

# ACIR State Legislative Program

3.

State and  
Local  
Revenues



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# FOREWORD

## 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 excerpting 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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# INTRODUCTION

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<sup>1</sup>

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 selfreliance 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.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions on Local Taxing Powers*, Report A-14 (Washington, D.C.: U.S. Government Printing Office, October, 1962).

Suggested Constitutional Amendment

[REGULATION OF TAXATION AND BORROWING]

(Be it enacted, etc.)

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

3 SECTION 2. *[All parts of the constitution in conflict with this amendment are hereby repealed.]*  
4 *[Identify those sections of the constitution to be repealed.]*

5 SECTION 3. *[Insert appropriate language, consistent with the referendum requirements for*  
6 *amending the constitution and with state election laws, for submission of the proposed amendment*  
7 *to the electorate.]*

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**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]

(Be it enacted, etc.)

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

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

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

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

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

18 SECTION 6. *Separability.* [Insert separability clause.]

19 SECTION 7. *Effective Date.* [Insert effective date.]



### 3.102 REAL ESTATE TRANSFER TAX<sup>1</sup>

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 constricting 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.<sup>2</sup>

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.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Intergovernmental Aspects of Documentary Taxes*, Report A-23 (Washington, D.C.: U.S. Government Printing Office, September, 1964).

<sup>2</sup>Advisory Commission on Intergovernmental Relations, *Federal-State-Local Finances: Significant Features of Fiscal Federalism*, Report M-79 (Washington, D.C.: U.S. Government Printing Office, February, 1974), pp. 236-37.

## Suggested Legislation

### [AN ACT IMPOSING A REAL ESTATE TRANSFER TAX]

(Be it enacted, etc.)

1 SECTION 1. *Definitions.* As used in this act:

2 (a) "Deed" means [insert the definition applied in the state's law pertaining to real estate].

3 (b) "[Registrar]" means [insert title of local official responsible for recording deeds].

4 (c) "Value" means:

5 (1) in the case of any deed not a gift, the amount of the full actual consideration therefor,  
6 paid or to be paid, including the amount of any lien or liens thereon; and

7 (2) in the case of a gift, or any deed with nominal consideration or without a stated consid-  
8 eration, the estimated price the property would bring in an open market and under the then prevailing  
9 market conditions in a sale between a willing seller and a willing buyer, both conversant with the  
10 property and with prevailing general price levels.

11 SECTION 2. *Imposition of Tax.* A tax is imposed at the rate of [\$ for each \$ of value or frac-  
12 tion thereof] [*per centum* of the value], which value is declared in the affidavit required by Section  
13 4, upon the privilege of transferring title to real property.

14 SECTION 3. *Collection of Tax.*

15 (a) If any deed evidencing a transfer of title subject to the tax herein imposed is offered for  
16 recordation, the [registrar] shall ascertain and compute the amount of the tax due thereon and shall  
17 collect such amount as prerequisite to acceptance of the deed for recordation.

18 (b) The amount of tax shall be computed on the basis of the value of the transferred property  
19 as set forth in the affidavit required by Section 4 of this act.

20 SECTION 4. *Declaration of Value.*

21 (a) Each deed evidencing a transfer of title subject to the tax as herein provided shall have ap-  
22 pended thereto an affidavit of the parties to the transaction or their legal representatives declaring  
23 the value of the property transferred. If the transfer is not subject to the tax as herein provided, the  
24 affidavit shall specify the reasons for the exemption.

25 (b) The form of affidavit shall be prescribed by the [state tax agency] which shall provide an  
26 adequate supply of such forms to each [registrar] in the state.

27 (c) The [registrar] shall transmit two true copies of the affidavit to the [assessor] who shall in-  
28 sert the most recent assessed value of each parcel of the transferred property on both copies and shall  
29 transmit one copy to the [state tax agency].

1 SECTION 5. *Disposition of Proceeds.* [Insert appropriate language as to disposition of pro-  
2 ceeds.]<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

26 (f) on sale for delinquent taxes or assessments;

27 (g) on partition;

28 (h) pursuant to mergers of corporations; and

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

31 SECTION 10. *Separability.* [Insert separability clause.]

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

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<sup>1</sup>Disposition 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<sup>1</sup>

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 is 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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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Financing Schools and Property Tax Relief — A State Responsibility*, Report A-40 (January, 1973); and *The Role of the States in Strengthening the Property Tax*, Vols. 1 and 2, Report A-17 (Washington, D.C.: U.S. Government Printing Office, June, 1963).

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.)

1 SECTION 1. *Purpose.* It is the purpose of this act to establish a [division of property taxa-  
2 tion], to provide for the duties and responsibilities of assessors, and to provide for state-county  
3 relations in respect to assessment and appraisal of property.

4 SECTION 2. [Division of Property Taxation].

5 (a) There shall be in the [state tax agency] a [division of property taxation], hereinafter called  
6 the [division]. The head of the [division] shall be the [director], appointed by the [head of the state tax  
7 agency] in accordance with the provisions of the [state merit system law]. The [director] shall serve in  
8 accordance with the provisions of the law. He shall have experience and training in the fields of  
9 taxation and property appraisal.<sup>1</sup>

10 (b) The employees of the [division] shall be in the [state merit service]. The [director] may con-  
11 tract for the services of expert consultants to the [division].

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

18 SECTION 3. *Assessors and Appraisers; Qualifications and Certification.*

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

24 (b) The [director] shall provide for the examination of applicants for such certificates. No certifi-  
25 cate shall be issued to any person who has not demonstrated to the satisfaction of the [division]  
26 that he is competent to perform the work of an assessor or appraiser, as the case may be, but any  
27 applicant for a certificate who is denied the same shall have a right to a review of the denial [in accord-

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<sup>1</sup>As 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.

1 *ance with the state administrative procedure act*] [by a court of appropriate jurisdiction].

2 SECTION 4. *Collection and Publication of Property Tax Data.*

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

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

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

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

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

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

31 SECTION 7. *Tax Maps.* The [division] shall require each [county assessor] to maintain tax  
32 maps in accordance with standards specified by the [division]. Whenever necessary to correct map-  
33 ping deficiencies, the [division] shall install standard maps or approve mapping plans and supervise  
34 map production. The [state tax agency] [shall] [may] require the county to reimburse the state for  
35 tax maps installed by the [division]. The amount or amounts of such reimbursement shall be de-

1 positioned in the [state treasury] to the account of the [state tax agency].<sup>1</sup>

2 SECTION 8. *Provision of Tax Manuals and Guides.* The [division] shall prepare, issue, and  
3 periodically revise guides for the use of local assessors in the form of handbooks of rules and regu-  
4 lations, appraisal manuals, special manuals and studies, cost and price schedules, news and reference  
5 bulletins, and digests of property tax laws suitably annotated.

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

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

20 [Alternative 1.]

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

28 [OR]

29 [Alternative 2.]

30 [SECTION 11.<sup>2</sup> *Appraisal of Industrial Property.*

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

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<sup>1</sup>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."

<sup>2</sup>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.



1 (b) Industrial property as used herein means a combination of land, improvements, and machin-  
2 ery functioning as a unit: in assembly, fabrication, processing, manufacture, and distribution of  
3 finished or partly finished products from raw materials (including agricultural products) or fab-  
4 ricated parts; in the processing of natural resources, including minerals and gravel.

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

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

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

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

23 SECTION 14. *Enforcement of Assessment and Appraisal Standards.*

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

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

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

32 (b) If the [director] finds that a county has failed or is failing to meet the standards contained  
33 in the rules or regulations in force pursuant to subsection (a) of this section, the [director] shall  
34 notify the [county assessor] of the fact and nature of the failure. The notice shall be in writing  
35 and shall be served upon the [county assessor] and the [county governing board].

1 (c) If within one year from the service of the notice the failure has not been remedied, the  
2 [director] may, at any time during the continuance of the failure, issue an order requiring the  
3 [county assessor] and [county governing board] to show cause why the authority of the county  
4 with respect to assessments or any matter related thereto should not be suspended, and shall  
5 set a time and place for a hearing with the [county assessor] and [county governing board] on the  
6 order, and after the hearing shall determine whether and to what extent the assessment function  
7 of the county shall be suspended.

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

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

18 SECTION 15. [County Assessor].

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

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

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

32 [Optional Subsection.]

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

35 SECTION 16. Governing Valuations. [Each local taxing unit] shall be bound by the assessed

1 valuations established by the [county assessor] for all property subject to its taxing power.

2 SECTION 17. *Multicounty Assessment District.*<sup>1</sup>

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

5 (b) The agreement shall provide for:

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

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

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

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

12 (5) any other necessary or appropriate matters.

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

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

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

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

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

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<sup>1</sup>The 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.

1 county may, [by resolution], request the [state tax agency] to assume the county assessment function  
2 and to perform the same in and for the county. If the [commissioner] of the [state tax agency]  
3 finds that direct state performance of the function is necessary or desirable to the economic and  
4 efficient performance thereof, he may direct the [division] to undertake its performance pursuant  
5 to the request. Unless otherwise authorized by law, the [division] shall undertake and perform the  
6 function only after the execution of a suitable agreement between the county and the [state tax  
7 agency] on how costs will be met. During the performance of the county assessment function by  
8 the [division], the office and functions of the [county assessor] shall be suspended, and the perform-  
9 ance thereof by the [division] shall be deemed performance by the [county assessor].

10 SECTION 19. *Discontinuance of Certain Assessors' Offices.* Assessment of property for  
11 purposes of taxation on and after [date], unless pursuant to agreement as authorized in Section  
12 17 of this act, shall be only by the county and state in accordance with law. However, any  
13 [assessor] in office on [date] who is serving a fixed term as provided by statute or local law may  
14 continue in office until the expiration of the term, and the jurisdiction of which he is the [assessor]  
15 shall continue to have the assessment function previously conferred upon it until the office is  
16 vacated or the [assessor's] term expires.

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

24 SECTION 21. *Separability.* [Insert separability clause.]

25 SECTION 22. *Effective Date.* [Insert effective date.]

### 3.104 STATE ASSUMPTION OF PROPERTY TAX ASSESSMENT FUNCTION<sup>1</sup>

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 84-401 through 84-453.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *The Role of the State in Strengthening the Property Tax*, Report A-17 (Washington, D.C.: U.S. Government Printing Office, June, 1963).

## Suggested Legislation

### [STATE ASSUMPTION OF THE PROPERTY TAX ASSESSMENT FUNCTION]

(Be it enacted, etc.)

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

6 SECTION 2. *Division of Assessments.*

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

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

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

15 (1) certification on or before [date] of each year to the governing body of each county<sup>1</sup> in the  
16 state the assessed value of each parcel of taxable real property lying within the county, the assessed  
17 value to constitute the basis<sup>2</sup> upon which a property tax bill is rendered by the county governing  
18 body to the respective owners of taxable property;<sup>3</sup>

19 (2) development and implementation of a system for [annually] adjusting property tax as-  
20 sessments to reflect changes in value resulting from such factors as market appreciation or deprecia-  
21 tion, and obsolescence; and

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

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<sup>1</sup>This 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.

<sup>2</sup>Appeals 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.

<sup>3</sup>Alternatively, 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.

1 *cerning assessment policy and administration which a particular state wishes should be included at this*  
2 *point*]. The director shall have rulemaking authority [*in accordance with the state administrative pro-*  
3 *cedures act*].

4 SECTION 3. *Appointment of Local Assessing Staff.*

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

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

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

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

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

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

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

28 (c) All assessors who elect under subsection (b) above to remain in a local salary system and sub-  
29 ject to a local pension or retirement system, and health benefit system shall be eligible to receive any  
30 salary increases or change in benefits applicable after [*date*] to all employees in the local system, any  
31 salary increases or change in benefits applicable to less than all the employees in the local system  
32 which are applicable to supervisors and assessors shall be effective for them only upon approval of  
33 the increases or change in benefits by the [*director of personnel*]. Any supervisor or assessor who  
34 elects to remain in a local system shall be entitled to receive the benefits of that system, and shall not  
35 share in any benefit of a system provided for state employees.



1 (d) All supervisors and assessors who on [date] become subject to any of the provisions of the  
2 [state merit system law] under [chapters and sections] of this code shall become members of the em-  
3 ployees retirement system on [date] and shall be placed in that position which is comparable or which  
4 closely compares with their former position, without further examination or qualification, and without  
5 diminution or loss of any benefits to which they are entitled prior to [date]. All assessors who were  
6 members of a local retirement system prior to becoming subject to the state employees pension system  
7 under [chapters and sections] of this code shall be credited with all prior service rendered by them  
8 to the [counties or districts] to which they were entitled prior to [date] for purposes of retirement and  
9 death benefits and rates of contribution under [statutory citation].

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

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

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

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

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

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

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

31 SECTION 7. *Separability.* [Insert separability clause.]

32 SECTION 8. *Effective Date.* [Insert effective date.]

### 3.105 ASSESSMENT NOTIFICATION, REVIEW, AND APPEAL PROCEDURE<sup>1</sup>

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 selfpolicing 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.<sup>2</sup>

*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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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Financing Schools and Property Tax Relief — A State Responsibility*, Report A-46 (January, 1973); and *The Role of the States in Strengthening the Property Tax*, 2 vols., Report A-17 (Washington, D.C.: U.S. Government Printing Office, June, 1963).

<sup>2</sup>See also Arlington County, Virginia, Department of Real Estate Assessments, *Assessment and Appeal Procedure of Real Property*, February, 1975.

cedures 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.

Suggested Legislation

[AN ACT PROVIDING FOR PROTESTS OF ASSESSMENTS, ESTABLISHING A STATE TAX COURT, AND FOR RELATED PURPOSES]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this act to provide for a notification, review, and ap-  
2 peal procedure for assessments of real property for purposes of taxation.

3 SECTION 2. *Information by [Assessors].*

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

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

14 (b) The [assessor] shall include a notification of the period during which assessment protests  
15 will be accepted and the place where they may be filed.

16 (c) This information shall be furnished by the [assessor] to the property owner or his designee  
17 by regular United States mail directed to him at his latest address known to the [assessor]. Neither  
18 the failure of the property owner to receive this information nor the failure of the [assessor] to inform  
19 the property owner shall in any way affect the validity of any assessment or the validity of any taxes  
20 levied.

21 SECTION 3. *Jurisdiction to Hear Protest.* A taxpayer who desires to protest an assessment of his  
22 property may protest in the manner provided by this act. Jurisdiction to hear and determine protest  
23 of assessments shall be only in the courts and agencies upon whom jurisdiction is conferred by this  
24 act.

25 SECTION 4. *Assessors and Boards of Review.*

26 (a) In all counties of less than [ ] population, according to the last decennial census, there shall  
27 be a [local board of property tax review] to consist of [specify membership, method of appointment,  
28 and term]. The [board] shall hear and determine assessment protests, and shall have power to alter or  
29 modify any protested assessment in order that it conform to law. The [board] may review any and all

1 assessments and order increases and decreases thereof as may be necessary to bring such assessments  
2 into substantial uniformity in terms of their relationship to market value. Whenever the [county  
3 assessor] has in his regular employ [three] or more appraisers holding appraiser's certificates issued  
4 by the [division of property taxation of the state tax agency], hereinafter called "[division]," one of  
5 the appraisers shall sit with and advise the [board], but no appraiser shall sit with the [board] on its  
6 hearing of, or advise the [board] concerning any protest of, an assessment of property previously ap-  
7 praised by him.

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

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

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

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

#### 26 SECTION 5. *Initiation of Protests.*

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

35 (b) At, or in connection with, any hearing held pursuant to this section, the protesting taxpayer

1 shall be entitled to the assistance of an agent and other persons as he may wish.

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

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

8 SECTION 6. *[Tax Court]*.<sup>1</sup>

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

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

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

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

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<sup>1</sup>States 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.

1 proceedings.

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

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

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

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

11 SECTION 7. *Taking of Testimony.*

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

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

26 SECTION 8. *Small Claims.*

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

31 (b) Any protesting taxpayer who, pursuant to the action on his protest by the [county assessor],  
32 [local board of property tax review], or [head of the state tax agency], would incur a tax liability  
33 of less than [\$1,000] by reason of the protested assessment in the first year to which the  
34 assessment applies may elect to employ such procedure to appeal from the action on his protest upon  
35 payment of a [\$2 ] filing fee.

1 (c) The appellant shall file with the [state tax court] a written statement of the facts in the case,  
2 together with a waiver of the right to appeal to the [state supreme court]. The [state tax court] shall  
3 cause notice of the appeal and a copy of the statement to be served on the [county assessor] or [head  
4 of the state tax agency] whose assessment is in question. If the sole defense offered is that the prop-  
5 erty was not overassessed, no further pleadings shall be required.

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

8 SECTION 10. *Effect of Assessment Ratio Evidence.*

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

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

16 SECTION 11. *Separability. [Insert separability clause.]*

17 SECTION 12. *Effective Date. [Insert effective date.]*



### 3.106 PROPERTY TAX RELIEF FOR OVERBURDENED FAMILIES<sup>1</sup>

#### (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-

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<sup>1</sup>Derived from: *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (October, 1967); and *Financing Schools and Property Tax Relief - A State Responsibility*, Report A-40 (Washington, D.C.: U.S. Government Printing Office, January, 1973).

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.

## Suggested Legislation

### [AN ACT TO PROVIDE STATE RELIEF TO HOUSEHOLDERS FOR EXTRAORDINARY PROPERTY TAX BURDENS]<sup>1</sup>

(Be it enacted, etc.)

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

4 SECTION 2. *Definitions.* As used in this act:

5 (a) "Claimant" means a person, [age or over]<sup>2</sup> who has filed a claim under this act and was domi-  
6 ciled in this state for the entire calendar year for which he files claim for relief under this act. When  
7 two or more individuals of a household are able to meet the qualifications for a claimant, they may  
8 determine among them as to who the claimant shall be. If they are unable to agree, the matter shall  
9 be referred to the [tax commissioner] and his decision will be final.

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

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

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

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

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<sup>1</sup>For a short title, this act may be cited as the *Extraordinary Property Tax Relief Act*.

<sup>2</sup>Many states limit their circuit breaker statutes to the elderly.

1 tenants, or roomers and boarders on contract.

2 (e) "Household income" means all income received by all persons of a household in a calendar  
3 year while members of the household [less an amount equal to [\$750] multiplied by the number  
4 of persons who constitute the household. However, for purposes of this act, "household" income  
5 shall not be less than zero].

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

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

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

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

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

1 of the claim, the amount of the claim shall escheat to the state.

2 [Alternative 1.]

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

11 [OR]

12 [Alternative 2.]

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

18 [OR]

19 [Alternative 3.]

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

29 [End of three alternatives.]

30 SECTION 5. *Filing Date.* No claim with respect to property taxes accrued or with respect to  
31 rent constituting property taxes accrued shall be paid or allowed, unless the claim is actually filed  
32 with, and in the possession of, the [tax department or property tax collector] on or before [date for  
33 filing initial claim]. Subject to the same conditions and limitations, claims may be filed on or before  
34 [income tax filing date or other specified date] with respect to property taxes accrued of the next  
35 preceding calendar year.

1 SECTION 6. *Satisfaction of Outstanding Tax Liabilities.* The amount of any claim otherwise  
2 payable under this act may be applied by the [tax department] against any liability outstanding on  
3 the books of the [department] against the claimant, or against his or her spouse who was a member  
4 of the claimant's household in the year to which the claim relates.

5 SECTION 7. *One Claim per Household.* Only one claimant per household per year shall be en-  
6 titled to relief under this act.

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

9 [Alternative 1.]

10 [(a) (*Based on previous Vermont statute.*) For any taxable year, a claimant shall be entitled to a  
11 credit equal to [60]<sup>1</sup> percent of the amount by which the property taxes or rent constituting prop-  
12 erty taxes upon the claimant's homestead for the taxable year exceeds [5] percent of the claimant's  
13 total household income for that taxable year.]<sup>2</sup>

14 [OR]

15 [Alternative 2.]

16 [(a) (*Based on present Vermont statute.*) For any taxable year, a claimant shall be entitled to a  
17 credit equal to [60]<sup>1</sup> percent of the amount by which the property taxes, or rent constituting property  
18 taxes, upon the individual's homestead for the taxable year exceeds a percentage of the individual's  
19 income for the taxable year determined according to the following schedule:

20	If Household Income	Then the Taxpayer is Entitled to
21	(Rounded to the	Credit for Property Tax Paid in
22	Nearest Dollar) is:	Excess of this Percent of that Income
23	\$ 0- 3,999.00	4.0%
24	4,000.00- 7,999.00	4.5
25	8,000.00-11,999.00	5.0
26	12,000.00-15,999.00	5.5
27	16,000.00-and up	6.0

28 [*The 1973 Michigan statute exemplifies the flexibility of the circuit-breaker. Two schedules are*  
29 *provided, one for the elderly and one for the non-elderly. For the elderly, the threshold ranges from*  
30 *0 to 3.5 percent of income, depending upon the level of income with 100 percent of the property*  
31 *tax in excess of the threshold relieved by the state. For the non-elderly the threshold is a constant*  
32 *3.5 percent of income, regardless of income level, but the state relieves only 60 percent of the property*

<sup>1</sup>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.

<sup>2</sup>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.

1 tax above the threshold level. For both elderly and non-elderly renters, 17 percent of rent is defined  
2 as the property tax equivalent. In no case may the credit-rebate exceed \$500.}]

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

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

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

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

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

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

23 SECTION 12. *Denial of Claim.* If it is determined that a claim is excessive and was filed with  
24 fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit  
25 has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount  
26 paid may be recovered by assessment [as income taxes are assessed], and the assessment shall bear  
27 interest from the date of payment of the claim, until refunded or paid, at the rate of 1 percent per  
28 month. The claimant in such case, and any person who assisted in the preparation or filing of such  
29 excessive claim or supplied information upon which such excessive claim was prepared, with  
30 fraudulent intent, is guilty of a misdemeanor. If it is determined that a claim is excessive and was  
31 negligently prepared, 10 percent of the corrected claim shall be disallowed, and if the claim has been  
32 paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled,  
33 and the proper portion of any amount paid shall be similarly recovered by assessment [as income  
34 taxes are assessed], and the assessment shall bear interest at 1 percent per month from the date of  
35 payment until refunded or paid.

1       SECTION 13. *Rental Determination.* If a homestead is rented by a person from another person  
2 under circumstances deemed by the [tax commissioner] to be not at arms-length, he may determine  
3 rent constituting property taxes accrued as at arms-length, and, for purposes of this act, such  
4 determination shall be final.

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

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

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

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

18       SECTION 18. *Separability.* [Insert separability clause.]

19       SECTION 19. *Effective Date.* [Insert effective date clause.]



### 3.107 PROPERTY TAX RELIEF ON BUSINESS INVENTORIES AND REIMBURSEMENT TO LOCAL GOVERNMENTS<sup>1</sup>

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-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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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Taxation and Industrial Location*, Report A-30 (Washington, D.C.: U.S. Government Printing Office, April, 1967).

## Suggested Legislation

### [REPEAL OF PROPERTY TAXES ON BUSINESS INVENTORIES]

(Be it enacted, etc.)

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

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

7 SECTION 3. *Certification by [State Tax Agency].* The [state tax agency] shall determine the great-  
8 est amount received by each [appropriate political subdivisions] from the local levy upon [business  
9 inventories] for the three years prior to the repeal of the tax, and shall, on or before [insert date],  
10 certify to the [state treasurer] the amounts so determined for each [appropriate political subdivisions]  
11 and the total amount for all [appropriate political subdivisions].<sup>1</sup>

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

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

20 SECTION 5. *Allocation of Revenue to [Appropriate Political Subdivisions].* If the amount deter-  
21 mined by the [state tax agency] in Section 4 shall exceed the amount determined by the [state tax  
22 agency] in Section 3 hereof, the [state tax agency] shall allocate the excess amount among the [ap-  
23 propriate political subdivisions] of this state in accordance with the following formula:

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

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<sup>1</sup>In those states where exemption of personal property was optional, the state may choose to distribute funds on a *per capita* basis.

1 The [state tax agency] shall total the amounts allocated to each [appropriate political sub-  
2 divisions] under the provisions of this section and shall certify this amount to the [state treasurer]  
3 on or before [insert date] and on or before [insert date] annually thereafter.

4 [Alternative 1.]

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

- 9 (a) from the moneys collected from the taxes described in Section 2 of this act; and
- 10 (b) from such other funds as may be appropriated by law for this purpose.]

11 [OR]

12 [Alternative 2.]

13 [SECTION 6. *Payment by [State Treasurer]*.

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

- 18 (1) from the moneys collected from the taxes described in Section 2 of this act, and
- 19 (2) from such other funds as may be appropriated by law for this purpose.

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

- 22 (1) [year], [90] percent of the first year's payment
- 23 (2) [year], [80] percent of the first year's payment
- 24 (3) [year], [70] percent of the first year's payment
- 25 (4) [year], [60] percent of the first year's payment
- 26 (5) [year], [ ] percent of the first year's payment
- 27 (6) [year], [ ] percent of the first year's payment.]

28 SECTION 7. *Distribution Dates*. The distribution required to be made by the [state treasurer]  
29 under this act shall be made as follows: the first installment shall be payable annually on [insert  
30 date] commencing on [insert date] and shall consist of one-half of the amount certified under Section  
31 3 hereof; and the second installment shall be payable on the succeeding [insert date] of each year  
32 and shall consist of the balance of the amount certified under Section 3 hereof plus each [appropri-  
33 ate political subdivisions'] distributive share of the excess, if any, allocated under Section 5  
34 thereof.

35 SECTION 8. *County Equalization Tables*. For the purpose of apportioning the amounts to be

1 raised in the respective taxing districts of the county, the [county board of taxation] shall, for each  
2 taxing district, include in the equalization table for the county the assumed assessed value of the  
3 property represented by the money received by each taxing district pursuant to the provisions of  
4 this act.

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

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

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

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

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

23 SECTION 10. *Powers of [State Tax Agency].*

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

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

31 SECTION 11. *Separability.* [Insert separability clause.]

32 SECTION 12. *Effective Date.* [Insert effective date.]

## **3.2 Non-Property Taxes and Other Revenues**

### 3.201 UNIFORM PERSONAL INCOME TAX STATUTE<sup>1</sup>

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 1, Section 11*) for crediting residents of the state for income tax paid another state, a practice now followed by nearly all of the income

<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Federal-State Coordination of Personal Income Taxes*, Report A-27 (Washington, D.C.: U.S. Government Printing Office, October, 1965).

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.<sup>1</sup> (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*

<sup>1</sup>Advisory Commission on Intergovernmental Relations, *Local Revenue Diversification: Income, Sales Taxes, and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).

*Section 16 – Standard Deduction*  
*Section 17 – Itemized Deductions*  
*Section 18 – Personal Exemptions*  
*Section 19 – Employer to Withhold Tax From Wages*  
*Section 20 – Information Statement for Employee*  
*Section 21 – Credit for Tax Withheld*  
*Section 22 – Employer’s Return and Payment of Tax Withheld*  
*Section 23 – Employer’s Liability for Withheld Taxes*  
*Section 24 – Employer’s Failure to Withhold*  
*Section 25 – Period for Computation of Taxable Income*  
*Section 26 – Methods of Accounting*  
*Section 27 – Adjustments*  
*Section 28 – Limitation on Additional Tax*  
*Section 29 – Imposition of Tax*  
*Section 30 – Computation and Payment*  
*Section 31 – Tax Not Applicable*  
*Section 32 – Resident Estate or Trust Defined*  
*Section 33 – Taxable Income of Resident Estate or Trust*  
*Section 34 – Fiduciary Adjustment*  
*Section 35 – Credit for Income Tax of Another State*  
*Section 36 – Credit to Beneficiary for Accumulation Distribution*  
*Section 37 – Non-Resident Estate or Trust Defined*  
*Section 38 – Taxable Income of a Non-Resident Estate or Trust*  
*Section 39 – Share of a Non-Resident Estate, Trust, or Its Beneficiaries in Income From Sources in This State*  
*Section 40 – Credit to Beneficiary for Accumulation Distribution*  
*Section 41 – Entity Not Taxable*  
*Section 42 – Resident Partner – Adjusted Gross Income*  
*Section 43 – Non-Resident Partner – Adjusted Gross Income From Sources in This State*  
*Section 44 – Persons Required to Make Returns of Income*  
*Section 45 – Joint Returns by Husband and Wife*  
*Section 46 – Returns by Fiduciaries*  
*Section 47 – Notice of Qualification as Receiver*  
*Section 48 – Change of Status as Resident or Non-Resident During Year*  
*Section 49 – Taxable Income as Resident and Non-Resident*  
*Section 50 – Minimum Tax and Prorating of Exemptions*  
*Section 51 – Time and Place for Filing Returns and Paying Tax*  
*Section 52 – Declarations of Estimated Tax*  
*Section 53 – Time for Filing Declaration of Estimated Tax*  
*Section 54 – Payments of Estimated Tax*  
*Section 55 – Extension of Time for Filing and Payment*  
*Section 56 – Change of Election*  
*Section 57 – Signing of Returns and Other Documents*  
*Section 58 – General Requirements Concerning Returns, Notices, Records, and Statements*  
*Section 59 – Partnership Return*  
*Section 60 – Information Returns*  
*Section 61 – Report of Change in Federal Taxable Income*  
*Section 62 – Examination of Return*  
*Section 63 – Assessment Final If No Protest*  
*Section 64 – Protest by Taxpayer*  
*Section 65 – Notice of Determination After Protest*  
*Section 66 – Action of [Tax Commissioner] Final*



*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.)

1 SECTION 1. *Imposition of Tax.*

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

5

6	If the taxable income is: [\$ ]	The tax is: [\$ ]
7	Not over [\$ ]	[ ] percent of the taxable income
8	Over [\$ ] but not over [\$ ]	[\$ ] plus [ ] percent of the excess over [\$ ]
9	Over [\$ ] but not over [\$ ]	[\$ ] plus [ ] percent of the excess over [\$ ]

10

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

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

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

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

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

25 SECTION 3. *Optional Tax.*

26 (a) *Option to Elect in Lieu of Tax.* In lieu of the tax imposed by Section 1, there is hereby im-  
27 posed for each taxable year on the taxable income of every individual whose adjusted gross income

1 for such year is less than \$5,000, or in the case of a married couple filing a joint return for such  
2 year whose adjusted gross income is less than \$10,000, and who has elected for such a year to pay  
3 the tax imposed by this section, a tax as follows: *[Insert appropriate tax tables]*

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

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

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

12 (e) *Determination of Taxable Income.* In the case of a taxpayer who makes the election referred  
13 to in this section, taxable income means adjusted gross income as modified by Section 6 less the stand-  
14 ard deduction provided in Section 8 and the deduction for personal exemptions provided in Section  
15 10.

16 *[Alternative 1.]*

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

23 [OR]

24 *[Alternative 2.]*

25 [SECTION 4. *Meaning of Terms.*<sup>1</sup> Any term used in this act shall have the same meaning as  
26 when used in a comparable context in the laws of the United States relating to Federal income taxes,  
27 unless a different meaning is clearly required. Any reference in this act to the laws of the United States  
28 shall mean the provisions of the *Internal Revenue Code of 1954*, and amendments thereto, in effect  
29 on [December 31, 19 ] and other provisions of the laws of the United States relating to Federal  
30 income taxes in effect on [December 31, 19 ], or at the option of the taxpayer it shall mean the  
31 provisions of the *Internal Revenue Code of 1954* and amendments thereto and other provisions of  
32 the laws of the United States relating to Federal income taxes as they may be in effect for the taxable  
33 year. As used in this act the terms "he," "his," and "him," are meant to include "she," "hers" and  
34 "her."]

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<sup>1</sup>Alternate form — to avoid invalidity on the ground of illegal delegation.

## Title II

### COMPUTATION OF TAXABLE INCOME

#### PART I

#### RESIDENT INDIVIDUALS

1 SECTION 5. *Taxable Income.* The entire taxable income of a resident of this state shall be his  
2 Federal adjusted gross income as defined in the laws of the United States with the modifications and less  
3 the deductions and personal exemptions provided in this part.

4 SECTION 6. *Modifications.*

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

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

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

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

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

23 (d) *Cross Reference.* For modifications required to be made by a partner relating to items of in-  
24 come, gain, loss, or deduction of a partnership, see Title VI.

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

27 SECTION 8. *Standard Deduction.* The standard deduction of a resident individual or of a resi-  
28 dent husband and wife who file a joint return shall be 10 percent of his or their adjusted gross  
29 income as modified by this part, or [\$1,000,] whichever is less. The standard deduction of a married

1 person who files a separate return shall not exceed [\$500].

2 SECTION 9. *Itemized Deductions.*

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

6 (1) reduced by any amount thereof representing

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

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

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

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

18 SECTION 10. *Personal Exemptions and Credits.*

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

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

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

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

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

<sup>1</sup>For example, \$6 where sales tax is 2 percent; \$9 where sales tax is 3 percent; \$12 where sales tax is 4 percent.

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

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

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

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

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

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

## PART II

### NON-RESIDENT INDIVIDUALS – TAXABLE INCOME

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

1       SECTION 14. *Husband and Wife.*

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

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

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

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

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

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

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

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

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

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

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

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

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

33       (d) *Deductions for Losses.* Deductions with respect to capital losses, net long term capital gains,  
34 and net operating losses shall be based solely on income, gains, losses, and deductions derived from  
35 or connected with sources in this state, under regulations to be prescribed by the [tax commissioner]

1 but otherwise shall be determined in the same manner as the corresponding Federal deductions.

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

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

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

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

18 SECTION 17. *Itemized Deductions.*

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

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

35 SECTION 18. *Personal Exemptions.* A non-resident individual shall be allowed the same person-



1 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  
1 making payment of any wages taxable under this act to a resident or non-resident individual shall  
2 deduct and withhold from such wages for each payroll period a tax computed in such manner as to  
3 result, so far as practicable, in withholding from the employee's wages during each calendar year  
4 an amount substantially equivalent to the tax reasonably estimated to be due from employee under  
5 this act with respect to the amount of such wages included in his adjusted gross income during the  
6 calendar year. The method of determining the amount to be withheld shall be prescribed by regula-  
7 tions of the [tax commissioner].

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

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

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

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

25 SECTION 20. *Information Statement for Employee.* Every employer required to deduct and with-  
26 hold tax under this act from the wages of an employee, or who would have been required so to deduct

1 and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish  
2 to each such employee in respect to the wages paid by such employer to such employee during the  
3 calendar year on or before February 15 of the succeeding year, or, if his employment is terminated  
4 before the close of such calendar year, within 30 days from the date on which the last payment of  
5 wages is made, a written statement as prescribed by the [tax commissioner] showing the amount of  
6 wages paid by the employer to the employee, the amount deducted and withheld as tax, and such  
7 other information as the [tax commissioner] shall prescribe.

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

14 SECTION 22. *Employer's Return and Payment of Tax Withheld.*

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

34 (b) *Deposit in Trust for [Tax Commissioner].* Whenever any employer fails to collect, truthfully  
35 account for, pay over the tax, or make returns of the tax as required by this section, the [tax com-

1 *missioner*] may serve a notice requiring such employer to collect the taxes which became collectible  
2 after service of such notice, to deposit such taxes in a bank approved by the [*tax commissioner*], in a  
3 separate account, in trust for and payable to the [*tax commissioner*], and to keep the amount of such  
4 tax in such account until paid over to the [*tax commissioner*]. Such notice shall remain in effect  
5 until a notice of cancellation is served by the [*tax commissioner*].

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

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

#### Title IV

### ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

1 SECTION 25. *Period for Computation of Taxable Income.*

2 (a) *General.* For purposes of the tax imposed by this act, a taxpayer's taxable year shall be the  
3 same as his taxable year for Federal income tax purposes.

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

9 (c) *Termination of Taxable Year for Jeopardy.* Notwithstanding the provisions of subsections  
10 (a) and (b), if the [*tax commissioner*] terminates the taxpayer's taxable year under Section 103 (re-  
11 lating to tax in jeopardy), the tax shall be computed for the period determined by such action.

1 SECTION 26. *Methods of Accounting.*

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

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

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

15 SECTION 28. *Limitation on Additional Tax.*

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

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

## Title V

### ESTATES, TRUSTS, BENEFICIARIES, AND DECEDENTS

#### Part I

#### GENERAL

1 SECTION 29. *Imposition of Tax.* The tax imposed by this act on individuals shall apply to

1 taxable income of estates and trusts.

2 SECTION 30. *Computation and Payment.* The taxable income of an estate or trust shall be com-  
3 puted in the same manner as in the case of an individual except as otherwise provided by this sub-  
4 chapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

5 SECTION 31. *Tax Not Applicable.*

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

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

## Part II

### RESIDENT ESTATES AND TRUSTS

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

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

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

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

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

8 SECTION 34. *Fiduciary Adjustment.*

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

12 (b) *Shares of Fiduciary Adjustment.* The respective shares of an estate or trust and its benefi-  
13 ciaries (including solely for the purpose of this allocation, non-resident beneficiaries) in the fiduciary ad-  
14 justment shall be in proportion to their respective shares of Federal distributable net income of the  
15 estate or trust. If the estate or trust has no Federal distributable net income for the taxable year, the  
16 share of each beneficiary in the fiduciary adjustment shall be in proportion to his share of the estate  
17 or trust income for such year, under local law or the terms of the instrument, which is required to be  
18 distributed currently and any other amounts of such income distributed in such year. Any balance of  
19 the fiduciary adjustment shall be allocated to the estate or trust.

1 (c) *Alternate Attribution of Adjustment.* The [tax commissioner] may by regulation authorize the  
2 use of such other methods of determining to whom the items comprising the fiduciary adjustment  
3 shall be attributed, as may be appropriate and equitable, on such terms and conditions as the [tax  
4 commissioner] may require.

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

8 SECTION 36. *Credit to Beneficiary for Accumulation Distribution.*

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

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

### Part III

#### NON-RESIDENT TRUSTS AND ESTATES

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

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

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

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

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

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

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

1 sists of:

2 (1) its share of items of income, gain, loss, and deduction which enter into the Federal defini-  
3 tion of distributable net income;

4 (2) increased or reduced by the amount of any items of income, gain, loss, or deduction  
5 which are recognized for Federal income tax purposes but excluded from the Federal definition of dis-  
6 tributable net income of the estate or trust;

7 (3) less the amount of the deduction for its Federal exemption.

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

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

14 (1) To the amount of items of income, gain, loss, and deduction which enter into the defini-  
15 tion of distributable net income there shall be added or subtracted, as the case may be, the modifica-  
16 tions described in Section 6 to the extent they relate to items of income, gain, loss, and deduction  
17 which also enter into the definition of distributable net income. No modification shall be made under  
18 this section which has the effect of duplicating an item already reflected in the definition of dis-  
19 tributable net income.

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

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

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

1 puate and equitable.

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

## Title VI

### PARTNERS AND PARTNERSHIPS

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

4 SECTION 42. *Resident Partner – Adjusted Gross Income.*

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

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

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

24 SECTION 43. *Non-Resident Partner – Adjusted Gross Income From Sources in This State.*



1           (a) *General.* In determining the adjusted gross income of a non-resident partner of any partner-  
2 ship, there shall be included only that part derived from, or connected with, sources in this state of  
3 the partner's distributive share of items of partnership income, gain, loss, and deduction entering  
4 into his Federal adjusted gross income, as such part is determined under regulations prescribed by  
5 the [tax commissioner] in accordance with the general rules in Section 15.

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

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

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

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

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

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

29          (f) *Application of Rules for Resident Partners to Nonresident Partners.* A non-resident partner's  
30 distributive share of items of income, gain, loss, or deduction shall be determined under subsection  
31 (a) of Section 42. The character of partnership items for a non-resident partner shall be determined  
32 under subsection (b) of Section 42. The effect of a special provision in a partnership agreement,  
33 other than a provision referred to in subsection (c) of this section, having as a principal purpose  
34 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

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

3 (a) every resident individual,

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

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

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

11 (b) every non-resident individual,

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

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

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

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

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

22 (1) any taxable income,

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

24 SECTION 45. *Joint Return by Husband and Wife.*

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

27 (1) no joint return shall be made under this act if the spouses are not permitted to file a joint  
28 Federal income tax return;

1 (2) if the Federal income tax liability of either spouse is determined on a separate Federal  
2 return their income tax liabilities under this act shall be determined on separate returns;

3 (3) if the Federal income tax liabilities of husband and wife, other than a husband and wife  
4 described in subsection (b) of this section, are determined on a joint Federal return, they shall file  
5 a joint return under this act and their tax liabilities shall be joint and several; or

6 (4) if neither spouse is required to file a Federal income tax return and either or both are re-  
7 quired to file an income tax return under this act, they may elect to file separate or joint returns  
8 and pursuant to such election their liabilities shall be separate or joint and several.

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

14 SECTION 46. *Returns by Fiduciaries.*

15 (a) *Decedents.* An income tax return for any deceased individual shall be made and filed by  
16 his executor, administrator, or other person charged with the care of his property. A final return  
17 of a decedent shall be due when it would have been due if the decedent had not died.

18 (b) *Individuals Under a Disability.* An income tax return for an individual who is unable to make  
19 a return by reason of minority or other disability shall be made and filed by his duly authorized  
20 agent, his committee, guardian, conservator, fiduciary or other person charged with the care of his  
21 person or property other than a receiver in possession of only a part of the individual's property.

22 (c) *Estates and Trusts.* The income tax return of an estate or trust shall be made and filed by the  
23 fiduciary thereof.

24 (d) *Joint Fiduciaries.* If two or more fiduciaries are acting jointly, the return may be made by any  
25 one of them.

26 (e) *Cross Reference.* For provisions relating to information returns by partnerships, see Section  
27 59.

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

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

1 SECTION 49. *Taxable Income as Resident and Non-Resident.*

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

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

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

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

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

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

25 SECTION 52. *Declarations of Estimated Tax.*

26 (a) *Requirement of Declaration.* Every resident and non-resident individual shall make a dec-  
27 laration of his estimated tax for the taxable year, in such form as the [tax commissioner] may prescribe  
28 if his adjusted gross income (in the case of a non-resident from sources within this state), other than  
29 from wages on which tax is withheld under this act, can reasonably be expected to exceed [\$500] plus  
30 the sum of the personal exemptions to which he is entitled.

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

34 (c) *Joint Declaration of Husband and Wife.* If they are eligible to do so for Federal tax purposes,  
35 a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in

1 which case the liability with respect to the estimated tax shall be joint and several. If a joint declara-  
2 tions is made but husband and wife elect to determine their taxes under this chapter separately, the  
3 estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be  
4 divided between them, as they may elect.

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

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

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

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

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

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

21 SECTION 53. *Time for Filing Declaration of Estimated Tax.*

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

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

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

29 (3) after September 1 of the taxable year, the declaration shall be filed on or before January  
30 15 of the succeeding year.

31 (b) *Declaration by Farmer.* A declaration of estimated tax required by Section 52 from an indi-  
32 vidual having an estimated adjusted gross income from farming in this state for the taxable year  
33 which is at least two-thirds of his total estimated adjusted gross income taxable in this state for the  
34 taxable year, may be filed at any time on or before January 15 of the succeeding taxable year, in lieu of  
35 the time otherwise prescribed.

1 (c) *Declaration of Estimated Tax of [\$50] or Less.* A declaration of estimated tax of an in-  
2 dividual having a total estimated tax for the taxable year of [\$50] or less may be filed at any time on  
3 or before January 15 of the succeeding taxable year under regulations prescribed by the [*tax com-*  
4 *missioner*].

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

8 SECTION 54. *Payments of Estimated Tax.*

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

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

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

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

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

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

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

1 of the filing of the declaration.

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

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

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

12 (f) *Installments Paid in Advance.* At the election of the individual, any installment of the esti-  
13 mated tax may be paid prior to the date prescribed for its payment.

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

16 SECTION 55. *Extension of Time for Filing and Payment.*

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

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

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

28 SECTION 57. *Signing of Returns and Other Documents.*

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

34 (b) *Partnerships.* Any return, statement, or other document required of a partnership shall be  
35 signed by one or more partners. The fact that a partner's name is signed to a return, statement, or

1 other document shall be *prima facie* evidence for all purposes that such partner is authorized to  
2 sign on behalf of the partnership.

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

## Part II

### INFORMATION RETURNS

1 SECTION 58. *General Requirements Concerning Returns, Notices, Records, and Statements.*

2 The [tax commissioner] may prescribe regulations as to the keeping of records, the content and form  
3 of returns and statements, and the filing of copies of Federal income returns and determinations.

4 The [tax commissioner] may require any person, by regulation or notice served on such person, to  
5 make such returns, render such statements, or keep such records, as the [tax commissioner] may  
6 deem sufficient to show whether or not such person is liable under this act for tax or for the collec-  
7 tion of tax.

8 SECTION 59. *Partnership Return.* Every partnership having a resident partner or having any  
9 income derived from sources in this state, determined in accordance with the applicable rules of Section  
10 15 as in the case of a non-resident individual, shall make a return for the taxable year setting forth all  
11 items of income, gain, loss, and deduction, and the names and addresses of the individuals whether  
12 residents or non-residents who would be entitled to share in the net income if distributed and the  
13 amount of the distributive share of each individual and such other pertinent information as the  
14 [tax commissioner] may prescribe by regulations and instructions. Such return shall be filed on or  
15 before the 15th day of the fourth month following the close of each taxable year. For purposes of  
16 this section, "taxable year" means a year or period which would be a taxable year of the partnership  
17 if it were subject to tax under this act.

18 SECTION 60. *Information Returns.* The [tax commissioner] may prescribe regulations and in-  
19 structions requiring returns of information to be made and filed on or before February 28 of each  
20 year by any person making payment or crediting in any calendar year the amounts of [\$600] or more  
21 ([\$10] or more in the case of interest or dividends) to any person who may be subject to the tax im-  
22 posed under this act. Such returns may be required of any person, including lessees or mortgagors of  
23 real or personal property, fiduciaries, employers, and all officers and employees of this state or of any  
24 municipal corporation or political subdivision of this state, having the control receipt, custody, disposal



1 or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remun-  
2 erations, emoluments, or other fixed or determinable gains, profits, or income, except interest coupons  
3 payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished  
4 by an employer to an employee, shall constitute the return of information required to be made under  
5 this section with respect to such wages.

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

## Title VIII

### PROCEDURE AND ADMINISTRATION

#### Part I

#### DEFICIENCIES

1 SECTION 62. *Examination of Return.*

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

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

11 (c) *Notice of Deficiency.* A notice of deficiency shall set forth the reason for the proposed

1 assessment. The notice may be mailed by certified or registered mail to the taxpayer at his last known  
2 address. In the case of a joint return, the notice of deficiency may be a single joint notice except that  
3 if the [tax commissioner] is notified by either spouse that separate residences have been established  
4 he shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a no-  
5 tice of deficiency may be mailed to his last known address unless the [tax commissioner] has received  
6 notice of the existence of a fiduciary relationship with respect to such taxpayer.

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

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

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

22 SECTION 66. *Action of [Tax Commissioner] Final.* The action of the [tax commissioner] on  
23 the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of  
24 his action to the taxpayer unless within this period the taxpayer seeks judicial review of the  
25 [tax commissioner's] determination.

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

- 30 (a) whether the taxpayer has been guilty of fraud with attempt to evade tax;  
31 (b) whether the petitioner is liable as the transferee of property of a taxpayer (but not to show  
32 that the taxpayer was liable for the tax);  
33 (c) whether the taxpayer is liable for any increase in a deficiency where such increase is asserted  
34 initially after the notice of deficiency was mailed and protest under Section 64 filed, unless such in-  
35 crease in deficiency is the result of a change or correction of federal taxable income required to be

1 reported under Section 61, and of which change or correction the [tax commissioner] had no notice  
2 at the time he mailed the notice of deficiency.

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

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

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

16 SECTION 71. *Assessment of Tax.*

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

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

34 (c) *Supplemental Assessment.* The [tax commissioner] may, at any time within the period pre-  
35 scribed for assessment, make a supplemental assessment, subject to the provisions of Section 62

1 where applicable, whenever it is found that any assessment is imperfect or incomplete in any  
2 material aspect.

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

4 SECTION 72. *Limitations on Assessment.*

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

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

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

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

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

30 (f) *Extension by Agreement.* Where, before the expiration of the time prescribed in this section  
31 for the assessment of a deficiency, both the [tax commissioner] and the taxpayer shall have con-  
32 sented in writing to its assessment after such time, the deficiency may be assessed at any time prior to  
33 the expiration of period agreed upon. The period so agreed may be extended by subsequent agree-  
34 ment in writing made before the expiration of the period previously agreed upon.

35 (g) *Time Return Deemed Filed.* For purposes of this section an income tax return filed before

1 the last day prescribed by law or regulation promulgated pursuant to law for the filing thereof, shall  
2 be deemed to be filed on such last day. If a return or withholding tax for any period ending with or  
3 within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be  
4 deemed to be filed on April 15 of such succeeding calendar year.

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

10 SECTION 74. *Interest on Underpayments.*

11 (a) *General.* If any amount of tax imposed by this act, including tax withheld by an employer,  
12 is not paid on or before the last date prescribed for payment, interest on such amount at the rate of  
13 6 percent *per annum* shall be paid for the period from such last date to date paid. No interest shall  
14 be imposed if the amount due is less than one dollar nor shall this section apply to any failure to pay  
15 estimated income tax under Section 54.

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

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

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

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

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

35 (g) *Satisfaction by Credits.* If any portion of a tax is satisfied by credit of an overpayment, then

1 no interest shall be imposed under this section on the portion of the tax so satisfied for any period  
2 during which, if the credit had not been made, interest would have been allowable with respect to  
3 such overpayment.

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

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

## Part II

### ADDITIONS TO TAX AND PENALTIES

1 SECTION 75. *Failure to File Tax Returns.*

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

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

19 SECTION 76. *Failure to Pay Tax.*

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

1 amount equal to 5 percent of the deficiency.

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

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

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

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

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

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

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

1 able to a deficiency;

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

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

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

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

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

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

18 (b) as the amount of the itemized deductions referred to in Section 9 shown on the return for  
19 any taxable year an amount greater than such deductions actually shown, he will pay a penalty of  
20 \$50 for such statement, unless

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

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

24 (i) the credits against such taxes; and

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

27 Section 62 relating to deficiency procedure shall not apply in respect to the assessment or col-  
28 lection of any penalty imposed by this section.

### Part III

#### CREDITS AND REFUNDS

1 SECTION 78. *Authority to Make Credits or Refunds.*

2 (a) *General Rule.* The [tax commissioner] within the applicable period of limitations may credit  
3 an overpayment of income tax and interest on such overpayment against any liability in respect of



1 any tax imposed by the tax laws of this state on the person who made the overpayment, and the  
2 balance shall be refunded by the [treasurer] out of the proceeds of the tax retained by him for such  
3 general purposes.

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

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

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

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

15 SECTION 79. *Abatements.*

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

18 (1) is excessive in amount, or

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

20 (3) is erroneously or illegally assessed.

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

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

27 SECTION 80. *Limitations on Credit or Refund.*

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

34 (b) *Limit on Amount of Claim or Refund.* If the claim is filed by the taxpayer during the three  
35 year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the por-

1 tion of the tax paid within the three years immediately preceding the filing of the claim plus the  
2 period of any extension of time for filing the return. If the claim is not filed within such three year  
3 period, but is filed within the two year period, the amount of the credit or refund shall not exceed  
4 the portion of the tax paid during the two years immediately preceding the filing of the claim. If no  
5 claim is filed, the credit or refund shall not exceed the amount which would be allowable under either  
6 of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is  
7 allowed.

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

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

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

30 (1) If the claim for credit or refund relates to an overpayment of tax on account of the  
31 deductibility by the taxpayer of a debt as a debt which became worthless or a loss from worthlessness  
32 of a security or the effect that the deductibility of a debt or of a loss has on the application to  
33 the taxpayer of a carryover, the claim may be made, under regulations prescribed by the [tax com-  
34 missioner], within seven years from the date prescribed by law for filing the return for the year  
35 with respect to which the claim is made.

1 (2) If the claim for credit or refund relates to an overpayment attributable to a net operating  
2 loss carryback, the claim may be made, under regulations prescribed by the [tax commissioner], within  
3 the period which ends with the expiration of the 15th day of the 40th month following the end of the  
4 taxable year of the net operating loss which resulted in such carryback or the period prescribed in  
5 subsection (c) in respect of such taxable year, whichever expires later.

6 SECTION 81. *Interest on Overpayment.*

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

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

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

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

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

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

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

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

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

34 SECTION 83. *Notice of Denial.* If the [tax commissioner] disallows a claim for refund, he shall  
35 notify the taxpayer accordingly. The action of the [tax commissioner] denying a claim for refund is fi-

1 nal upon expiration of 90 days from the date when he mails notice of his action to the taxpayer  
2 unless within this period the taxpayer seeks judicial review of the [tax commissioner's] determination.

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

#### Part IV

### JUDICIAL REVIEW – SUITS FOR REFUNDS

1 SECTION 85. *Review of Determination of [Tax Commissioner].* A determination by the [tax  
2 commissioner] on a taxpayer's protest against the proposed assessment of a deficiency shall be  
3 subject to judicial review at the instance of any taxpayer affected thereby [either in the manner pro-  
4 vided by law for the review of final decisions or determinations of administrative agencies of this  
5 state or by a *de novo* review in [a court of jurisdiction]].<sup>1</sup>

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

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

22 SECTION 88. *Proceedings After Review.*

23 (a) *Credit, Refund of Abatements.* If the amount of a deficiency determined by the [tax com-  
24 missioner] is disallowed in whole or in part by the [court of review], the amount so disallowed

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<sup>1</sup>These provisions will have to be drafted to be consistent with judicial remedies available in comparable proceedings.

1 shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment  
2 has not been made, shall be abated.

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

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

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

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

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

33 SECTION 92. *Judgement for Taxpayer.* In any action for a refund, the [court] may render judge-  
34 ment for the taxpayer for any part of the tax, interest, penalties, or other amounts found to be  
35 erroneously paid, together with interests on the amount of the overpayment. The amount of any

1 judgement against the [tax commissioner] shall first be credited against any taxes, interest, penal-  
2 ties or other amounts due from the taxpayer under the tax laws of this state and the remainder  
3 refunded by the [state treasurer].

## Part V

### MISCELLANEOUS ENFORCEMENT PROVISIONS

1 SECTION 93. *Timely Mailing.* If any claim, statement, notice, petition, or other document in-  
2 cluding to the extent authorized by the [tax commissioner], a return or declaration of estimated tax  
3 required to be filed within a prescribed period or on or before a prescribed date under the author-  
4 ity of any provision of this act is, after such period or such date, delivered by United States mail to the  
5 [tax commissioner] or the officer or person therein with which or with whom such document is re-  
6 quired to be filed, the date of the United States postmark stamped on the envelope shall be deemed  
7 to be the date of delivery. This section shall apply only if the postmark date falls within the pre-  
8 scribed period or on or before the prescribed date for filing of such document, determined with regard  
9 to any extension granted for such filing, and only if such document was deposited in the mail, postage  
10 prepaid, properly addressed to the [tax commissioner], office, officer, or person therein with which  
11 or with whom the document is required to be filed. If any document is sent by United States regis-  
12 tered mail, such registration shall be *prima facie* evidence that such document was delivered to the  
13 [tax commissioner], or the office, officer, or person to which or to whom it is addressed. To the  
14 extent that the [tax commissioner] shall prescribe by regulation, certified mail may be used in lieu of  
15 registered mail under this section. This section shall apply in the case of postmarks not made by the  
16 United States Post Office only if and to the extent provided by regulations of the [tax commissioner].  
17 When the last day prescribed under the authority of this act, including any extension of time, for  
18 performing any act falls on Saturday, Sunday, or a legal holiday in this state, the performance of  
19 such act shall be considered timely if it is performed on the next succeeding day which is not a Sat-  
20 urday, Sunday, or a legal holiday.

21 SECTION 94. *Collection Procedures.*

22 (a) *General.* The tax imposed by this act shall be collected by the [tax commissioner], and he may  
23 establish the mode of time for the collection of any amount due under this act if not otherwise speci-  
24 fied. The [tax commissioner] shall, on request, give a receipt for any amount collected under this  
25 act. The [tax commissioner] may authorize the incorporated banks or trust companies which are  
26 depositories or fiscal agents of this state to receive and give a receipt for any tax imposed under  
27 this act, in such manner, at such times, and under such conditions as he may prescribe; and the  
28 [tax commissioner] shall prescribe the manner, times, and conditions under which the receipt of tax by

1 such banks and trust companies is to be treated as payment of tax to the [tax commissioner].

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

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

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

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

31 SECTION 97. *Extension; Release of Lien.* Within ten years from the date of the recording or  
32 within ten years from the date of the last extension of the lien in the manner provided herein, the  
33 lien may be extended by recording in the office of the [county recorder] of any county a new certifi-  
34 cate. The [tax commissioner] may, at any time, release all or any portion of the property subject to  
35 any lien provided for in this act or subordinate the lien to other liens if he determines that the taxes

1 are sufficiently secured by a lien on other property of the taxpayer or that the release or subordina-  
2 tion of the lien will not endanger or jeopardize the collection of the taxes.

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

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

28 SECTION 100. *Income Tax Claims of Other States.* The courts of this state shall recognize and  
29 enforce liabilities for personal income taxes lawfully imposed by any other state which extends a  
30 like comity to this state, and the duly authorized officer of any such state may sue for the collection  
31 of such a tax in the courts of this state. A certificate by the [secretary of state] of such other state that  
32 an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclus-  
33 ive proof of such authority. For the purposes of this section, the word "taxes" shall include  
34 additions to tax (interest and penalties, and liability for such taxes). Interest, and penalties shall be  
35 recognized and enforced by the courts of this state to the same extent that the laws of such other state



1 permit the enforcement in its courts of liability for such taxes, additions to tax, interest, and  
2 penalties due this state under this act.

3 SECTION 101. *Order to Compel Compliance.*

4 (a) *Failure to File Tax Return.* If any person willfully refuses to file an income tax return required  
5 by this act, the [tax commissioner] may apply to a judge of the [court of appropriate jurisdiction] for  
6 the county in which the taxpayer (or other person required to file an income tax return) resides, for  
7 an order directing such person to file the required return. If a person fails or refuses to obey such  
8 an order, he shall be guilty of contempt of court.

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

19 SECTION 102. *Transferees.*

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

25 (b) *Period of Limitation.* In the case of the liability of an initial transferee, the period of limi-  
26 tation for assessment of any liability is within one year after the expiration of the period of limi-  
27 tation against the transferor; in the case of the liability of a transferee of a transferee, within one year  
28 after the expiration of the period of limitation against the preceding transferee, but not more than  
29 three years after the expiration of the period of limitation for assessment against the original trans-  
30 feror; except that if before the expiration of the period of limitation for assessment of the liability  
31 of the transferee, a proceeding for the collection of the liability has been begun against the initial  
32 transferor of the last preceding transferee, respectively, then the period of limitation for assessment of  
33 the liability of the transferee shall expire one year after the proceeding is terminated.

34 (c) *Extension by Agreement.* If before the expiration of the time provided in this section for  
35 the assessment of the liability, the [tax commissioner] and the transferee have both consented in

1 writing to its assessment after such time, the liability may be assessed at any time prior to the expira-  
2 tion of the period agreed upon or an extension thereof. For the purpose of determining the period of  
3 limitation on credit or refund to the transferee of overpayments of tax made by such transferee of  
4 overpayments of tax made by the transferor of which the transferee is legally entitled to credit or  
5 refund, such agreement and any extension thereof shall be deemed an agreement or extension referred  
6 to in subsection (c) of Section 80. If the agreement is executed after the expiration of the period of  
7 limitation for assessment against the taxpayer with reference to whom the liability of such transferee  
8 arises, then in applying the limitations under subsection (b) of Section 80 on the amount of the credit  
9 or refund, the period specified in subsection (a) of Section 80 shall be increased by the period from the  
10 date of such expiration to the date of the agreement.

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

13 SECTION 103. *Jeopardy Assessments.*

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

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

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

31 (d) *Proceeding on Reassessment.* If a request for reassessment, accompanied by a bond or other  
32 security, is filed within the ten day period, the [tax commissioner] shall reconsider the assessment  
33 and, if the taxpayer has so requested in his petition, the [tax commissioner] shall grant him or his  
34 authorized representatives an oral hearing. The [tax commissioner's] action on the request for reass-  
35 sment becomes final upon the expiration of 30 days from the date when he mails notice of his action

1 to the taxpayer, unless within that 30 day period, the taxpayer files an application to seek judicial re-  
2 view of the [tax commissioner's] determination.

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

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

9 SECTION 104. *Bankruptcy or Receivership.*

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

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

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

Part VI

CRIMINAL OFFENSES

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

6 SECTION 106. *Failure to Collect or Pay Over.* Any person required under this act to collect,  
7 truthfully account for, and pay over any tax imposed by this act who willfully fails to collect or  
8 truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be  
9 guilty of a felony and, upon conviction thereof, shall be fined not more than [\$5,000], or impris-

1 oned not more than [five] years, or both, together with the costs of prosecution.

2 SECTION 107. *Failure to File Return, Supply Information, Pay Tax.* Any person required  
3 under this act to pay any tax or estimated tax, or required by this act or regulation prescribed there-  
4 under to make a return [other than a return of estimated tax], keep any records, or supply any infor-  
5 mation, who willfully fails to pay such tax or estimated tax, make such return, keep such records,  
6 or supply such information, at the time or times required by law or regulations, shall, in addition to  
7 other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall  
8 be fined not more than [\$5,000], or imprisoned not more than [one] year, or both, together with the  
9 costs of prosecution.

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

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

## Part VII

### POWERS OF [TAX COMMISSIONER]

1 SECTION 110. *General Powers.*

2 (a) *Rule Making and Field Administration.* The [tax commissioner] shall administer and enforce  
3 the tax imposed by this act and he is authorized to make such rules and regulations and to require  
4 such facts and information to be reported, as he may deem necessary to enforce the provisions of  
5 this act. The [tax commissioner] may for enforcement and administrative purposes divide the state  
6 into a reasonable number of districts in which branch offices may be maintained.

1       (b) *Returns and Forms.* The [tax commissioner] may prescribe the form and contents of any  
2 return or other document required to be filed under the provisions of this act.

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

11       (d) *Secrecy of Returns and Information.* Except in accordance with proper judicial order or as  
12 otherwise provided by law, it shall be unlawful for the [tax commissioner] or any officer or em-  
13 ployee of the [tax department], any person engaged or retained by such [department] on an inde-  
14 pendent contract basis, or any person who, pursuant to this section, is permitted to inspect any  
15 report or return or to whom a copy, an abstract, or a portion of any report or return is furnished,  
16 to divulge or make known in any manner the amount of income or any particulars set forth or  
17 disclosed in any report or return required under this act. The officer charged with the custody  
18 of such reports and returns shall not be required to produce any of them or evidence of anything  
19 contained in them in any action or proceeding in any court, except on behalf of the [tax commis-  
20 sioner] in an action or proceeding under the provisions of the tax law to which he is a party, or on behalf  
21 of any party to any action or proceeding under the provisions of this act when the reports or facts shown  
22 thereby are directly involved in such action or proceeding, in either of which events the court may re-  
23 quire the production of, and may admit in evidence, so much of said reports or of the facts shown there-  
24 by, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to  
25 prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return  
26 or report filed in connection with his tax or to prohibit the publication of statistics so classified as to  
27 prevent the identification of particular reports or returns and the items thereof, or the inspection  
28 by the [attorney general] or other legal representatives of the state of the report or return of any  
29 taxpayer who shall bring an action to review the tax based thereon, or against whom an action or  
30 proceeding for collection of tax has been instituted. Any person who violates the provisions of  
31 this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not  
32 more than [\$1,000] or imprisoned not more than [one] year, or both, in the discretion of the court,  
33 together with costs of prosecution. If the offender is an officer or employee of the state, he shall  
34 be dismissed from office and be ineligible to hold any public office in this state for a period of  
35 [five] years thereafter.

1 (e) *Reports and Returns Preserved.* Reports and returns required to be filed under this act shall  
2 be preserved for [three] years and thereafter until the [tax commissioner] orders them to be destroyed.

3 (f) *Cooperation with the United States and Other States.* Notwithstanding the provisions of sub-  
4 section (d), the [tax commissioner] may permit the Secretary of the Treasury of the United States  
5 or his delegates, or the proper officer of any state imposing an income tax upon the incomes  
6 of individuals, or the authorized representative of either such officer, to inspect the income tax re-  
7 turns of any individuals, or may furnish to such officer or his authorized representative an ab-  
8 stract of the return of income of any individual, or supply him with information concerning an  
9 item of income contained in any return, or disclosed by the report of any investigation of the income  
10 or return of income of any individual, but such permission shall be granted only if the statutes of  
11 the United States, or of such other state, as the case may be, grant substantially similar privileges  
12 to the [tax commissioner] of this state as the officer charged with the administration of the tax  
13 imposed by this act.

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

18 SECTION 111. *Closing Agreements.*

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

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

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

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

31 SECTION 112. *Governor May Contract with Secretary of the Treasury for Collection of State*  
32 *Tax.* Pursuant to this act and to the *State and Local Fiscal Assistance Act of 1972*, P.L. 92-512 and  
33 regulations thereunder, the governor or his delegate is authorized, in his discretion, to enter into  
34 an agreement with the Secretary of the Treasury of the United States or his delegate, under which,  
35 to the extent provided by the terms of the agreement, the Secretary or his delegate will administer,

1 enforce, and collect such income tax in behalf of the state. [The cost of the services performed by  
2 the Secretary or his delegate in administering, enforcing, or collecting an income tax under the  
3 terms of such an agreement may be paid from the appropriations for the general operations of the  
4 [tax department].]

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

12 SECTION 114. *Armed Forces Relief Provisions.*

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

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

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

31 SECTION 116. *Separability.* [Insert separability clause.]

32 SECTION 117. *Disposition of Revenues.* [Insert appropriate language, if needed, for disposi-  
33 tion of revenues.]

### 3.202 STATE BROAD BASED SALES TAX<sup>1</sup>

The retail sales tax ranks behind the property tax as the most widely used of the major tax sources 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.<sup>2</sup>

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 taxes, 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

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

<sup>2</sup>Advisory Commission on Intergovernmental Relations, *Federal-State-Local Finances: Significant Features of Fiscal Federalism*, 1973-74 Edition, Report M-79 (Washington, D.C.: U.S. Government Printing Office, February, 1974).



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.<sup>1</sup>

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

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<sup>1</sup>State 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.

<i>Section 7</i>	Applicability or Inapplicability of Use Tax in Certain Cases
<i>Section 8</i>	Moving Residence or Business into State: Use Tax
<i>Section 9</i>	Diversion of Tangible Personal Property to Personal Use
<i>Section 10</i>	Dealers
<i>Section 11</i>	Contractors
<i>Section 12</i>	Certificates of Registration
<i>Section 13</i>	Exemption Certificates
<i>Section 14</i>	Collection
<i>Section 15</i>	Absorption of Tax Prohibited
<i>Section 16</i>	Returns by Dealers
<i>Section 17</i>	Payment to Accompany Dealer's Return
<i>Section 18</i>	Returned Goods
<i>Section 19</i>	Repossessions
<i>Section 20</i>	Bad Debts
<i>Section 21</i>	Extensions
<i>Section 22</i>	Civil Penalties
<i>Section 23</i>	Assessment Based on Estimate
<i>Section 24</i>	Records
<i>Section 25</i>	Sale of Business
<i>Section 26</i>	Bond
<i>Section 27</i>	Jeopardy Assessment
<i>Section 28</i>	Direct Payment Permits
<i>Section 29</i>	Vending Machine Sales
<i>Section 30</i>	Tax Warrants
<i>Section 31</i>	Erroneous Assessments
<i>Section 32</i>	Period of Limitations
<i>Section 33</i>	Violation of Act by Dealer a Misdemeanor
<i>Section 34</i>	Administration
<i>Section 35</i>	Rules and Regulations
<i>Section 36</i>	Administration of Oaths
<i>Section 37</i>	Secrecy of Information
<i>Section 38</i>	Exchange of Information with Other Tax Officials
<i>Section 39</i>	Personnel, Supplies, Equipment, Other Expenses
<i>Section 40</i>	Separability
<i>Section 41</i>	Effective Date of Tax

## Suggested Legislation

### [RETAIL SALES AND USE TAX ACT]

*(Be it enacted, etc.)*

1 SECTION 1. *Purpose.* It is the purpose of this act to impose a retail sales and use tax.

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

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

6 (b) "Commissioner" means the [*state tax commissioner*].

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

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

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

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

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

28 (h) "In this state" or "in the state" means within the exterior limits of the state of [ ] and  
29 includes all territory within these limits owned by or ceded to the United States of America.

1 (i) "Lease or rental" means the leasing or renting of tangible personal property and the possession  
2 or use thereof by the lessee or rentee for a consideration, without transfer of the title to the property.

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

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

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

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

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

30 (3) the sale or charge of admissions;

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

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<sup>1</sup>Louisiana 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.

1 consideration, whether or not the services are performed directly or by means of coin operated equip-  
2 ment or by any other means, and whether or not any tangible personal property is transferred in con-  
3 junction with the service, except such services as are rendered in the construction, remodeling, repair,  
4 or maintenance of real estate and such services as are rendered directly in conjunction with the  
5 processing, manufacturing, refining, or conversion of products for sale or resale;

6 (5) the charge for the service of printing or imprinting, photographing, or copying by any  
7 means whatsoever for a consideration for persons who furnish either directly or indirectly the  
8 materials used in conjunction with the rendition of the service;

9 (6) the charge for barber and beauty services to persons and animals for a consideration  
10 whether or not any tangible personal property is transferred in conjunction with the performance of  
11 the service;

12 (7) the charge for motor vehicle parking service or parking space in privately owned parking  
13 lots or garages and the charge for docking or storage space for boats in privately owned boat docks or  
14 marinas;

15 (8) all charges for work relating to motor vehicles and boats of another whether or not any  
16 tangible personal property is transferred in conjunction with services performed; and

17 (9) the furnishing of intrastate telephonic and telegraphic communications and services.

18 (m) "Sale" means any transfer of title or possession, or both, exchange, barter, lease, or rental,  
19 conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property  
20 and any rendition of a taxable service for a consideration, and includes the fabrication of tangible  
21 personal property for consumers who furnish, either directly or indirectly, the materials used in  
22 fabrication; and the furnishing, preparing, or serving for a consideration of any tangible personal  
23 property consumed on the premises of the person furnishing, preparing, or serving such tangible  
24 personal property. A transaction whereby the possession of property is transferred but the seller  
25 retains title as security for the payment of the price shall be deemed a sale.

26 (n) "Sales price" means the total amount for which tangible personal property or services are sold,  
27 including any services that are a part of the sale, valued in money, whether paid in money or other-  
28 wise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the  
29 dealer, without any deduction therefrom on account of the cost of the property sold, the cost of  
30 materials used, labor or service costs, losses or any other expenses whatsoever; but cash discount  
31 allowed and taken on sales are not included in the sales price; nor shall the sales price include finance  
32 charges, carrying charges, service charges or interest from credit extended on sales of tangible personal  
33 property under conditional sales contracts or other conditional contracts providing for deferred pay-  
34 ments of the purchase price or transportation charges separately stated. If used articles are taken in  
35 trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax

1 levied by this act shall be paid on the net difference between the sales price of the new or used articles  
2 and the credit for the used articles.

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

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

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

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

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

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

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

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

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

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

32 SECTION 4. *Imposition of Use Tax.* There is levied and imposed, in addition to all other taxes  
33 and fees of every kind except the tax imposed under Section 3 of this act, a tax upon the use or  
34 consumption of tangible personal property in this state, to be collected in the amount determined by  
35 applying the rate of [ ] percent to the cost price of each item or article of tangible personal

1 property used or consumed in this state; provided that tangible personal property which has been  
2 acquired after the effective date of this act for use outside this state and subsequently becomes subject  
3 to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought  
4 within this state for use within six months of its acquisition; but if so brought within this state six  
5 months or more after its acquisition, the property shall be taxed on the basis of the current market  
6 value, but not in excess of the cost price of the property at the time of its first use within this state;  
7 provided, further, that the tax shall be based on such proportion of the cost price or current market  
8 value as the duration of time of use within this state bears to the total useful life of the property but it  
9 shall be presumed in all cases that the property will remain within this state for the remainder of its  
10 useful life unless convincing evidence is provided to the contrary.

11 SECTION 5. *Exclusions and Exemptions.*<sup>1</sup> "Retail sale" or "sale at retail" do not include the sale of:

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

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

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

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

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

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

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<sup>1</sup>This 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.

1 utility directly in the rendition of it public service;

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

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

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

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

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

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

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

32 SECTION 8. *Moving Residence or Business into State; Use Tax.* The use tax does not apply to  
33 tangible personal property purchased outside this state for use outside this state by a then non-  
34 resident natural person or a business entity not actually doing business within this state who or which  
35 later brings the tangible personal property into this state in connection with his establishment of a



1 permanent residence or business in this state, provided that the property was purchased more than six  
2 months prior to the date it was first brought into this state or prior to the establishment of the  
3 residence or business, whichever first occurs. This section does not apply to tangible personal  
4 property temporarily brought into this state for the performance of contracts for the construction,  
5 reconstruction, installation, repair, or for any other service with respect to real estate or fixtures  
6 thereon.

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

11 SECTION 10. *Dealers.* The tax levied in Section 3 and Section 4 shall be collected from "dealers."  
12 For the purpose of this act, "dealer" means:

13 (a) any person physically located in this state who:

14 (1) manufactures or produces tangible personal property for sale at retail for use, consump-  
15 tion, or distribution, or for storage to be used or consumed in this state;

16 (2) imports or causes to be imported into this state tangible personal property from any state  
17 or foreign country for sale at retail for use, consumption, or distribution, or for storage to be used or  
18 consumed in this state;

19 (3) sells at retail, or offers for sale at retail, or has in possession for sale at retail or for use,  
20 consumption, or distribution, or for storage to be used or consumed in this state, tangible personal  
21 property and taxable services as defined in this act;

22 (4) has sold at retail, or used, consumed, or distributed, or stored for use or consumption in  
23 this state, tangible personal property or who has performed taxable services, and who cannot prove  
24 that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or  
25 storage of such tangible personal property or the charge for the rendition of taxable services;

26 (5) leases or rents tangible personal property, as defined in this act, for a consideration,  
27 permitting the use or possession of the property without transferring title thereto; and

28 (b) every other person who:

29 (1) maintains or has within this state, directly, or by an agent or a subsidiary, an office,  
30 distributing house, sales room, or house, warehouse, or other place of business;

31 (2) solicits business in this state either by employees, independent contractors, agents, or other  
32 representatives and by reason thereof makes sales to persons within this state of tangible personal  
33 property, the use of which is taxed by this act; and any other person making sales to persons within  
34 this state of tangible personal property, the use of which is taxed by this act, who may be authorized  
35 by the commissioner to collect such tax;

1           (3) as a representative, agent, or solicitor for an out-of-state principal, solicits, receives, and  
2 accepts orders from persons in this state for future delivery and whose principal refuses to register  
3 under this act;

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

6           SECTION 11. *Contractors.*

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

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

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

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

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

1 consumed in the performance thereof.

2 SECTION 12. *Certificates of Registration.*

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

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

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

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

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

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

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

1       SECTION 13. *Exemption Certificates.*

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

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

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

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

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

34       To eliminate separate statement of the amount of tax in fractions of one cent, dealers shall add to  
35 the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may be

1 prescribed by the commissioner to carry out the purposes of this section.

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

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

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

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

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

33 SECTION 17. *Payment to Accompany Dealer's Return.* At the time of transmitting to the  
34 commissioner the return required under Section 16, the dealer shall remit to the commissioner there-  
35 with the amount of tax due under the applicable provisions of this act after making appropriate

1 adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as  
2 provided in Sections 18, 19, and 20. The tax imposed by this act for each month becomes delinquent  
3 on the day following the [28th] day of the succeeding month if not theretofore paid.

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

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

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

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

30 SECTION 22. *Civil Penalties.* When any dealer fails to make any return and pay the full amount  
31 of the tax required by this act, there shall be imposed, in addition to other penalties provided herein, a  
32 specific penalty to be added to the tax in the amount of [\$10] and [10] percent of the tax due if the  
33 failure is for not more than 30 days, with an additional [5] percent for each additional 30 days, or  
34 fraction thereof, during which the failure continues, not to exceed [25] percent in the aggregate; but,  
35 if the failure is due to providential cause shown to the satisfaction of the commissioner, the return

1 with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return,  
2 where willful intent exists to defraud the state of any tax due under this act, a specific penalty of  
3 [50] percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by  
4 this act shall be payable by the dealer and collectible by the commission as if they were a part of the  
5 tax imposed.

6 SECTION 23. *Assessment Based on Estimate.*

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

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

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

34 SECTION 24. *Records.*

35 (a) Every dealer required to make a return and pay or collect any tax under this act shall keep and

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

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

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

31 SECTION 25. *Sale of Business.* If any dealer liable for any tax, penalty, or interest levied here-  
32 under sells out his business or stock of goods or quits the business, he shall make a final return and  
33 payment within 15 days after the date of selling or quitting the business. The return shall include any  
34 sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of  
35 the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the



1 former owner produces a receipt from the commissioner showing that they have been paid or a certifi-  
2 cate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of  
3 goods fails to withhold the purchase money as above provided, he shall be personally liable for the  
4 payment of the taxes, penalties, and interest due and unpaid on account of the operation of the  
5 business by any former owner. Nothing herein shall be deemed to qualify or limit the exemption as to  
6 such a sale as is covered by Section 5.

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

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

30 SECTION 28. *Direct Payment Permits.*

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

32 (1) a manufacturer, mine operator, or public service corporation that is a user, consumer,  
33 distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are  
34 made under circumstances which normally make it impossible at the time thereof to determine the  
35 manner in which the property will be used by the person; or

1 (2) any person who stores tangible personal property in this state for use both within and  
2 outside this state, to pay any tax levied by this act directly to this state and waive the collection of the  
3 tax by the dealer; but no such authority shall be granted or exercised except upon application to the  
4 commissioner and the issuance by the commissioner of a direct payment permit. If a direct payment  
5 permit is granted, payment of the tax on all sales, distributions, and leases, including sales, distribu-  
6 tions, leases, and storage of tangible personal property and sales of tangible personal property and  
7 sales of taxable services for use known at the time thereof, shall be made directly to the commissioner  
8 by the permit holder.

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

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

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

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

34 (f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act shall  
35 thereafter apply to the person who previously held the permit, and the person shall promptly notify

1 in writing dealers from whom purchases, leases, and storage of tangible personal property are made of  
2 the cancellation or surrender. Upon receipt of the notice, the dealer shall be subject to the provisions of  
3 this act, with respect to all sales, distributions, leases, or storage of tangible personal property there-  
4 after made to the person.

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

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

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

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

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

33 SECTION 34. *Administration.* The commissioner shall administer and enforce the assessment  
34 and collection of the taxes and penalties imposed by this act. He shall design, prepare, print, and  
35 furnish to all dealers, or make available to them, all necessary forms for filing returns together with

1 instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of  
2 any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment  
3 of the tax at the time and in the manner herein provided.

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

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

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

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

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

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

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<sup>1</sup>States 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.

1 court of competent jurisdiction the same shall not affect the remaining provisions of this act but all  
2 such provisions not held unconstitutional or invalid shall remain in full force and effect.

3 SECTION 41. *Effective Date of Tax.* The taxes imposed by this act shall be in full force and  
4 effect on and after [*insert date*].

### 3.203 AUTHORIZATION FOR A LOCAL INCOME TAX<sup>1</sup>

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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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Local Revenue Diversification: Income, Sales Taxes and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).

## Suggested Legislation

### [UNIFORM LOCAL INCOME TAX LAW]

*(Be it enacted, etc.)*

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

3 SECTION 2. *Definitions.*

4 (a) An "eligible city" is a city of at least 25,000 population as of the effective date of the tax.

5 (b) A "non-resident" is anyone who is not a resident.

6 (c) "Persons." [*To be defined in conformity with the state income tax code.*]

7 (d) A "resident" of a county or eligible city is an individual who is domiciled in that jurisdiction  
8 unless he maintains no permanent place of abode in the county or city and does maintain a permanent  
9 place of abode elsewhere and spends in the aggregate not more than [30] days of the taxable year in  
10 the city or county; or who is not domiciled in the county or city but maintains a permanent place of  
11 abode in the county or city and spends in the aggregate more than [183] days of the taxable year in the  
12 county or city.

13 (e) "Taxable year." [*To be defined in conformity with the state income tax code.*]

14 SECTION 3. *Authorization.*

15 (a) Any county is authorized to impose a local income tax on its residents and on all other persons  
16 earning or receiving income from economic activities carried out in the county or eligible city at a rate  
17 not less than [ ] percent of the state income tax liability nor more than [ ] percent of the state in-  
18 come tax liability, provided that the rate adopted is evenly divisible by five. The county shall have the  
19 right to preempt a city income tax by adopting a countywide income tax provided that the revenues so  
20 raised by the county are shared with all cities [of at least [ ] population in the county].<sup>1</sup>

21 (b) The share for all cities shall be equal to the fraction which total tax revenue raised by all cities  
22 within the county represents of the total tax revenue raised by the county and its cities. The share for  
23 each city shall be determined by the ratio of the city population multiplied by the fraction represented  
24 by the ratio of the county equalized, full value assessment to the city equalized, full value assessment.<sup>2</sup>  
25 If the county does not adopt the tax, the authority to enact local income taxes is extended to all eligible  
26 cities within the county subject to the conditions set forth in subsection (a) above and to subsequent

<sup>1</sup>If 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*.

<sup>2</sup>If 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.

1 preemption by the county.<sup>1</sup>

2 SECTION 4. *Certification and Withdrawal of the Local Income Tax.*

3 (a) Any county or eligible city enacting an income tax pursuant to this act, shall certify at least  
4 [120] days in advance to the [state tax commissioner] the effective date of the ordinance imposing an  
5 income tax, the rate of the tax for the entire tax year, and the date when the enactment becomes  
6 effective.

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

11 SECTION 5. *State Administration of the Local Income Tax.* The income tax authorized under the  
12 provisions of this act in any county or eligible city shall be administered by the [state tax commis-  
13 sioner].<sup>2</sup>

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

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

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

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<sup>1</sup>Intercounty 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.

<sup>2</sup>If 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.



1 under this act.

2 SECTION 7. *Distribution of Collection Among Local Governments.* All sums collected pursuant  
3 to this act shall be credited to a special local income tax fund which is hereby established in the [*state*  
4 *treasury*]. After deducting the amount of refunds made, a reserve for expected or anticipated refunds,  
5 and the costs of administering the tax, the remaining sums shall be returned by [*appropriate state of-*  
6 *ficial*] to the county or eligible city of origin by the [15th day of the month following the month dur-  
7 ing which such sums were collected].

8 SECTION 8. *Separability.* [*Insert separability clause.*]

9 SECTION 9. *Effective Date.* [*Insert effective date.*]

### 3.204 AUTHORIZATION FOR A LOCAL SALES TAX<sup>1</sup>

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.

*Section 6* provides for distribution of the revenue derived.

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

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Local Revenue Diversification: Income, Sales Taxes, and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).

Suggested Legislation

[UNIFORM LOCAL SALES  
AND OUT-OF-STATE USE TAX LAW]

(Be it enacted, etc.)

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

3 SECTION 2. *Definitions.* An "eligible city" is a city of at least 25,000 population as of the ef-  
4 fective date of the tax.

5 SECTION 3. *Authorization.*

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

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

16 SECTION 4. *Conformity to State Sales and Use Taxes.* Any sales and use tax law or ordinance  
17 adopted under this act shall impose a sales tax for the privilege of selling tangible personal property  
18 at retail and a use tax upon the storage, use or other consumption of tangible personal property pur-  
19 chased out-of-state<sup>3</sup> for storage, use, or consumption in the political subdivision. Any sales and use  
20 tax adopted pursuant to this act shall be identical to all relevant sections of the state sales and use  
21 tax. [Statutory citation of the state sales and use tax law.]

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

<sup>1</sup>Or some other measure of fiscal ability such as income, tax effort, or fiscal capacity.

<sup>2</sup>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.

<sup>3</sup>The legislature may wish to authorize a local use tax on automobiles purchased within the state.

1 ceived and distributed under this act and is authorized to make any refunds to taxpayers pursuant to  
2 this act.

3 SECTION 6. *Distribution of Collections.* All sums collected on behalf of a particular political  
4 subdivision pursuant to this act shall be credited to a special local sales and use tax fund which is  
5 hereby established in the [state treasury]. After deducting the amount of refunds made and the costs  
6 of administering the tax, the remaining sums shall be returned by the [appropriate state official] to the  
7 county or eligible city of origin by the [15th day of the month following the month during which  
8 such sums were collected].

9 SECTION 7. *Separability.* [Insert separability clause.]

10 SECTION 8. *Effective Date.* [Insert effective date.]

### 3.205 STATE ASSISTANCE IN LOCAL USER CHARGE FORMULATION AND ADMINISTRATION<sup>1</sup>

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.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Local Revenues Diversification: Income, Sales Taxes, and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).

**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.)*

1       SECTION 1. *Findings and Purpose.*

2       (a) The [legislature] finds that one of the appropriate methods by which local units of government  
3 obtain revenue for the provision of services to their residents is the imposition of charges and fees for  
4 services that constitute a special benefit to individuals, businesses, and institutions. However, such  
5 charges and fees by their nature present significant difficulties to local government in their utilization:

6           (1) criteria for use are difficult to formulate, especially the identification of benefits accruing  
7 to a particular user as distinguished from those of benefit to the community as a whole;

8           (2) lack of published information as to the kind and level of such fees and charges imposed  
9 by local governments in this and other states; and

10          (3) the difficulty in keeping the level of fees and charges appropriately related to costs in-  
11 curred due to changes in services, wage levels, and other factors.

12       (b) The [legislature] concludes that the state government should provide continuing information  
13 and technical assistance to local governments in the effective and equitable utilization of service fees  
14 and user charges.

15       SECTION 2. *Authority to Adjust Fees and Charges.* To the extent not prohibited by laws of this  
16 state, local governing bodies are authorized to adjust no more than once [annually] the rate or amount of  
17 fees and charges previously imposed [to reflect changes in service costs, price and wage levels and  
18 other relevant factors]. This section may not be construed as conferring new authority on cities and  
19 counties to impose user fees and service charges.

20       SECTION 3. *Assistance by the [appropriate state agency].*

21       (a) The [director] of the [central finance agency, community affairs, or other appropriate state  
22 agency] is authorized and directed to provide political subdivisions of this state with current informa-  
23 tion and, upon request of a political subdivision, with advice and assistance as to the effective use  
24 and determination of fees, charges, and special assessments in defraying in whole or in part the cost  
25 of particular services and benefits provided to users [such as water and sewer utilities, street parking,  
26 solid waste collection and disposal, various inspection services, and regulatory and other special per-  
27 mits].

28       (b) Local units of government in their [annual] fiscal reports pursuant to [cite appropriate statute

1 *requiring periodic reports of revenue and expenditure from local governments*] shall append to such  
2 report a schedule of fees and charges in force as of the date of the report. The *[agency charged with*  
3 *receiving local government fiscal reports]* shall make such schedules available to the *[director]*, who in  
4 turn shall summarize the information available therein and publish it in suitable form for dissemina-  
5 tion among local units of government in the state and to the general public. The *[director]* shall also  
6 acquire representative information as to the types and levels of fees and charges imposed by local  
7 jurisdictions in other states and shall publish summaries or excerpts of such information in appro-  
8 priate form.

9 (c) Upon request of the governing body or the chief elected executive of a political subdivision of  
10 this state, the *[director]* shall, within the limitations of available staff and funds, provide advice and  
11 assistance in the formulation of ordinances and regulations for the collection of user fees and charges  
12 and in the development of procedures for their efficient and economical collection and for maintaining  
13 their level on a basis consistent with service costs and benefits.

14 SECTION 4. *Separability. [Insert appropriate separability clause.]*

15 SECTION 5. *Effective Date. [Insert effective date.]*

### 3.206 TAXATION OF INTERSTATE FIRMS PHYSICAL PRESENCE RULES<sup>1</sup>

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.

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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *State-Local Taxation and Industrial Location*, Report A-30 (April, 1967); and *Local Revenue Diversification: Income, Sales Taxes, and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).



## Suggested Regulation

### [CORPORATE INCOME TAX]

1        *General Rule.* A corporation shall be considered to have income from sources within this state for  
2 corporate income tax purposes if the corporation:

3        (a) owns or leases real property within this state,

4        (b) owns or leases personal property within this state which contributes directly (but not inci-  
5 dentally) to the production of income,

6        (c) has one or more employees located in this state, or

7        (d) regularly maintains a stock of tangible personal property in this state for sale in the ordinary  
8 course of business, but property which is on consignment in the hands of a consignee and which is  
9 offered for sale by the consignee on his own account, shall not be considered as stock maintained by  
10 the consignor, nor shall property which is in the hands of a purchaser under a sale or return arrange-  
11 ment be considered as stock maintained by the seller.

12        *Location of Tangible Personal Property.* Personal property shall be considered located in this state  
13 if it is physically present in the state.

14        Personal property which is rented out by a corporation to another person and which is character-  
15 istically mobile property, shall be considered to be located in this state if the location at or from which  
16 the property is regularly delivered to a lessee is in this state.

17        *Location of Employee.* An employee shall be considered to be located in this state if the employ-  
18 ee's service is either localized in this state, or not localized in any state but some of the service is per-  
19 formed in this state and the employee's base of operation is in this state.

20        Service of any employee shall be considered to be localized in this state if the service is per-  
21 formed either entirely within this state, or both within and without this state, but the service perform-  
22 ed without the state is incidental to service performed within the state.

23        The term "base of operations," with respect to employee, means a single place of business with a  
24 permanent location which is maintained by the employer and from which the employee regularly com-  
25 mences his activities and to which he regularly returns in order to perform the functions necessary to  
26 the exercise of his trade or profession.

27        An employee shall not be considered to be located in this state if his only business activities with-  
28 in the state on behalf of his employer are either or both of the following:

29            (1) the solicitation of orders, for sales of tangible personal property, which are sent outside  
30 this state for approval or rejection and (if approved) are filled by shipment or delivery from a point  
31 outside the state;

1           (2) the solicitation of orders in the name of, or for the benefit of, a prospective customer of  
2 his employer, if orders by the customer to the employee to enable the customer to fill orders resulting  
3 from the solicitation are orders described in paragraph (1).

4           The term "employee" shall have the same meaning it has for purposes of Federal income tax  
5 withholding under Chapter 24 of the *Internal Revenue Code of 1954*, as amended.

6           *Rules Related to Physical Presence Only.* Nothing in the foregoing paragraphs shall be construed  
7 to affect the powers of this state to require the combining or consolidation of the income of two or  
8 more corporations where that action is necessary to determine accurately the income of a corporation  
9 considered to have income from sources within this state.

## Suggested Regulation

### [SALES AND USE TAX]

1        *General Rule.* A person shall be required to pay a sales and use tax imposed with respect to tax-  
2 able sales of tangible personal property and services to persons within this state if he:

3        (a) owns or leases real property within the state,

4        (b) has one or more employees located in the state,

5        (c) regularly maintains a stock of tangible personal property in the state for sale in the ordinary  
6 course of business,

7        (d) regularly leases out tangible personal property for use in the state,

8        (e) regularly solicits orders for the sale of tangible personal property by salesmen, solicitors, or  
9 representatives in the state, or

10       (f) regularly engages in the delivery of property in the state other than by common carrier or  
11 United States mail.

12       *Local Sales and Use Taxes.* [Appropriate statutory enactment authorizing state imposition of a  
13 uniform local supplement of [ ] percent on all sales by firms not located physically in the state and for  
14 distribution of collection to localities on a formula basis. Such enactment would be contingent upon  
15 congressional authorization of state and local sales taxes to those firms doing business in the state  
16 but not maintaining a physical presence in each local jurisdiction.] [Appropriate rules governing im-  
17 position of supplemental local rate and distribution of proceeds to local governments.]

### 3.207 STATE REVENUE SHARING<sup>1</sup>

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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<sup>1</sup>Derived from: Advisory Commission on Intergovernmental Relations, *Local Revenue Diversification: Income, Sales Taxes, and User Charges*, Report A-47 (Washington, D.C.: U.S. Government Printing Office, October, 1974).

*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*).<sup>1</sup>

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.<sup>2</sup>

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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<sup>1</sup>For additional state citations, see Advisory Commission on Intergovernmental Relations, *Federal-State Local Finances: Significant Features of Fiscal Federalism*, 1973-74 Edition, Report M-79 (Washington, D.C.: U.S. Government Printing Office, February, 1974).

<sup>2</sup>Advisory Commission on Intergovernmental Relations, *State Aid to Local Government*, Report A-34 (Washington, D.C.: U.S. Government Printing Office, April, 1969).

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.)

1 SECTION 1. *Purpose.* It is the purpose of this act to share with counties, cities [and towns,  
2 townships], a portion of the funds derived each year by the state government from broad based state  
3 revenue sources, including sales and income taxes, so that: (1) disparities between fiscal resources and  
4 service needs of neighboring units of local government may be lessened; (2) the local property tax  
5 burden may be stabilized; and (3) the "overburden" arising from higher levels of services required by  
6 residents of central cities and other economically depressed areas may be recognized in the distribution  
7 of state financial aid.

8 SECTION 2. *Definitions.*

9 (a) "County area" means the geographic area of a county government [or where any unit of local  
10 government other than a county government constitutes the next level of government below the state  
11 government level, the geographic area of such unit of government shall be treated as a county area and  
12 such unit shall be treated as a county government with respect to that portion of the state's geographic  
13 area].

14 (b) "County area tax effort factor" means the quotient obtained by:

15 (1) dividing the ratio of the total local taxes of all eligible units, including the county govern-  
16 ment, within the county area to the income of the county area by

17 (2) the ratio of local taxes levied by all eligible governments in the state to income of all resi-  
18 dents of the state.

19 (c) "Department" means the [state department of revenue or other state agency charged with  
20 administering the revenue sharing act].

21 (d) "Eligible unit" means to be eligible to receive distributions from the fund, a unit of general  
22 local government must be a county, or if a city [or township] must meet both of the following condi-  
23 tions:

24 (1) have a population of [1,000] or more; and

25 (2) spend from its own revenue sources [50 percent or more of the total cost within its juris-  
26 diction] of at least [three] of the following services: fire protection; police protection; street and road  
27 construction and maintenance; water supply and distribution; sewage collection and treatment; health  
28 inspection and services; parks and recreation; housing and urban renewal; general assistance; and  
29 library services.

30 (e) "Eligible unit's tax effort factor" means the ratio obtained by dividing:

31 (1) the tax effort of the eligible unit by

1 (2) the quotient obtained by dividing the sum of the local taxes of all eligible units, other  
2 than the county government, within the same county area by the sum of the fiscal capacities of all  
3 eligible units, other than the county government, within that county area.

4 (f) "Fiscal capacity" means the sum of income received by residents of a local government unit  
5 and the property tax base of such unit.

6 (g) "Income" means total money income received from all sources as reported by the U.S. Depart-  
7 ment of Commerce [or latest official state estimate of income] for general statistical purposes.

8 (h) "Local taxes" means the compulsory contributions [as well as fees and charges] levied by  
9 local units of government for public purposes, excluding [taxes for the support of public elementary  
10 and secondary education, special assessments, other exclusions].

11 (i) "Local unit of government" means a county, a municipality [or a township], a school district  
12 or a special district.

13 (j) "Local unit of general government" means a county, a municipality [or a township].

14 (k) "Overburden factor" means the number obtained by:

15 (1) adding one plus;

16 (2) the percentage by which the eligible unit's *per capita* local taxes, i.e., local taxes divided by  
17 the population of the eligible unit, exceeds 1.5 times the statewide average of *per capita* taxes for  
18 eligible units other than county governments.

19 (l) "Population" means the population shown in the last U.S. decennial census [or latest official  
20 state estimate of population].

21 (m) "Property tax base" means the full value of taxable property as equalized for state tax pur-  
22 poses by the [*department of revenue or other state agency charged with equalizing property tax assess-*  
23 *ments among local units of government*].

24 (n) "Tax effort" means the quotient obtained by dividing the sum of local taxes collected in a giv-  
25 en year by the fiscal capacity of the local unit of government for the same year.

26 SECTION 3. *Local Government Revenue Sharing Fund.*

27 (a) There is hereby established in the [*state treasury or other central state finance agency*] a local  
28 government revenue sharing fund.

29 (b) There shall be [appropriated to] [deposited in] the local government revenue sharing fund at  
30 the end of each state fiscal year an amount equal to [5] percent of the total revenue received from:

31 (1) the state general sales tax collected under [*appropriate citations*];

32 (2) the state personal income tax collected under [*appropriate citations*]; and

33 (3) [*other state taxes desired to be a part of the input to the fund*].

34 (c) Moneys credited to the local government revenue sharing fund shall be distributed [month-  
35 ly] [quarterly] on [*date*] to all eligible units of general local government in the state pursuant to the



1 formula and criteria set forth below.

2 [Alternative 1.]

3 [SECTION 4. *Distribution Formula.*

4 (a) Moneys in the fund available for distribution shall be allocated to all county areas so that each  
5 county area shall receive an amount which bears the same ratio to the total amount to be allocated from  
6 the fund as:

7 (1) the population of that county area, multiplied by the county area tax effort factor, bears  
8 to,

9 (2) the sum of the products determined under the preceding paragraph (1) for all county  
10 areas.

11 (b) The county government shall be allocated that portion of the amount allocated to the county  
12 area under subsection (a) which bears the same ratio to such amount as the county government's local  
13 taxes bear to the sum of the local taxes of all eligible units, including the county government, within  
14 that county area.

15 (c) The amount remaining for allocation within a county area after the application of subsection  
16 (b) shall be distributed to eligible units, other than county governments, located in that county area  
17 so that each eligible unit will receive an amount which bears the same ratio to the total amount to be  
18 allocated to all such eligible units as:

19 (1) the population of that eligible unit, multiplied by the eligible unit's tax effort factor, and,  
20 for eligible units with population of 10,000 or more, by the overburden factor, bears to,

21 (2) the sum of the products determined under the preceding paragraph (1) for all such eligible  
22 units within the county.]

23 [OR]

24 [Alternative 2.]

25 [SECTION 4. *Distribution Formula*

26 (a) Moneys in the local government revenue sharing fund available for distribution shall be sepa-  
27 rated into a county allocation and municipal [city-township] allocation. The county allocation will be  
28 determined by dividing the statewide total of local taxes collected by and for county governments by  
29 the statewide total of local taxes collected by or for [eligible] units of general local government. Total  
30 local government revenue sharing fund moneys available multiplied by the resulting percentage will  
31 establish the amount of the county allocation. The remainder will constitute the amount of the munici-  
32 pal allocation and will be apportioned pursuant to Section 4(c), below.

33 (b) The county allocation determined in subsection (a) shall be distributed so that each county  
34 government will receive an amount which bears the same ratio to the total amount to be allocated to  
35 county governments as:

1 (1) the population of that county, multiplied by the county government's tax effort factor  
2 bears to,

3 (2) the sum of the products determined under the preceding paragraph (1) for all counties  
4 within the state.

5 (c) The amount remaining for allocation within a county area after the application of subsection  
6 (b) shall be distributed to eligible units, other than county governments, so that each eligible unit will  
7 receive an amount which bears the same ratio to the total amount to be allocated to all such eligible  
8 units as:

9 (1) the population of that eligible unit, multiplied by the eligible unit's tax effort factor, and,  
10 for eligible units with population of [10,000] or more, multiplied by the overburden factor, bears to,

11 (2) the sum of the products determined under the preceding paragraph (1) for all such eligible  
12 units.]

13 SECTION 5. *Adjustments of Allocation.*<sup>1</sup>

14 (a) In no event shall any eligible unit, other than a county government, with population less than  
15 [20,000] receive more than 1.5 times the statewide average *per capita* allocation for eligible units,  
16 other than county governments.

17 (b) any funds not allocated shall be returned to the state [*general fund*].

18 SECTION 6. *Certification.* On or before [*date*] and annually thereafter, the [*state department of*  
19 *revenue*] shall certify to the [*state finance agency*] the amount to be remitted to the treasurers of each  
20 eligible unit of general local government. Decisions of the [*director of revenue*] as to eligibility of units  
21 and other questions of fact will be conclusive.

22 SECTION 7. *Separability.* [*Insert separability clause.*]

23 SECTION 8. *Effective Date.* [*Insert effective date.*]

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<sup>1</sup>In 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 sub-state 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.

