall be equal to the fraction which total tax revenues raised by all cities within the county represents of the total tax revenue raised by the county and its cities. The share for each city shall be determined by multiplying the total share for all cities within the county by the population of the city times the ratio of the aggregate equalized, full value assessment of all cities to the city's full value assessment.\(^1\) If the county does not adopt the tax, the authority to enact local sales taxes is extended to all eligible cities within the county.\(^2\)

SECTION 4. Conformity to State Sales and Use Taxes. Any sales and use tax law or ordinance adopted under this act shall impose a sales tax for the privilege of selling tangible personal property at retail and a use tax upon the storage, use or other consumption of tangible personal property purchased out-of-state\(^3\) for storage, use, or consumption in the political subdivision. Any sales and use tax adopted pursuant to this act shall be identical to all relevant sections of the state sales and use tax. [Statutory citation of the state sales and use tax law.]

SECTION 5. State Administration. The [state tax commissioner] shall administer local sales and use taxes adopted under this act. He may prescribe forms and rules and regulations in conformity with this act for the making of returns and for the ascertainment, assessment, and collection of the tax imposed pursuant to this act, and for the orderly transition necessitated by preemption of city sales taxes by a county. The [state tax commissioner] shall keep full and accurate records of all moneys re-

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\(^1\) Or some other measure of fiscal ability such as income, tax effort, or fiscal capacity.

\(^2\) Intercounty equalization of revenues can be dealt with by state general fund transfers designed to bring all below average county sales tax yields per capita, taking account of differences in rate, up to the average for the state.

\(^3\) The legislature may wish to authorize a local use tax on automobiles purchased within the state.
received and distributed under this act and is authorized to make any refunds to taxpayers pursuant to
this act.

SECTION 6. Distribution of Collections. All sums collected on behalf of a particular political
subdivision pursuant to this act shall be credited to a special local sales and use tax fund which is
hereby established in the [state treasury]. After deducting the amount of refunds made and the costs
of administering the tax, the remaining sums shall be returned by the [appropriate state official] to the
county or eligible city of origin by the [15th day of the month following the month during which
such sums were collected].

SECTION 7. Separability. [Insert separability clause.]

SECTION 8. Effective Date. [Insert effective date.]
User charges comprise an important and gradually increasing proportion of local government revenues. Currently they amount to nearly a fifth of revenue from own sources (16.8 percent for city governments and 19.7 percent for county governments in 1972). The major types of user charges include: front foot assessments for water and sewer lines; metered charges for water and sewer use, charges for trash collection; parking charges through meters and in publicly operated lots and garages; and charges for inspection and other permits.

Four characteristics of a service need to be examined in determining whether and how to charge for it: (a) potential for rationing and conserving resources by altering citizen behavior (charging requires the user to consider how much or how often he uses the service); (b) nature of benefits (sometimes benefits are too diffuse or general to be associated with particular users); (c) feasibility of administration; and (d) equity (charges are frequently both arbitrary and regressive).

Policies and practices concerning the imposition and administration of user charges vary widely. The extent of their use by local governments depends in the first instance on state constitutional and statutory provisions and judicial interpretations thereof. Often fees are permitted to cover the cost of services rendered but prohibited as a source of general revenues. When does a charge become a tax? This question is debated frequently in the courts of many states.

In a 1974 report on Local Revenue Diversification, the Advisory Commission on Intergovernmental Relations recommended that states take action along several lines regarding local fees and charges: (1) statutory authorization for recovery of costs not only of the particular service but of closely associated activities (e.g., use of parking fees as a means of charging street users for part of the cost of street maintenance); (2) statutory authority to revise fees and charges in light of increased costs or price levels; (3) empowering an agency of state government to serve as a clearinghouse for user charge information by publishing and disseminating data on current charges in various jurisdictions; and assisting in the development of new areas for user charge utilization.

The following suggested legislation is designed to provide a statutory policy and procedural role for the state government in assisting local governments to diversify their revenue systems through adoption of an aggressive and equitable system of user fees and charges.

Section 1 sets forth the legislature's findings and purposes.

Section 2 authorizes local units of government, to the extent not prohibited by other provisions of state law, to readjust the rate or amount of charges in the light of changes in cost and other factors; it confers no new authority for the imposition of new kinds of charges or for the use of such charges by local governments heretofore denied their use.

Section 3 authorizes and directs the director of an appropriate state agency to provide continuing information and assistance to local governments in the formulation and administration of user fees and charges.

Sections 4 and 5 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO ENCOURAGE OPTIMUM UTILIZATION OF USER CHARGES AND FEES BY LOCAL GOVERNMENTS AND TO PROVIDE TECHNICAL ASSISTANCE FOR SUCH PURPOSE]

(Be it enacted, etc.)

SECTION 1. Findings and Purpose.
(a) The [legislature] finds that one of the appropriate methods by which local units of government obtain revenue for the provision of services to their residents is the imposition of charges and fees for services that constitute a special benefit to individuals, businesses, and institutions. However, such charges and fees by their nature present significant difficulties to local government in their utilization:

(1) criteria for use are difficult to formulate, especially the identification of benefits accruing to a particular user as distinguished from those of benefit to the community as a whole;
(2) lack of published information as to the kind and level of such fees and charges imposed by local governments in this and other states; and
(3) the difficulty in keeping the level of fees and charges appropriately related to costs incurred due to changes in services, wage levels, and other factors.

(b) The [legislature] concludes that the state government should provide continuing information and technical assistance to local governments in the effective and equitable utilization of service fees and user charges.

SECTION 2. Authority to Adjust Fees and Charges. To the extent not prohibited by laws of this state, local governing bodies are authorized to adjust no more than once [annually] the rate or amount of fees and charges previously imposed [to reflect changes in service costs, price and wage levels and other relevant factors]. This section may not be construed as conferring new authority on cities and counties to impose user fees and service charges.

SECTION 3. Assistance by the [appropriate state agency].
(a) The [director] of the [central finance agency, community affairs, or other appropriate state agency] is authorized and directed to provide political subdivisions of this state with current information and, upon request of a political subdivision, with advice and assistance as to the effective use and determination of fees, charges, and special assessments in defraying in whole or in part the cost of particular services and benefits provided to users [such as water and sewer utilities, street parking, solid waste collection and disposal, various inspection services, and regulatory and other special permits].

(b) Local units of government in their [annual] fiscal reports pursuant to [cite appropriate statute]
requiring periodic reports of revenue and expenditure from local governments] shall append to such report a schedule of fees and charges in force as of the date of the report. The [agency charged with receiving local government fiscal reports] shall make such schedules available to the [director], who in turn shall summarize the information available therein and publish it in suitable form for dissemination among local units of government in the state and to the general public. The [director] shall also acquire representative information as to the types and levels of fees and charges imposed by local jurisdictions in other states and shall publish summaries or excerpts of such information in appropriate form.

(c) Upon request of the governing body or the chief elected executive of a political subdivision of this state, the [director] shall, within the limitations of available staff and funds, provide advice and assistance in the formulation of ordinances and regulations for the collection of user fees and charges and in the development of procedures for their efficient and economical collection and for maintaining their level on a basis consistent with service costs and benefits.

SECTION 4. Separability. [Insert appropriate separability clause.]

SECTION 5. Effective Date. [Insert effective date.]
Tax certainty and uniform treatment of similarly situated taxpayers are important ingredients of high quality tax administration and significant determinants of the tax climate for business. Some states have shown an understandable reluctance to set out clear cut and enforceable physical presence rules to govern whether business is liable for a state income tax or the vendor collection of a state sales tax.

The growing demand for tax certainty and uniform treatment on the part of multistate firms suggests that most states would have much to gain by pursuing a policy designed to maximize convenience, certainty, and evenhanded treatment of business. State action on the jurisdictional front would go a long way toward removing the threat of a congressionally mandated rule that ignores the necessity of distinguishing between jurisdictions for income tax purposes where business pays taxes directly and jurisdictions for sales tax purposes where business acts as the collection agency for the state.

The Advisory Commission on Intergovernmental Relations, in a 1974 report on *Local Revenue Diversification* recommended that Congress enact legislation requiring sellers of taxable commodities destined for a state to collect and remit to the state the sales tax on the transaction whether or not the seller maintained a place of business in the state, the sale to be taxed at a rate equal to the state rate plus a single local rate. This approach, in the Commission’s view, would be an equitable way of achieving uniform application of state and local sales taxes while holding the compliance costs of vendors to a minimum. Until state sales tax collections are expanded by appropriate Federal legislation, however, states need to spell out the physical presence rules for asserting jurisdiction to require vendor collection of the sales tax.

The paragraphs below provide the set of criteria the state tax administrator can use as his guide to assert his state’s jurisdiction to tax a person or firm under its business income or sales tax statutes. States may establish these physical presence rules either by administrative regulation or by incorporating them into the appropriate taxing statute.

Suggested Regulation

[CORPORATE INCOME TAX]

1 General Rule. A corporation shall be considered to have income from sources within this state for corporate income tax purposes if the corporation:
2 (a) owns or leases real property within this state,
3 (b) owns or leases personal property within this state which contributes directly (but not incidentally) to the production of income,
4 (c) has one or more employees located in this state, or
5 (d) regularly maintains a stock of tangible personal property in this state for sale in the ordinary course of business, but property which is on consignment in the hands of a consignee and which is offered for sale by the consignee on his own account, shall not be considered as stock maintained by the consignor, nor shall property which is in the hands of a purchaser under a sale or return arrangement be considered as stock maintained by the seller.

6 Location of Tangible Personal Property. Personal property shall be considered located in this state if it is physically present in the state.
7 Personal property which is rented out by a corporation to another person and which is characteristically mobile property, shall be considered to be located in this state if the location at or from which the property is regularly delivered to a lessee is in this state.

8 Location of Employee. An employee shall be considered to be located in this state if the employee’s service is either localized in this state, or not localized in any state but some of the service is performed in this state and the employee’s base of operation is in this state.
9 Service of any employee shall be considered to be localized in this state if the service is performed either entirely within this state, or both within and without this state, but the service performed without the state is incidental to service performed within the state.
10 The term “base of operations,” with respect to employee, means a single place of business with a permanent location which is maintained by the employer and from which the employee regularly commences his activities and to which he regularly returns in order to perform the functions necessary to the exercise of his trade or profession.

11 An employee shall not be considered to be located in this state if his only business activities within the state on behalf of his employer are either or both of the following:
12 (1) the solicitation of orders, for sales of tangible personal property, which are sent outside this state for approval or rejection and (if approved) are filled by shipment or delivery from a point outside the state;
(2) the solicitation of orders in the name of, or for the benefit of, a prospective customer of his employer, if orders by the customer to the employee to enable the customer to fill orders resulting from the solicitation are orders described in paragraph (1).

The term "employee" shall have the same meaning it has for purposes of Federal income tax withholding under Chapter 24 of the Internal Revenue Code of 1954, as amended.

Rules Related to Physical Presence Only. Nothing in the foregoing paragraphs shall be construed to affect the powers of this state to require the combining or consolidation of the income of two or more corporations where that action is necessary to determine accurately the income of a corporation considered to have income from sources within this state.
General Rule. A person shall be required to pay a sales and use tax imposed with respect to taxable sales of tangible personal property and services to persons within this state if he:

(a) owns or leases real property within the state,
(b) has one or more employees located in the state,
(c) regularly maintains a stock of tangible personal property in the state for sale in the ordinary course of business,
(d) regularly leases out tangible personal property for use in the state,
(e) regularly solicits orders for the sale of tangible personal property by salesmen, solicitors, or representatives in the state, or
(f) regularly engages in the delivery of property in the state other than by common carrier or United States mail.

Local Sales and Use Taxes. [Appropriate statutory enactment authorizing state imposition of a uniform local supplement of | | percent on all sales by firms not located physically in the state and for distribution of collection to localities on a formula basis. Such enactment would be contingent upon congressional authorization of state and local sales taxes to those firms doing business in the state but not maintaining a physical presence in each local jurisdiction.] [Appropriate rules governing imposition of supplemental local rate and distribution of proceeds to local governments.]
3.207 STATE REVENUE SHARING

For several years the most fiscally critical and politically difficult feature of state-local financial relations had been the increasing disparity between service needs and fiscal resources of units of local government and the extent to which, and methods by which, the state government should relieve these interlocal financial disparities.

Over recent years, the context within which local governments exercise their responsibilities has changed dramatically. Population growth and settlement patterns have been modified; local economies have been subjected to wide swings between rapid growth and stagnation or decline; and fiscal burdens have increased. The additional strain on fiscal resources arises from new responsibilities that local governments have assumed and from price inflation. State aid systems that were devised during the early years of the century to (a) distribute state funds on some egalitarian basis, (b) urge localities into particular functional areas, or (c) help support certain public services (primarily education and highways) that were deemed by state policymakers to be endowed with statewide interest no longer meet the needs of an increasingly urban and technologically interdependent society.

In successive reports dealing with state-local revenue and fiscal systems, the Advisory Commission on Intergovernmental Relations in recent years has called for greater equalization action by state governments (Fiscal Balance in the American Federal System, Vol. 1, 1967), state compensatory policies in recognition of "municipal overburden" (State Aid to Local Government, 1969), and using new or existing state programs of general support to reduce fiscal disparities among local taxing authorities (Local Revenue Diversification, 1974). In the report on state aid, the Commission observed: "Aside from the education function, however, conditional state government grants rarely are provided on an equalizing basis. Indeed, the very same can be said for existing state programs of unconditional support to local governments. Most of these programs return state collected funds on the basis of origin and as such perform an anti-equalization function. While Wisconsin and New York stand out by providing substantial amounts of general local government support on an equalizing basis, the general rule remains that in most states unconditional grant programs are too anemic to make much impact on reducing local disparities and the few that do attempt to are, at best, mildly redistributive in their effect." In its 1974 report on local revenue diversification, the Commission recommended that states take steps to minimize local fiscal disparities by "using existing state programs of general support to offset fiscal disparities among local taxing authorities with the widest jurisdictional reach." In addition to these concerns with equalization, there is the basic need to bring local fiscal resources more into line with local service responsibilities, a substantial number of which have been mandated by state governments.

In 1974, the unconditional state aid to local government was $4 to $5-billion (out of total state aid of $40-billion). Of this amount, about $2-billion was for reimbursement to localities for property tax relief, $0.5-billion in tax sharing on the basis of origin, and about $2.5-billion on "needs type" revenue sharing. States providing amounts to localities in excess of $100-million dollars annually include California, Florida, Illinois, Louisiana, Michigan, Minnesota, New York, Ohio, and Wisconsin. The primary bases of distribution include:

1) population — California (Revenue and Taxation Code, Secs. 11005, 11005.1, and Business and Professions Code, Sec. 25761); Illinois (Stat. Ch. 84, Secs. 611-620); and Minnesota (Laws, 1st Spec. Sess., 1971, Ch. 31, Arts. 21, 24, and 26);
2) directly to population and inversely to property tax base — Florida (Stat. 218.20-218.26);
3) population and "tax effort" — Michigan (Constitution, Art. IX, Sec. 10, and Stat. 7.557-1481, as amended by Public Acts of 1971, Act No. 140);
4) directly to population and inversely to property tax base and income — New York (State Finance

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Law, Sec. 54, Subdiv. 2, pars. a-h, and Ch. 120, Laws of 1971); 5) population and "program need" — Ohio (Revenue Code, 5725.24; 5733.02; 5733.12; 5739.21-23; 5747.03).1

As a practical matter, legislators tend to select allocation factors in terms of the distribution patterns among jurisdictions that result from alternative grouping and weighting of the factors — essentially a political judgement. It is desirable that minimal areas of discretion be left to the administering agency, but to place with the agency responsibility for conclusive determination as to questions of fact.

In some states a constitutional amendment will be necessary authorizing the sharing of funds between the state government and political subdivisions as may be provided by law.

The suggested legislation which follows is drawn partially from Wisconsin Chapter 77, Laws of 1961, Maine Chapter 478, Laws of 1971 (Revised Statutes, Title 30, Sec. 5055), and takes into account the general structure of the State and Local Fiscal Assistance Act of 1972, PL 92-512; ("Federal general revenue sharing").

Section 1 sets forth the legislative purpose. Section 2 comprises definitions used in the act. Inevitably the determination of eligibility is a source of great controversy. The draft legislation presented here makes three exclusions from eligibility: these are based on the recommendations of the Commission that have called for the establishment of criteria for assessing local government viability and for the use of such criteria in dispensing state aid.2

Special purpose units — school districts and other special districts and authorities are excluded. Typically state educational aid is targeted to school districts and many other special districts are financed through a combination of benefit assessments and user charges. Eligibility for general revenue sharing should be confined to general purpose local governments — counties, municipalities, and in some states, towns, and townships. (In New England, counties play a limited role and the basic units of general purpose government are cities and towns.)

Secondly, eligibility of municipalities is limited to those in excess of some reasonable population minimum; 1,000 is suggested here. Very small incorporated places rarely constitute a really general purpose government.

Finally, municipalities and townships that do not provide a range of local government services are excluded. A measure of such a "breadth of services" requirement is suggested in terms of a minimum of three from a specified list. Most municipalities excluded under population minima also fail the range of services test. Such a test is especially necessary to avoid including essentially single purpose townships as eligible recipients. These criteria of eligibility relate closely to the general question of "local government viability" treated in suggested legislation dealing with state aid administration.

Section 3 provides for the creation of a local government revenue sharing fund based upon a specified percentage of state tax revenues derived from broad based taxes (general sales, personal income). Moneys accruing to the fund are distributed periodically (annually or otherwise) among eligible units of local government.

Section 4 deals with the distribution formula. At the outset, two general methods of apportionment are provided. In the first, funds are allocated to county areas with subsequent division between county governments within each area and the eligible municipal governments in that area. This is the method used in the Federal revenue sharing plan and provides differentiated treatment between county and municipal government in each county. A second alternate subsection is included whereunder the total amount available for distribution is divided into a county allocation and a municipal allocation. This may be preferred in some states where there is a rather clear delineation on a statewide basis in the nature and scale of functional responsibilities borne by counties and cities, respectively.

Under either alternative, the municipal entitlement is further modified to account for "overburden" as

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measured by the extent to which a municipality's _per capita_ local tax burden exceeds 1.5 times the state average.

_Section 5_ provides a ceiling limitation upon allocations to any one eligible municipality.

_Section 6_ prescribes procedures for certification of entitlements by a designated state agency to the central state finance agency and to treasurers of local units and provides that such determinations be conclusive.

_Sections 7 and 8_ are for insertion of a separability clause and an effective date, respectively.

In contrast to the Federal revenue sharing law, neither the suggested legislation nor existing revenue sharing laws in most states carry any special reporting, auditing, antidiscrimination, public hearing, or fund use requirements upon local governments. Revenue sharing funds, when distributed, co-mingle without trace with other local funds. Requirements for citizen participation on local budgeting, and the other items mentioned above, are most appropriately set forth in general statutes applicable to state and local funds across the board.
Suggested Legislation

[STATE REVENUE SHARING ACT]

(Be it enacted, etc.)

SECTION 1. Purpose. It is the purpose of this act to share with counties, cities [and towns, townships], a portion of the funds derived each year by the state government from broad based state revenue sources, including sales and income taxes, so that: (1) disparities between fiscal resources and service needs of neighboring units of local government may be lessened; (2) the local property tax burden may be stabilized; and (3) the "overburden" arising from higher levels of services required by residents of central cities and other economically depressed areas may be recognized in the distribution of state financial aid.

SECTION 2. Definitions.

(a) "County area" means the geographic area of a county government [or where any unit of local government other than a county government constitutes the next level of government below the state government level, the geographic area of such unit of government shall be treated as a county area and such unit shall be treated as a county government with respect to that portion of the state's geographic area].

(b) "County area tax effort factor" means the quotient obtained by:

(1) dividing the ratio of the total local taxes of all eligible units, including the county government, within the county area to the income of the county area by

(2) the ratio of local taxes levied by all eligible governments in the state to income of all residents of the state.

(c) "Department" means the [state department of revenue or other state agency charged with administering the revenue sharing act].

(d) "Eligible unit" means to be eligible to receive distributions from the fund, a unit of general local government must be a county, or if a city [or township] must meet both of the following conditions:

(1) have a population of [1,000] or more; and

(2) spend from its own revenue sources [50 percent or more of the total cost within its jurisdiction] of at least [three] of the following services: fire protection; police protection; street and road construction and maintenance; water supply and distribution; sewage collection and treatment; health inspection and services; parks and recreation; housing and urban renewal; general assistance; and library services.

(e) "Eligible unit's tax effort factor" means the ratio obtained by dividing:

(1) the tax effort of the eligible unit by
(2) the quotient obtained by dividing the sum of the local taxes of all eligible units, other
than the county government, within the same county area by the sum of the fiscal capacities of all
eligible units, other than the county government, within that county area.

(f) "Fiscal capacity" means the sum of income received by residents of a local government unit
and the property tax base of such unit.

(g) "Income" means total money income received from all sources as reported by the U.S. Depart-
ment of Commerce [or latest official state estimate of income] for general statistical purposes.

(h) "Local taxes" means the compulsory contributions [as well as fees and charges] levied by
local units of government for public purposes, excluding [taxes for the support of public elementary
and secondary education, special assessments, other exclusions].

(i) "Local unit of government" means a county, a municipality [or a township], a school district
or a special district.

(j) "Local unit of general government" means a county, a municipality [or a township].

(k) "Overburden factor" means the number obtained by:

(1) adding one plus;

(2) the percentage by which the eligible unit's per capita local taxes, i.e., local taxes divided by
the population of the eligible unit, exceeds 1.5 times the statewide average of per capita taxes for
eligible units other than county governments.

(l) "Population" means the population shown in the last U.S. decennial census [or latest official
state estimate of population].

(m) "Property tax base" means the full value of taxable property as equalized for state tax pur-
poses by the [department of revenue or other state agency charged with equalizing property tax assess-
ments among local units of government].

(n) "Tax effort" means the quotient obtained by dividing the sum of local taxes collected in a giv-
en year by the fiscal capacity of the local unit of government for the same year.

SECTION 3. Local Government Revenue Sharing Fund.

(a) There is hereby established in the [state treasury or other central state finance agency] a local
government revenue sharing fund.

(b) There shall be [appropriated to] [deposited in] the local government revenue sharing fund at
the end of each state fiscal year an amount equal to [5] percent of the total revenue received from:

(1) the state general sales tax collected under [appropriate citations];

(2) the state personal income tax collected under [appropriate citations]; and

(3) [other state taxes desired to be a part of the input to the fund].

(c) Moneys credited to the local government revenue sharing fund shall be distributed [monthly] [quarterly] on [date] to all eligible units of general local government in the state pursuant to the
formula and criteria set forth below.  

[Alternative 1.]

|SECTION 4. Distribution Formula.

(a) Moneys in the fund available for distribution shall be allocated to all county areas so that each county area shall receive an amount which bears the same ratio to the total amount to be allocated from the fund as:

(1) the population of that county area, multiplied by the county area tax effort factor, bears to,

(2) the sum of the products determined under the preceding paragraph (1) for all county areas.

(b) The county government shall be allocated that portion of the amount allocated to the county area under subsection (a) which bears the same ratio to such amount as the county government's local taxes bear to the sum of the local taxes of all eligible units, including the county government, within that county area.

(c) The amount remaining for allocation within a county area after the application of subsection (b) shall be distributed to eligible units, other than county governments, located in that county area so that each eligible unit will receive an amount which bears the same ratio to the total amount to be allocated to all such eligible units as:

(1) the population of that eligible unit, multiplied by the eligible unit's tax effort factor, and,

for eligible units with population of 10,000 or more, by the overburden factor, bears to,

(2) the sum of the products determined under the preceding paragraph (1) for all such eligible units within the county.]

[OR]

[Alternative 2.]

|SECTION 4. Distribution Formula

(a) Moneys in the local government revenue sharing fund available for distribution shall be separated into a county allocation and municipal [city-township] allocation. The county allocation will be determined by dividing the statewide total of local taxes collected by and for county governments by the statewide total of local taxes collected by or for [eligible] units of general local government. Total local government revenue sharing fund moneys available multiplied by the resulting percentage will establish the amount of the county allocation. The remainder will constitute the amount of the municipal allocation and will be apportioned pursuant to Section 4(c), below.

(b) The county allocation determined in subsection (a) shall be distributed so that each county government will receive an amount which bears the same ratio to the total amount to be allocated to county governments as:
(1) the population of that county, multiplied by the county government's tax effort factor bears to,

(2) the sum of the products determined under the preceding paragraph (1) for all counties within the state.

(c) The amount remaining for allocation within a county area after the application of subsection (b) shall be distributed to eligible units, other than county governments, so that each eligible unit will receive an amount which bears the same ratio to the total amount to be allocated to all such eligible units as:

(1) the population of that eligible unit, multiplied by the eligible unit's tax effort factor, and,

(2) the sum of the products determined under the preceding paragraph (1) for all such eligible units.

SECTION 5. Adjustments of Allocation.¹

(a) In no event shall any eligible unit, other than a county government, with population less than 20,000 receive more than 1.5 times the statewide average per capita allocation for eligible units, other than county governments.

(b) any funds not allocated shall be returned to the state [general fund].

SECTION 6. Certification. On or before [date] and annually thereafter, the [state department of revenue] shall certify to the [state finance agency] the amount to be remitted to the treasurers of each eligible unit of general local government. Decisions of the [director of revenue] as to eligibility of units and other questions of fact will be conclusive.

SECTION 7. Separability. [Insert separability clause.]

SECTION 8. Effective Date. [Insert effective date.]

¹In addition to the policy consideration underlying choices among the allocation factors to be used in the distribution formula, there are data considerations, varying from state-to-state, that will dictate or influence these choices. Income data are available for county areas and for larger municipalities; they become less reliable when applied to smaller units. Also, in many states the variation in costs of living may make income a faulty measure of fiscal capacity in those states, unless corrected by an area price or cost of living factor. Likewise, data on market value of property in some states makes less reliable the use of the property tax base as a measure of fiscal capacity. This adjustment section may be useful in taking care of aberrant cases, particularly small industrial or resort enclaves that might receive unjustifiably high allocations unchecked by the application of valid inverse factors of wealth and income.

Another measure of fiscal need that is occasionally substituted for, or considered in addition to, income and/or property tax wealth is that of population density. In general, if applied to municipalities of moderate or great size, this factor will tend to favor central cities at the expense of suburban jurisdictions. Density data are available for most units from the U.S. Census of Population and Housing. Another factor sometimes used as an indicator of economic deprivation is numbers of people on welfare. The number of families with incomes below the poverty level is also used, but has validity problems paralleling those associated with per capita income unless a cost index of some sort is used as a corrector.
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what is acir?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public. The Commission is composed of 26 members — nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20 — three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House. Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories, as wide ranging as substate regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.