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Taxation

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TAXATION

Administration—By creating the Indiana Department of State Revenue, Chapter 42 provides for a consolidation of Indiana tax administration. The Department will be directed by a Board consisting of the Governor, State Treasurer and State Auditor.¹ The Board has authority to employ a Commission-

26. Id. §1. Accord Ind. Acts 1936, c. 3, §38, Ind. Stat. Ann. (Burns, Supp. 1943) §52-1207.
27. Id. §1. This specific authority was not granted in the 1936 act.
28. Id. §3. Accord, Ind. Acts 1936, c. 3, §47. The present act does not provide for interest as did the 1936 Act.
29. Id. §4. Accord, Ind. Acts 1936, c. 3, §46.
30. Ibid. The 1936 Act prescribed a recovery of double the amount of payments in the case of fraud.
31. Id. §6.
32. Ind. Acts 1936, c. 3, §45.
 1. Ind. Acts 1947, c. 42, §3.

er of Revenue,² and may delegate powers to any officer or employee.³

The new Department will assume the powers and duties⁴ of (1) the Gross Income Tax Division;⁵ (2) the State Board of Tax Commissioners and the county assessors in administering the Intangibles Tax,⁶ Financial Institution Tax,⁷ and Inheritance and Transfer Tax;⁸ and (3) the State Auditor in administering the Motor Vehicle Fuel Tax,⁹ Fuel Use Tax,¹⁰ Chain Store Tax¹¹ and the Petroleum Oil Inspection Act.¹² The State Board of Tax Commissioners will continue to supervise the property tax.¹³ The substantive provisions of the statutes providing for the various taxes are not changed by the principal act.

The Board may exercise any of the powers granted by any of the laws imposing the taxes which it will administer¹⁴ and has authority to make interpretative and procedural rules.¹⁵ The 1945 Administrative Rule Making Act¹⁶ will govern the procedure to be followed in the issuance of rules or regulations and the 1947 Administrative Adjudication Act¹⁷ will govern any administrative orders or determinations

2. Id. §6.
3. Id. §14.
4. This transfer may be accomplished as soon as it is administratively practical, but shall be not later than July 1, 1948. Id. §4.
5. Ind. Acts 1933, c. 50, as amended, Ind. Stat. Ann. (Burns, Repl. 1943) §§ 64-2601 to 64-2631.
6. Ind. Acts 1933, c. 81, as amended, Ind. Stat. Ann. (Burns, Repl. 1940) §§ 47-1532 to 47-1568.
7. Ind. Acts 1933, c. 83, as amended, Ind. Stat. Ann. (Burns, Repl. 1943) §§64-801-64-820; Ind. Acts 1933, c. 82, as amended, Ind. Stat. Ann. (Burns, 1933) §§64-822 to 64-834.
8. Ind. Acts 1931, c. 75, as amended, Ind. Stat. Ann. (Burns, 1933) §§6-2401 to 6-2442.
9. Ind. Acts 1943, c. 73, as amended, Ind. Stat. Ann. (Burns, Supp. 1945) §§47-1532 to 47-1568.
10. Ind. Acts 1943, c. 74, Ind. Stat. Ann. (Burns, Supp. 1945) §§47-1601 to 47-1617.
11. Ind. Acts 1929, c. 207, as amended, Ind. Stat. Ann. (Burns, Repl. 1940) §§42-301 to 42-314.
12. Ind. Acts 1943, c. 75, Ind. Stat. Ann. (Burns, Supp. 1945) §§35-2138 to 35-2152.
13. Ind. Acts 1919, c. 59, as amended, Ind. Stat. Ann. (Burns, Repl. to 1943) §§64-703 to 64-748, 64-1302 to 64-1344; Ind. Acts 1921, c. 40, Ind. Stat. Ann. (Burns, Repl. 1943) §64-701; Acts 1947, c. 166.
14. Ind. Acts 1947, c. 42, §13.
15. Id. §8.
16. Ind. Acts 1945, c. 120, Ind. Stat. Ann. (Burns, Supp. 1945) §§60-1501 to 60-1511.
17. Ind. Acts 1947, c. 365, discussed herein, p. 319.

that may be made by the Board or Department.

New Taxes—The 1947 legislature sought additional revenue through use and excise taxes upon tobacco¹⁸ and petroleum,¹⁹ both measures to become effective July 1, 1947.

The cigarette tax, which is to be administered by the Alcoholic Beverage Commission or other state agency designated by the Governor at his discretion, is imposed upon any paper-wrapped roll containing tobacco²⁰ and upon cigarette papers, wrappers, and tubes.²¹ It does not apply to cigars. The tax is two-pronged—Section 11 levies a tax upon the sale, exchange, barter or other disposition and Section 12 taxes the use, consumption, or possession for use where the tax has not been paid under Section 11. The rate is 1½ mills for the average sized cigarette.²² An individual package not stamped within six days after receipt is contraband and subject to seizure. Any vending machine or vehicle not a common carrier which is used in violation of the Act is subject to confiscation.²³

The petroleum tax imposes a 1% ad valorem excise upon all producers²⁴ and owners²⁵ at the time of severing from the land, except when the petroleum is used upon the premises.²⁶ A lien for the tax exists against the petroleum from the time of severance.²⁷ Proceeds of the tax are earmarked for a special Oil, Gas, and Geology Fund kept by the State Treasurer for the use of the Department of Conservation.²⁸

Property Tax. Chapter 166 prescribes an appraisalment and assessment of all real estate and improvements as of March 1, 1949. This project is under the general supervision of the State Board of Tax Commissioners, which is to prescribe

18. Ind. Acts 1947, c. 222.

19. Ind. Acts 1947, c. 278.

20. Ind. Acts 1947, c. 222, §2.

21. Id. §§ 11, 12.

22. Id. §11(1).

23. Id. §23.

24. Ind. Acts 1947, c. 278, §6.

25. Id. §7.

26. Id. §8.

27. Id. §9.

28. Id. §27.

necessary rules and regulations.²⁹ The procedure for appropriations and increases in the tax levy to finance the reassessment is specified.³⁰

Chapter 329 grants discretion to the State Board of Tax Commissioners to waive on behalf of the state and its subdivisions all delinquent taxes on lands acquired by cities and towns by foreclosure proceedings or voluntary conveyance under the Barrett Law or other assessment proceedings.³¹ The mayor of the city or the board of trustees of the town must petition for the waiver³² on forms to be supplied by the Board.³³

Gross Income Tax. Chapter 126 provides income tax exemptions for non-residents whose states of residence allow similar exemptions to residents of Indiana.³⁴ The reciprocal exemption applies to all gross income taxes payable after April 1, 1947. A search of neighboring state legislation discloses that Kentucky is the only state having such reciprocal provisions. It applies to income of "persons," broadly defined in the Gross Income Tax Act³⁵ to include individuals, associations, corporations, etc. Other states may not apply their taxes so broadly, but that is immaterial inasmuch as the Indiana exemptions apply only if "similar exemptions" are allowed to residents of this state. A foreign corporation would be exempt from Indiana taxation if the state of its "residence" exempted Indiana corporations operating therein.

Chapter 370 amends various provisions of the Gross Income Tax Act (1) by redefining "withholding agent," making such agents liable for payments for performance of all contracts within Indiana³⁶ (2) by requiring withholding of payments for performance of contracts within Indiana by non-

29. The Act precludes embarrassment such as the Board faced as a result of the 1943 Act, permitting the county council to prevent reassessments. See Ops. Atty. Gen., Ind. (1943) p. 261, 264-268; (1946) 21 Ind. L.J. 180,181.

30. Ind. Acts 1947, c. 166, §4.

31. Ind. Acts 1947, c. 329, §2.

32. Id. §1.

33. Id. §3.

34. Other states tend to provide credit-exemptions rather than tax exemptions in their reciprocal tax acts. See Ky. Rev. Stat. (1946) § 141,070(2), Minn. Stat. (Henderson, 1941) §12-1, N.Y. Tax Law, §363.

35. Ind. Acts 1947, c. 370, §1(a), which remains the same as Ind. Stat. Ann. (Burns, Supp. 1945) § 64-2601.

36. Id. §1(1).

resident contractors, except contracts of sale,³⁷ (3) by changing the time for suit for refund to three months after denial by the Department or after six months of filing if the Department takes no action, but in no event more than three years after filing a claim for refund,³⁸ and (4) by eliminating the requirement that a taxpayer be furnished with copies of rules and regulations.³⁹

Inheritance Tax. Chapter 311⁴⁰ amends the 1939 inheritance tax act by extending an exemption from the tax to persons, organizations, associations and corporations organized in other states and residents therein, whose states extend similar exemptions to taxpayers resident in Indiana.⁴²

Chapter 182 limits deductions in determining the value of property of non-resident decedents' estates to taxes and other liens against the property being transferred, except where the general debts of the decedent cannot be paid from the gross domiciliary estate, in which case all unpaid debts allowed by the court of the domicile may be deducted.⁴³

TRADE NAMES

Chapter 143 prohibits¹ any seller, other than instrumentalities of the federal government, from using military or related federal names² which might lead the public to believe that the seller is the United States Government or that the place of business is owned, operated or managed by the United States Government or any of its agencies. The statute also

37. Id. §2(e).

38. Id. §3.

39. Id. §4.

40. Ind. Acts 1947, c. 311, §1.

41. Ind. Acts 1939, c. 111, §1, Ind. Stat. Ann. (Burns, Supp. 1945) §6-2403.

42. Compare similar exemption provisions in the Gross Income Tax Act, Ind. Acts 1947, c. 126.

43. Ind. Acts 1947, c. 182, §1, amending Ind. Acts 1931, c. 75, §4, Ind. Stat. Ann. (Burns, 1933) § 6-2404.

1. Ind. Acts 1947, c. 143, §3 declares that violations shall be misdemeanors punishable by a fine up to five hundred dollars or sixty days imprisonment or both. §4 provides that the attorney general, prosecuting attorney, or a citizen of any county in which business is being conducted in violation of the act may bring suit to enjoin the violation. The remedy by injunction however, does not relieve the violator from prosecution for the misdemeanor.
2. The following names are expressly prohibited: "Army," "Navy," "Marine Corps," "Marines," "Coast Guard," "Government," "Post Exchange," "P-X," and "G-I." Ind. Acts 1947, c. 143, §1.