

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993



ENROLLED

SENATE BILL NO. 542

Originating in the
(By Senator *Committee on Finance*)



PASSED April 21, 1993
In Effect from Passage

E N R O L L E D

Senate Bill No. 542

(Originating in the Committee on Finance.)

[Passed April 21, 1993; in effect from passage.]

AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections fourteen, twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eight, article twenty-one of said chapter; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto two new sections, designated sections nine and ten; to amend and reenact sections one and four, article four-b of said chapter; to amend and reenact sections one, two and seven, article four-c of said chapter; to amend article five of said chapter by adding thereto a new section, designated section seventeen; to amend and reenact sections one, two, three, four, nine, twenty-five and twenty-eight, article thirteen, chapter eleven of said code; to further amend said article by adding thereto four new sections, designated sections two-a, four-a, twenty-seven-a and thirty-two; to amend and reenact sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, nineteen, twenty and twenty-one, article thirteen-a of said chapter; to further amend said article by adding thereto

four new sections, designated sections three-a, three-b, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven, all relating to medicaid tax revenue; conforming health care provider tax to requirements of applicable federal law; taxation of ambulance authorities; requiring secretary to initiate independent case management system and other reforms; requiring nonprofit agency or facility in receipt of medicaid moneys to provide annual accounting of gross receipts and disbursements, including salaries; collection of copayments by health care providers; penalties; deleting tax imposed solely on medicaid reimbursements; deleting hold-harmless provisions; deleting abrogation provisions; definitions; changing composition of general medicaid board; requiring that medicaid reimbursement schedules be developed within limits of available funding; creation of general medicaid board to recommend fee schedules of health care providers to single state agency; creation of physician provider board to recommend fee schedules of physicians to single state agency; providing for quarterly review and reporting of fee schedules to the Legislature; establishing a business and occupation privilege tax imposed on certain gross proceeds of certain health care providers; limitations on municipalities to tax health care providers; establishing a severance and business privilege tax imposed on certain gross proceeds of certain health care providers; establishing a broad based health care provided tax imposed on certain gross receipts of certain health care providers; and transition rules.

Be it enacted by the Legislature of West Virginia:

That sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, ten and twelve, article four-c of said chapter be repealed; that sections fourteen, twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said

code be repealed; that section eight, article twenty-one of said chapter be repealed; that section eighteen, article twenty-six of said chapter be repealed; that section thirteen, article fifteen, chapter seven of said code be amended and reenacted; that article two, chapter nine of said code be amended by adding thereto two new sections, designated sections nine and ten; that sections one and four, article four-b of said chapter be amended and reenacted; that sections one, two and seven, article four-c of said chapter be amended and reenacted; that article five of said chapter be amended by adding thereto a new section, designated section seventeen; that sections one, two, three, three-c, four, nine, twenty-five and twenty-eight, article thirteen, chapter eleven of said code be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections two-a, four-a, twenty-seven-a and thirty-two; that sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, nineteen, twenty and twenty-one, article thirteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections three-a, three-b, twenty-a and twenty-five; that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty; and that said chapter be further amended by adding thereto a new article, designated article twenty-seven, all to read as follows:

**CHAPTER 7. TRAINING PROGRAMS FOR COUNTY
EMPLOYEES, ETC.; COMPENSATION OF ELECTED
COUNTY OFFICIALS; COUNTY ASSISTANTS,
DEPUTIES AND EMPLOYEES, THEIR NUMBER
AND COMPENSATION.**

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

§7-15-13. Exemption from taxation.

1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its
3 purposes is in all respects for the benefit of the people
4 of this state in general and of the participating
5 governments in particular and is a public purpose; and
6 that the authority will be performing an essential
7 governmental function in the exercise of the powers

8 conferred upon it by the provisions of this article.
9 Accordingly, each authority and, without limitation, its
10 revenues, properties, operations and activities shall be
11 exempt from the payment of any taxes or fees to the
12 state or any of its political subdivisions: *Provided*, That
13 this exemption shall not apply to the tax imposed by
14 section three, article thirteen-a, chapter eleven of this
15 code on gross receipts derived from transporting
16 patients. Interest on obligations and all evidences of
17 indebtedness of any such authority shall be exempt
18 from taxation, except inheritance and transfer taxes:
19 *Provided, however*, That this exemption shall not
20 apply to the tax imposed by section three, article
21 thirteen-a, chapter eleven of this code on gross
22 receipts derived from transporting patients.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES AND OFFICE OF COMMISSIONER OF HUMAN SER- VICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9. Secretary to develop medicaid monitoring and case management.

1 On or before the first day of September, one thou-
2 sand nine hundred ninety-three, the secretary of the
3 department of health and human resources shall
4 develop a managed care system to monitor the servi-
5 ces provided by the medicaid program to individual
6 clients, develop an independent referral service
7 including the review of individual cases for abuses of
8 the program and develop a schedule for implementa-
9 tion of the managed care system. The managed care
10 system shall focus on, but not be limited to, the
11 behavioral health and mental health services. In
12 addition thereto, in accordance with applicable federal
13 medicaid laws, the secretary shall prepare recommen-
14 dations, to be submitted to the joint committee on
15 government and finance on or before the first day of
16 September, one thousand nine hundred ninety-three,
17 concerning the following:

18 (i) A policy of prior authorization for certain identi-

19 fied health care procedures;

20 (ii) A policy for identifying excessive use of certain
21 health care procedures by individuals and providers;

22 (iii) A policy of utilization caps for certain health
23 care procedures;

24 (iv) A policy concerning disallowance of reimburse-
25 ment rates for cosmetic procedures;

26 (v) A policy concerning higher reimbursement rates
27 for basic primary health care services; and

28 (vi) The secretary is to utilize in-state health care
29 facilities for inpatient treatment when such facilities
30 are available. Prior authorization, consistent with
31 applicable federal law, will be required for out-of-state
32 inpatient treatment when such in-state inpatient
33 health care facilities are not available.

**§9-2-10. Collection of copayments by health care providers;
penalties.**

1 (a) The secretary is hereby directed to institute
2 procedures to enforce the collection of copayments as
3 required by Chapter 42, Section 447.53 of the Code of
4 Federal Regulations. Any individual or entity receiv-
5 ing reimbursement from the state under the medical
6 assistance program of the Social Security Act is
7 required to collect such copayments and report the
8 collection thereof to the single state agency: *Provided,*
9 That pursuant to Chapter 42, Section 447.15 of the
10 Code of Federal Regulations, no such individual or
11 entity shall refuse care or services to any medicaid-
12 eligible individual because of the individual's inability
13 to pay such copayment. In the event the copayment is
14 not collected, the failure to collect the copayment and
15 reasons therefor shall likewise be reported.

16 (b) Any person, firm, corporation or other entity
17 which willfully, by means of a false statement or
18 representation, or by concealment of any material fact,
19 or by other fraudulent scheme, device or artifice on
20 behalf of himself, itself or others, fails to collect the
21 copayment as mandated by Chapter 42, Section 447.53

22 of the Code of Federal Regulations, shall be liable to
23 the department of health and human resources in the
24 amount of five hundred dollars for each occurrence of
25 failure to collect said copayment and shall be liable for
26 payment of reasonable attorney fees and all other fees
27 and costs of litigation.

28 (c) A civil action under this section may be prosecut-
29 ed and maintained on behalf of the department of
30 health and human resources by the office of the
31 attorney general or by any attorney employed by the
32 department of health and human resources to provide
33 such representation.

ARTICLE 4B. PHYSICIAN PROVIDER MEDICAID ACT.

§9-4B-1. Definitions.

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in
3 those instances where the context clearly indicates a
4 different meaning:

5 (a) "Board" means the physician provider medicaid
6 board created to develop, review and recommend the
7 physician provider fee schedule.

8 (b) "Fund" means the physician provider medicaid
9 fund established to receive moneys collected from
10 physician providers, individuals and corporations
11 which will be matched with federal medicaid funds
12 pursuant to Title XIX of the United States Social
13 Security Act and expended in accordance with the
14 provisions of this article.

15 (c) "Physician provider" means a person engaged in
16 delivering services within the scope of practice of
17 medicine or osteopathy by or under the personal
18 supervision of a person licensed to practice as an
19 allopathic or osteopathic physician, regardless of
20 location, rendering services within or without this
21 state and receiving reimbursement, directly as an
22 individual provider or indirectly as an employee or
23 agent of a medical clinic, partnership or other business
24 entity.

25 (d) "Single state agency" means the single state
26 agency for medicaid in this state.

§9-4B-4. Powers and duties.

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physician
3 provider fee schedule so that the schedule conforms
4 within the limits of funds available, to usual and
5 customary charges in accordance with federal medic-
6 aid laws. In developing the fee schedule, the board
7 shall refer to a nationally published fee schedule
8 selected by the secretary of the department of health
9 and human resources. The board may consider identi-
10 fied health care priorities in developing its fee sched-
11 ule to the extent permitted by applicable federal
12 medicaid laws, and may recommend higher reim-
13 bursement rates for basic primary and preventive
14 health care services than for other services. In identi-
15 fying basic primary and preventive health care servi-
16 ces and in accordance with applicable federal medicaid
17 laws, the board may consider factors, including, but
18 not limited to, services defined and prioritized by the
19 basic services task force of the health care planning
20 commission in its report issued in December of the
21 year one thousand nine hundred ninety-two; and
22 minimum benefits and coverages for policies of insur-
23 ance as set forth in section fifteen, article fifteen and
24 section four, article sixteen-c, chapter thirty-three of
25 this code and rules of the insurance commissioner
26 promulgated thereunder. If the single state agency
27 approves the adjustments to the fee schedule, it shall
28 implement the physician provider fee schedule;

29 (2) Review the fee schedule on a quarterly basis and
30 recommend to the single state agency any adjustments
31 it considers necessary. If the single state agency
32 approves the board's adjustments, it shall immediately
33 implement the adjustments and shall report the same
34 to the joint committee on government and finance on
35 a quarterly basis;

36 (3) Meet and confer with representatives from each
37 medical specialty area so that equity in reimburse-

38 ment increases may be achieved to the greatest extent
39 possible;

40 (4) Assist and enhance communications between
41 participating physician providers and the department
42 of health and human resources; and

43 (5) Review reimbursements in relation to those
44 physician providers who provide early and periodic
45 screening diagnosis and treatment.

46 (b) The board may carry out any other powers and
47 duties as prescribed for it by the secretary.

48 (c) Nothing in this section gives the board the
49 authority to interfere with the discretion and judg-
50 ment given to the single state agency that administers
51 the state's medicaid program. If the single state agency
52 disapproves the recommendations or adjustments to
53 the fee schedule, in accordance with applicable medic-
54 aid laws, it is expressly authorized to make any
55 modifications to fee schedules as are necessary to
56 ensure that total financial requirements of the agency
57 for the current fiscal year with respect to the state's
58 medicaid plan are met and shall report the same to the
59 joint committee on government and finance on a
60 quarterly basis. The purpose of the board is to assist
61 and enhance the role of the single state agency in
62 carrying out its mandate by acting as a means of
63 communication between the medicaid provider com-
64 munity and the agency.

65 (d) On a quarterly basis, the single state agency shall
66 report to the joint committee on government and
67 finance the status of the fund, adjustments to the fee
68 schedule and the fee schedule for each health care
69 provider group identified in section one of this article.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ACT.

§9-4C-1. Definitions.

1 The following words when used in this article have
2 the meanings ascribed to them in this section, except
3 in those instances where the context clearly indicates
4 a different meaning:

5 (a) "Ambulance service provider" means a person,
6 regardless of location, rendering ambulance services
7 within or without this state and receiving reimburse-
8 ment, directly as an individual provider or indirectly
9 as an employee or agent of a medical clinic, partner-
10 ship or other business entity.

11 (b) "Dentist provider" means a dentist, regardless of
12 location, rendering services within or without this
13 state and receiving reimbursement, directly as an
14 individual provider or indirectly as an employee or
15 agent of a medical clinic, partnership or other business
16 entity.

17 (c) "General health care provider" means an
18 advanced nurse practitioner, an audiologist, a chiro-
19 practor, a nurse-midwife, an occupational therapist, an
20 optician, an optometrist, a physical therapist, a podia-
21 trist, a psychologist, a speech therapist, a behavioral
22 health center, a community care provider, regardless
23 of location, rendering services within or without this
24 state and receiving reimbursement, directly as an
25 individual provider or indirectly as an employee or
26 agent of a medical clinic, partnership or other business
27 entity.

28 (d) "Inpatient hospital service provider" means a
29 hospital, regardless of location, maintained primarily
30 for the care and treatment of patients with disorders
31 other than mental diseases, providing services for the
32 care and treatment of inpatients. As used in this
33 definition, "services" may include inpatient psychiat-
34 ric services.

35 (e) "Outpatient hospital service provider" means a
36 hospital, regardless of location, providing preventative,
37 diagnostic, therapeutic, rehabilitative or palliative
38 services that are furnished to outpatients.

39 (f) "Secretary" means the secretary of the depart-
40 ment of health and human resources.

41 (g) "Single state agency" means the single state
42 agency for medicaid in this state.

§9-4C-2. General medicaid board.

1 There is hereby created the general medicaid board
2 to consist of fifteen members who shall be appointed
3 by the governor, including two lay persons and one
4 representative from each of the following thirteen
5 groups: Advanced nurse practitioner, an audiologist, a
6 chiropractor, a nurse-midwife, an occupational thera-
7 pist, an optician, an optometrist, a physical therapist, a
8 podiatrist, a psychologist, a speech therapist, a behav-
9 ioral health center, a community care provider. In
10 addition to the fifteen members appointed by the
11 governor, the secretary, or his or her designee, shall
12 serve as an ex officio, nonvoting member of the board.
13 The governor shall make all appointments within
14 twenty days from the effective date of this article.
15 After the initial appointment of the board, any
16 appointment to fill a vacancy shall be for the unex-
17 pired term only, shall be made in the same manner as
18 the initial appointment, and the terms of all members
19 shall expire on the first day of July, one thousand nine
20 hundred ninety-four.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:

2 (1) Develop and recommend a reasonable provider
3 fee schedule, in relation to its respective provider
4 group, so that the schedule conforms, within the limits
5 of available funding, to usual and customary charges
6 in accordance with federal medicaid laws. In develop-
7 ing the fee schedule the board shall refer to a nation-
8 ally published fee schedule, if available, as selected by
9 the secretary in accordance with section eight of this
10 article. The board may consider identified health care
11 priorities in developing its fee schedule to the extent
12 permitted by applicable federal medicaid laws, and
13 may recommend higher reimbursement rates for basic
14 primary and preventive health care services than for
15 other services. In identifying basic primary and
16 preventive health care services, the board may consid-
17 er factors, including, but not limited to, services
18 defined and prioritized by the basic services task force

19 of the health care planning commission in its report
20 issued in December of the year one thousand nine
21 hundred ninety-two; and minimum benefits and
22 coverages for policies of insurance as set forth in
23 section fifteen, article fifteen and section four, article
24 sixteen-c, chapter thirty-three of this code and rules of
25 the insurance commissioner promulgated thereunder.
26 If the single state agency approves the adjustments to
27 the fee schedule, it shall implement the provider fee
28 schedule;

29 (2) Review its respective provider fee schedule on a
30 quarterly basis and recommend to the single state
31 agency any adjustments it considers necessary. If the
32 single state agency approves a board's adjustment, it
33 shall immediately implement the adjustments and
34 shall report the same to the joint committee on
35 government and finance on a quarterly basis;

36 (3) Assist and enhance communications between
37 participating providers and the department of health
38 and human resources;

39 (4) Meet and confer with representatives from each
40 specialty area within its respective provider group so
41 that equity in reimbursement increases may be
42 achieved to the greatest extent possible and when
43 appropriate to meet and confer with other provider
44 boards; and

45 (5) Appoint a chairperson to preside over all official
46 transactions of the board.

47 (b) Each board may carry out any other powers and
48 duties as prescribed to it by the secretary.

49 (c) Nothing in this section gives any board the
50 authority to interfere with the discretion and judg-
51 ment given to the single state agency that administers
52 the state's medicaid program. If the single state agency
53 disapproves the recommendations or adjustments to
54 the fee schedule, it is expressly authorized to make
55 any modifications to fee schedules as are necessary to
56 ensure that total financial requirements of the agency
57 for the current fiscal year with respect to the state's

58 medicaid plan are met and shall report to the joint
59 committee on government and finance on a quarterly
60 basis. The purpose of each board is to assist and
61 enhance the role of the single state agency in carrying
62 out its mandate by acting as a means of communica-
63 tion between the health care provider community and
64 the agency.

65 (d) In addition to the duties specified in subsection
66 (a) of this section, the ambulance service provider
67 medicaid board shall work with the health care cost
68 review authority to develop a method for regulating
69 rates charged by ambulance services. The health care
70 cost review authority shall report its findings to the
71 Legislature by the first day of January, one thousand
72 nine hundred ninety-four. The cost of the report shall
73 be paid by the health care cost review authority. In
74 this capacity only, the chairperson of the health care
75 cost review authority shall serve as an ex officio,
76 nonvoting member of the board.

77 (e) On a quarterly basis, the single state agency shall
78 report the status of the fund, adjustments to the fee
79 schedule and the fee schedule to the joint committee
80 on government and finance for each health care
81 provider identified in section two of this article.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-17. Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.

1 Any nonprofit health care agency or facility which
2 receives medicaid moneys shall as a condition of the
3 receipt of same, provide an annual accounting of that
4 facility's or provider's receipts and disbursements,
5 including the total salaries of all employees and
6 administrators, with one copy of same to be submitted
7 to the joint committee on government and finance and
8 one copy submitted to health care cost review author-
9 ity on or before the fifteenth day of the first month of
10 the year, for the preceding year.

CHAPTER 11. TAXATION.**ARTICLE 13. BUSINESS AND OCCUPATION TAX.****§11-13-1. Definitions.**

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsections (b) and (c) shall have the meanings
4 ascribed to them by this section, unless a different
5 meaning is clearly required by either the context in
6 which the term is used or by specific definition.

7 (b) *Terms defined.* —

8 (1) “Person” or the term “company”, herein used
9 interchangeably, includes any individual, firm, copart-
10 nership, joint adventure, association, corporation, trust
11 or any other group or combination acting as a unit,
12 and the plural as well as the singular number, unless
13 the intention to give a more limited meaning is
14 disclosed by the context.

15 (2) “Sale”, “sales” or “selling” includes any transfer
16 of or title to property or electricity, whether for
17 money or in exchange for other property.

18 (3) “Taxpayer” means any person liable for any tax
19 hereunder.

20 (4) “Gross income” means the gross receipts of the
21 taxpayer, received as compensation for personal
22 services and the gross receipts of the taxpayer derived
23 from trade, business, commerce or sales and the value
24 proceeding or accruing from the sale of tangible
25 property (real or personal), or service, or both, and all
26 receipts by reason of the investment of the capital of
27 the business engaged in, including rentals, royalties,
28 fees, reimbursed costs or expenses or other emolu-
29 ments however designated and including all interest,
30 carrying charges, fees or other like income, however
31 denominated, derived by the taxpayer from repetitive
32 carrying of accounts, in the regular course and con-
33 duct of his business, and extension of credit in connec-
34 tion with the sale of any tangible personal property or
35 service, and without any deductions on account of the

36 cost of property sold, the cost of materials used, labor
37 costs, taxes, royalties paid in cash or in kind or
38 otherwise, interest or discount paid or any other
39 expenses whatsoever.

40 (5) "Gross proceeds of sales" means the value,
41 whether in money or other property, actually proceed-
42 ing from the sale of tangible property without any
43 deduction on account of the cost of property sold or
44 expenses of any kind.

45 (6) "Business" shall include all activities engaged in
46 or caused to be engaged in with the object of gain or
47 economic benefit, either direct or indirect. "Business"
48 shall include the rendering of gas storage service by
49 any person for the gain or economic benefit of any
50 person, including, but not limited to, the storage
51 operator. "Business" also includes activities, whether
52 engaged in for profit, or not for profit, or by a
53 governmental entity: *Provided*, That "business" does
54 not include services rendered by an employee within
55 the scope of his or her contract of employment.
56 Employee services, services by a partner on behalf of
57 his or her partnership, and services by a member of
58 any other business entity on behalf of that entity, are
59 the business of the employer, or partnership, or other
60 business entity, as the case may be, and reportable as
61 such for purposes of the taxes imposed by this article.

62 (7) "Gas" means either natural gas unmixed, or any
63 mixture of natural and artificial gas or any other gas.

64 (8) "Storage reservoir" means that portion of any
65 subterranean sand or rock stratum or strata into
66 which gas has been injected for the purpose of storage
67 prior to the first day of March, one thousand nine
68 hundred eighty-nine.

69 (9) "Gas storage service" means the injection of gas
70 into a storage reservoir, the storage of gas for any
71 period of time in a storage reservoir, or the withdraw-
72 al of gas from a storage reservoir. Such gas may be
73 owned by the storage operator or any other person.

74 (10) "Net number of dekatherms of gas injected"

75 means the sum of the daily injection of dekatherms of
76 gas in excess of the sum of the daily withdrawals of
77 dekatherms of gas during a tax month.

78 (11) "Net number of dekatherms of gas withdrawn"
79 means the sum of the daily withdrawal of dekatherms
80 of gas in excess of the sum of the daily injection of
81 dekatherms of gas during a tax month.

82 (12) "Partner" includes a member of such a syndi-
83 cate, group, pool, joint venture or other organization
84 which is a "partnership", as defined in this section.

85 (13) "Partnership" includes a syndicate, group, pool,
86 joint venture or other unincorporated organization
87 through or by means of which any privilege taxable
88 under this article is exercised, and which is not within
89 the meaning of this article a trust or estate or corpo-
90 ration. "Partnership" includes a limited liability
91 company which is treated as a partnership for federal
92 income tax purposes.

93 (14) "Gas storage operator" means any person who
94 operates a storage reservoir or provides a storage
95 service as defined herein, either as owner or lessee.

96 (15) "Month" or "tax month" means the calendar
97 month.

98 (16) "Dekatherm" means the thermal energy unit
99 equal to one million British thermal units (BTU's) or
100 the equivalent of one thousand cubic feet of gas having
101 a heating content of one thousand BTU's per cubic
102 foot.

103 (17) "Taxable year" means the calendar year, or the
104 fiscal year ending during such calendar year, upon the
105 basis of which tax liability is computed under this
106 article. "Taxable year" means, in case of a return
107 made for a fractional part of a year under the pro-
108 visions of this article, or under regulations promulgat-
109 ed by the tax commissioner, the period for which such
110 return is made.

111 (c) *Specific definitions for persons providing health*
112 *care items or services. —*

113 (1) "Advanced nurse practitioners" means certified
114 pediatric nurse practitioners and certified family
115 nurse practitioners as defined in article seven, chapter
116 thirty of this code and duly licensed by the board of
117 examiners for registered professional nurses.

118 (2) "Audiologist" means a person licensed to practice
119 audiology in this state.

120 (3) "Chiropractor" means a person licensed to
121 practice chiropractic in this state.

122 (4) "Dentist" means a person licensed to practice
123 dentistry or dental surgery in this state.

124 (5) "Nurse-midwife" means a person licensed to
125 practice nurse-midwifery in this state.

126 (6) "Occupational therapist" means a person licensed
127 to practice occupational therapy in this state.

128 (7) "Optician" means a maker or dealer in optical
129 items or instruments; or a person who grinds and
130 dispenses prescription spectacle lenses.

131 (8) "Optometrist" means a person licensed to prac-
132 tice optometry in this state.

133 (9) "Physical therapist" means a person licensed to
134 practice physical therapy in this state.

135 (10) "Podiatrist" means a person licensed to practice
136 podiatry in this state.

137 (11) "Psychologist" means a person licensed to
138 practice psychology in this state.

139 (12) "Speech therapist" means speech-language
140 pathologists and audiologists as defined in section two,
141 article thirty-two, chapter thirty of this code.

§11-13-2. Imposition of privilege tax.

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing in certain business activities in this state, there is
3 hereby levied and shall be collected from every person
4 engaging in one or more of such activities during the
5 taxable year an annual privilege tax. The amount of
6 tax due shall be determined by the application of rates

7 against the measure of tax as set forth in sections two-
8 a, two-d, two-e, two-m and two-n of this article, as
9 appropriate, to the activity or activities of such person
10 during the taxable year.

11 (b) *Apportionment of gross income.* — When a
12 business or other activity taxable under this article is
13 engaged in partially in this state and partially in
14 another state, the measure of tax under this article
15 shall be determined under the rules set forth in this
16 subsection.

17 (1) When a service is rendered partially in this state
18 and partially in another state the gross income attrib-
19 utable to such service shall be allocated or apportioned
20 in accordance with uniform rules promulgated by the
21 tax commissioner.

22 (2) If any person liable for any tax under section
23 two-m shall ship or transport his products or any part
24 thereof out of the state without making sale of such
25 products, the value of the products in the condition or
26 form in which they exist immediately before transpor-
27 tation out of the state shall be the basis for the
28 assessment of the tax imposed in such section, except
29 in those instances in which another measure of the tax
30 is expressly provided. The tax commissioner shall
31 prescribe equitable and uniform rules for ascertaining
32 such value.

33 (3) In determining value, however, as regards sales
34 from one to another of affiliated companies or persons,
35 or under other circumstances where the relation
36 between the buyer and seller is such that the gross
37 proceeds from the sale are not indicative of the true
38 value of the subject matter of the sale, the tax
39 commissioner shall prescribe uniform and equitable
40 rules for determining the value upon which such
41 privilege tax shall be levied, corresponding as nearly
42 as possible to the gross proceeds from the sale of
43 similar products of like quality or character where no
44 common interest exists between the buyer and seller
45 but the circumstances and conditions are otherwise
46 similar.

47 (c) *Effective date.* — This section, as amended in the
48 year one thousand nine hundred ninety-three, shall
49 take effect on the first day of May, one thousand nine
50 hundred ninety-three, and apply to taxable years, or
51 portions thereof, ending after the thirtieth day of
52 April, one thousand nine hundred ninety-three. With
53 regard to taxable years or portions thereof ending
54 before the said first day of May, the language of this
55 section as then in effect for such years or portions
56 thereof is fully and completely preserved.

§11-13-2a. Certain professional service businesses.

1 (a) Upon every person engaging or continuing
2 within this state in certain professional service busi-
3 ness activities, the amount of tax imposed by section
4 two of this article shall be equal to one and three-
5 fourths percent of the gross income of such persons
6 derived from the conduct of such professional service
7 business activity in this state: *Provided*, That dentists
8 shall be taxed at a rate equal to one and one-fourths
9 percent of the gross income of such professional
10 service business activity in this state.

11 (b) The measure of tax under this section shall be
12 determined using the cash method of accounting,
13 whether or not taxpayer uses that method of account-
14 ing for federal income tax purposes.

15 (c) *“Certain professional services” defined.* — For
16 purposes of this section, the term “certain professional
17 services” means, and is limited to, the health care
18 related activities of advanced nurse practitioners,
19 audiologists, chiropractors, dentists, nurse-midwives,
20 occupational therapists, opticians, optometrists, phys-
21 ical therapists, podiatrists, psychologists and speech
22 therapists.

23 (d) *Effective date.* — The tax imposed by section two
24 of this article, the amount of which is determined
25 under this section, applies to gross income received
26 after the thirtieth day of April, one thousand nine
27 hundred ninety-three, regardless of when the trans-
28 action or activity generating the gross income occurred.

§11-13-3. Annual exemption and periods thereof.

1 There shall be an exemption in every case of forty-
2 one dollars and sixty-seven cents per month in amount
3 of tax computed under the provisions of this article.
4 Only one exemption shall be allowed to any one
5 person, whether he exercises one or more privileges
6 taxable hereunder.

§11-13-3c. Tax credit for business investment and jobs expansion.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article, the amount determined under
3 article thirteen-c of this chapter, relating to tax credit
4 for business investment and jobs expansion.

5 (b) The tax commissioner shall prescribe such
6 regulations as he deems necessary to carry out the
7 purposes of this section and article thirteen-c of this
8 chapter.

9 (c) Notwithstanding any provision of this code to the
10 contrary, no credit allowed under article thirteen-c of
11 this chapter may be taken against the taxes imposed
12 by this article for qualified investment property
13 purchased or placed into service or use after the
14 thirtieth day of April, one thousand nine hundred
15 ninety-three.

§11-13-4. Payment of estimated tax in periodic installment payments.

1 (a) *General rule.* — Every person subject to a tax
2 imposed by this article must make estimated tax
3 payments for a taxable year in which such person's
4 tax liability can reasonably be expected to exceed fifty
5 dollars per month.

6 (b) *Small businesses.* — If a person's tax liability is
7 reasonably expected to be more than fifty dollars per
8 month but not more than one thousand dollars per
9 month, three fourths of such person's estimated tax
10 liability must be remitted in installment payments
11 during the tax year. Installment payments are due on
12 the last day of the fourth, seventh and tenth months

13 of the tax year, for gross receipts received during the
14 preceding quarter of the tax year: *Provided*, That any
15 installment payment due on the thirtieth day of June
16 each year shall be remitted by the fifteenth day of
17 June. The balance of tax due must be paid by the last
18 day of the first month following the close of the
19 taxpayer's tax year.

20 (c) *All other taxpayers.* — If a person's tax liability
21 can reasonably be expected to be more than one
22 thousand dollars per month of the tax year, eleven
23 twelfths of such person's estimated tax liability must
24 be remitted in monthly installment payments during
25 that tax year. Installment payments are due on the
26 last day of the second through the twelfth months of
27 the tax year, for gross receipts received during the
28 preceding month: *Provided*, That any installment
29 payment due on the thirtieth day of June each year
30 shall be remitted to the tax commissioner by the
31 fifteenth day of June. The balance of tax due must be
32 paid by the last day of the first month following the
33 close of taxpayer's tax year.

34 (d) *Remittance form.* — Each installment payment
35 taxpayer shall file a remittance form executed as
36 provided in section five of this article. This form shall
37 be prescribed by the tax commissioner and require
38 such information as the commissioner deems neces-
39 sary for the efficient administration of this article.

40 (e) *Exception.* — The above provisions of this section
41 notwithstanding, the tax commissioner, if he deems it
42 necessary to ensure payment of the tax, may require
43 the return and payment under this section for periods
44 of shorter duration than those prescribed above.

§11-13-4a. Additions to tax for underpayment of estimated tax.

1 (a) *General rule.* — A taxpayer must remit estimat-
2 ed tax based on actual gross income received during
3 the period to which the installment payment relates
4 unless taxpayer elects to use the method set forth in
5 subsection (b) of this section.

6 (1) If a person required to make quarterly install-
7 ment payments of estimated tax timely pays estimated
8 tax during the tax year equal to seventy-five percent
9 or more of such person's actual liability for that tax
10 year, no additions to tax will be imposed under this
11 section for failure to timely pay estimated tax. Esti-
12 mated tax is timely paid if at least one fourth of the
13 tax due for the year is paid by the due date of each
14 installment for that year.

15 (2) If a person required to make monthly installment
16 payments of estimated tax timely pays estimated tax
17 during the tax year equal to eleven twelfths or more
18 of such person's actual tax liability for the tax year, no
19 additions to tax will be imposed under this section for
20 failure to timely pay estimated tax. Estimated tax is
21 timely paid if at least one eleventh of the tax due for
22 the year is paid by the due date of each installment for
23 that year.

24 (b) *Estimated tax payments based on last year's*
25 *gross receipts.* — A taxpayer may elect to remit
26 estimated tax for the current tax year using the
27 amount of gross receipts taxpayer received during the
28 preceding tax year, if that year was a taxable year of
29 twelve months and if gross receipts were received in
30 each of those twelve months. If this election is made,
31 then:

32 (1) If a person required to make quarterly install-
33 ment payments of estimated tax timely pays estimated
34 tax during the tax year equal to seventy-five percent,
35 or more, of the tax determined using last year's
36 measure of tax and this year's rate of tax, no additions
37 to tax will be imposed under this section for failure to
38 timely pay estimated tax. Estimated tax is timely paid
39 if at least one fourth is paid by the due date of each
40 installment for the tax year to which the installment
41 relates.

42 (2) If a person required to make monthly installment
43 payments of estimated tax timely pays estimated tax
44 during the tax year equal eleven twelfths, or more, of
45 the tax determined using last year's measure of tax

46 and this year's rate of tax, no additions to tax will be
47 imposed for failure to timely pay estimated tax.
48 Estimated tax is timely paid if at least one twelfth is
49 paid by the due date of each installment for the tax
50 year to which the installment relates.

51 (c) *Additions to tax for underpayment of estimated*
52 *tax.* — If there is an underpayment of estimated tax,
53 there shall be added to the tax due under this article
54 for the tax year, an amount determined by applying
55 the rate established under section seventeen or seven-
56 teen-a, article ten of this chapter, as appropriate for
57 the tax year (and if two or more such rates apply, the
58 weighted average thereof), to the amount of underpay-
59 ment of estimated tax for the period of underpayment.

60 (d) *Period of underpayment.* — The period of under-
61 payment of an installment shall run from the date the
62 installment was required to be paid (due date) to
63 whichever of the following dates is the earlier:

64 (1) The due date of the annual return following the
65 close of the tax year for which the installment was due
66 (determined without regard to any extension of time
67 for filing such annual return); or

68 (2) With respect to any portion of the underpayment,
69 the date on which such portion is paid. For purposes
70 of this subsection, a payment of estimated tax shall be
71 credited against unpaid required installments in the
72 order in which such installments are required to be
73 paid.

74 (e) *Waiver in certain cases.* — No addition to tax
75 shall be imposed under this section with respect to any
76 underpayment of estimated tax if and to the extent
77 the tax commissioner determines that by reason of
78 casualty, disaster or other unusual circumstances the
79 imposition of such addition would be against equity
80 and good conscience.

81 (f) *Short tax years.* — This section shall apply to
82 short tax years under rules promulgated by the tax
83 commissioner.

84 (g) Section eighteen-a, article ten of this chapter

85 shall not apply to the taxes imposed by this article.

§11-13-9. Tax year; methods of accounting.

1 (a) *Taxable year.* — For purposes of the tax imposed
2 by this article, a taxpayer's taxable year shall be the
3 same as the taxpayer's taxable year for federal income
4 tax purposes. If taxpayer has no taxable year for
5 federal income tax purposes, then the calendar year
6 shall be taxpayer's taxable year under this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable
8 year is changed for federal income tax purposes,
9 taxpayer's taxable year for purposes of this article
10 shall be similarly changed. The taxpayer shall provide
11 a copy of the authorization from the Internal Revenue
12 Service for such change with taxpayer's annual return
13 for the taxable year filed under this article.

14 (c) *Method of accounting.* —

15 (1) *Same as federal.* — A taxpayer's method of
16 accounting under this article shall be the same as the
17 taxpayer's method of accounting for federal income
18 tax purposes, except as provided in subdivision (2) of
19 this subsection. In the absence of any method of
20 accounting for federal income tax purposes, the tax
21 under this article shall be computed under such
22 method that in the opinion of the tax commissioner
23 clearly reflects such income.

24 (2) *Exception.* — A person taxed under this article
25 who provides health care items or services shall, with
26 respect to gross income derived from such business
27 activity, determine such person's tax liability using the
28 cash method of accounting, whether or not that
29 method is used by such person for federal income tax
30 purposes, unless the tax commissioner, in writing,
31 consents to use another method.

32 (d) *Adjustments.* — In computing a taxpayer's
33 liability for tax for any taxable year under a method
34 of accounting different from the method under which
35 the taxpayer's liability for tax under this article for
36 the previous year was computed, there shall be taken
37 into account those adjustments which are determined,

38 under regulations prescribed by the tax commissioner,
39 to be necessary solely by reason of the change in order
40 to prevent amounts from being duplicated or omitted.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

1 Notwithstanding the provisions of section five,
2 article thirteen, chapter eight of this code, no city,
3 town or village shall impose a business and occupation
4 tax:

5 (a) Upon occupations or privileges taxed under
6 sections two-a, two-b, two-c, two-d, two-e, two-g, two-
7 h, two-i and two-j of this article, in excess of rates in
8 effect under this article on the first day of January,
9 one thousand nine hundred fifty-nine;

10 (b) Upon occupations or privileges taxed under
11 section two-k of this article, in excess of one percent
12 of gross income;

13 (c) Under section two-l of this article; or

14 (d) Upon occupations or privileges taxed under
15 section two-m of this article, in excess of the tax rate
16 applicable to such occupations or privileges under
17 section two-b of this article on the first day of Janu-
18 ary, one thousand nine hundred fifty-nine.

19 Enactment of section two-a of this article in the year
20 one thousand nine hundred ninety-three, shall not
21 increase or decrease the authority of municipalities to
22 impose their tax on persons exercising such privilege
23 under their service classification.

§11-13-27a. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of
3 this chapter shall apply to the taxes imposed by this
4 article with like effect as if said act were applicable
5 only to the taxes imposed by this article and were set
6 forth in extenso in this article.

§11-13-28. Effective date.

1 This act of the Legislature shall take effect the first

2 day of May, one thousand nine hundred ninety-three.

§11-13-32. Dedication of tax.

1 (a) The amount of taxes collected under this article
 2 from providers of health care items or services,
 3 including any interest, additions to tax and penalties
 4 collected under article ten of this chapter, less the
 5 amount of allowable refunds and any interest payable
 6 with respect to such refunds, shall be deposited into
 7 the special revenue fund created in the state treasur-
 8 er's office and known as the medicaid tax revenue
 9 fund. Said fund shall have separate accounting for
 10 those health care providers as set forth in articles
 11 four-b and four-c, chapter nine of this code.

12 (b) The amount of taxes collected under this article
 13 from all other persons, including any interest, addi-
 14 tions to tax and penalties collected under article ten of
 15 this chapter, less the amount of allowable refunds and
 16 any interest payable with respect to such refunds,
 17 shall be deposited into the general revenue fund.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

§11-13A-1. Short title; arrangement and classification.

1 This article may be cited as the "Severance and
 2 Business Privilege Tax Act of 1993". No inference,
 3 implication or presumption of legislative construction
 4 shall be drawn or made by reason of the location or
 5 grouping of any particular section or provision or
 6 portion of this article, and no legal effect shall be given
 7 to any descriptive matter of headings relating to any
 8 part, section, subsection, subdivision or paragraph of
 9 this article.

§11-13A-2. Definitions.

1 (a) *General rule.* — When used in this article, or in
 2 the administration of this article, the terms defined in
 3 subsection (b), (c) or (d) shall have the meanings
 4 ascribed to them by this section, unless a different
 5 meaning is clearly required by the context in which
 6 the term is used, or by specific definition.

7 (b) *General terms defined.* — Definitions in this

8 subsection apply to all persons subject to the taxes
9 imposed by this article.

10 (1) "Business" includes all activities engaged in, or
11 caused to be engaged in, with the object of gain or
12 economic benefit, direct or indirect, and whether
13 engaged in for profit, or not for profit, or by a
14 governmental entity: *Provided*, That "business" does
15 not include services rendered by an employee within
16 the scope of his or her contract of employment.
17 Employee services, services by a partner on behalf of
18 his or her partnership, and services by a member of
19 any other business entity on behalf of that entity, are
20 the business of the employer, or partnership, or other
21 business entity, as the case may be, and reportable as
22 such for purposes of the taxes imposed by this article.

23 (2) "Corporation" includes associations, joint-stock
24 companies and insurance companies. It also includes
25 governmental entities when and to the extent such
26 governmental entities engage in activities taxable
27 under this article.

28 (3) "Delegate" in the phrase "or his delegate", when
29 used in reference to the tax commissioner, means any
30 officer or employee of the state tax division of the
31 department of tax and revenue duly authorized by the
32 tax commissioner directly, or indirectly by one or
33 more redelegations of authority, to perform the
34 function mentioned or described in this article or
35 regulations promulgated thereunder.

36 (4) "Fiduciary" means and includes, a guardian,
37 trustee, executor, administrator, receiver, conservator
38 or any person acting in any fiduciary capacity for any
39 person.

40 (5) "Gross proceeds" means the value, whether in
41 money or other property, actually proceeding from the
42 sale or lease of tangible personal property, or from the
43 rendering of services, without any deduction for the
44 cost of property sold or leased, or expenses of any
45 kind.

46 (6) "Includes" and "including" when used in a

47 definition contained in this article shall not be deemed
48 to exclude other things otherwise within the meaning
49 of the term being defined.

50 (7) "Partner" includes a member of such a syndi-
51 cate, group, pool, joint venture or other organization
52 which is a "partnership", as defined in this section.

53 (8) "Partnership" includes a syndicate, group, pool,
54 joint venture or other unincorporated organization
55 through or by means of which any privilege taxable
56 under this article is exercised, and which is not within
57 the meaning of this article a trust or estate, or
58 corporation. "Partnership" includes a limited liability
59 company which is treated as a partnership for federal
60 income tax purposes.

61 (9) "Person" means any individual, partnership,
62 association, company, corporation or other entity
63 engaged in activity taxable under this article.

64 (10) "Sale" includes any transfer of the ownership or
65 title to property, whether for money or in exchange
66 for other property or services, or any combination
67 thereof. "Sale" includes a lease of property, whether
68 the transaction be characterized as a rental, lease,
69 hire, bailment or license to use. "Sale" also includes
70 rendering services for a consideration, whether direct
71 or indirect.

72 (11) "Service" includes all activities engaged in by a
73 person for a consideration, which involve the render-
74 ing of a service as distinguished from the sale of
75 tangible personal property: *Provided*, That "service"
76 does not include: (A) Services rendered by an employ-
77 ee to his or her employer under a contract of employ-
78 ment; (B) contracting; or (C) severing or processing
79 natural resources.

80 (12) "Tax" means any tax imposed by this article
81 and, for purposes of administration and collection of
82 such tax, it includes any interest, additions to tax or
83 penalties imposed with respect thereto under article
84 ten of this chapter.

85 (13) "Tax commissioner" or "commissioner" means

86 the tax commissioner of the state of West Virginia, or
87 his delegate.

88 (14) "Taxable year" means the calendar year, or the
89 fiscal year ending during such calendar year, upon the
90 basis of which the tax imposed by this article is
91 computed. In the case of a return made under this
92 article, or regulations of the tax commissioner, for a
93 fractional part of a year, the term "taxable year"
94 means the period for which such return is made.

95 (15) "Taxpayer" means any person subject to any
96 tax imposed by this article.

97 (16) "This code" means the code of West Virginia,
98 one thousand nine hundred thirty-one, as amended.

99 (17) "This state" means the state of West Virginia.

100 (18) "Withholding agent" means any person required
101 by law to deduct and withhold any tax imposed by this
102 article, or under regulations promulgated by the tax
103 commissioner.

104 (c) *Specific definitions for producers of natural*
105 *resources.* —

106 (1) "Coal" means and includes any material com-
107 posed predominantly of hydrocarbons in a solid state.

108 (2) "Economic interest" for the purpose of this
109 article is synonymous with the economic interest
110 ownership required by Section 611 [26 U.S.C. 611] of
111 the Internal Revenue Code in effect on the thirty-first
112 day of December, one thousand nine hundred eighty-
113 five, entitling the taxpayer to a depletion deduction for
114 income tax purposes: *Provided*, That a person who
115 only receives an arm's length royalty shall not be
116 considered as having an economic interest.

117 (3) "Extraction of ores or minerals from the ground"
118 includes extraction by mine owners or operators of
119 ores or minerals from the waste or residue of prior
120 mining.

121 (4) "Gross value" in the case of natural resources
122 means the market value of the natural resource

123 product, in the immediate vicinity, where severed,
124 determined after application of post production pro-
125 cessing generally applied by the industry to obtain
126 commercially marketable or usable natural resource
127 products. For all natural resources, "gross value" is to
128 be reported as follows:

129 (A) For natural resources severed or processed (or
130 both severed and processed) and sold during a report-
131 ing period, gross value is the gross proceeds received
132 or receivable by the taxpayer.

133 (B) In a transaction involving related parties, gross
134 value shall not be less than the fair market value for
135 natural resources of similar grade and quality.

136 (C) In the absence of a sale, gross value shall be the
137 fair market value for natural resources of similar
138 grade and quality.

139 (D) If severed natural resources are purchased for
140 the purpose of processing and resale, the gross value is
141 the amount of gross proceeds received or receivable
142 during the reporting period reduced by the amount
143 paid or payable to the taxpayer actually severing the
144 natural resource.

145 (E) If natural resources are severed outside the state
146 of West Virginia and brought into the state of West
147 Virginia by or for the producer for the purpose of
148 processing and sale, the gross value is the amount of
149 gross proceeds received or receivable during the
150 reporting period reduced by the fair market value of
151 natural resources of similar grade and quality and in
152 the same condition immediately preceding the process-
153 ing of the natural resources in this state.

154 (F) If severed natural resources are purchased for
155 the purpose of processing and consumption, the gross
156 value is the fair market value of processed natural
157 resources of similar grade and quality reduced by the
158 amount paid or payable to the taxpayer actually
159 severing the natural resource. If severed natural
160 resources are severed outside the state of West Virgin-
161 ia and brought into the state of West Virginia by the

162 taxpayer for the purpose of processing and consump-
163 tion, the gross value is the fair market value of
164 processed natural resources of similar grade and
165 quality reduced by the fair market value of natural
166 resources of similar grade and quality and in the same
167 condition immediately preceding the processing of the
168 natural resources.

169 (G) In all instances, the gross value shall not be
170 reduced by any state or federal taxes, royalties, sales
171 commissions or any other expense.

172 (H) For natural gas, gross value is the value of the
173 natural gas at the wellhead immediately preceding
174 transportation and transmission.

175 (I) For limestone or sandstone quarried or mined,
176 gross value is the value of such stone immediately
177 upon severance from the earth.

178 (5) "Mining" includes not merely the extraction of
179 ores or minerals from the ground but also those
180 treatment processes necessary or incidental thereto.

181 (6) "Natural resources" means all forms of minerals
182 including, but not limited to, rock, stone, limestone,
183 coal, shale, gravel, sand, clay, natural gas, oil and
184 natural gas liquids which are contained in or on the
185 soils or waters of this state, and includes standing
186 timber.

187 (7) "Processed" or "processing" as applied to:

188 (A) Oil and natural gas shall not include any conver-
189 sion or refining process; and

190 (B) Limestone or sandstone quarried or mined shall
191 not include any treatment process or transportation
192 after the limestone or sandstone is severed from the
193 earth.

194 (8) "Related parties" means two or more persons,
195 organizations or businesses owned or controlled direct-
196 ly or indirectly by the same interests. Control exists if
197 a contract or lease, either written or oral, is entered
198 into whereby one party mines or processes natural
199 resources owned or held by another party and the

200 owner or lessor participates in the severing, processing
201 or marketing of the natural resources or receives any
202 value other than an arm's length passive royalty
203 interest. In the case of related parties, the tax commis-
204 sioner may apportion or allocate the receipts between
205 or among such persons, organizations or businesses if
206 he determines that such apportionment or allocation is
207 necessary to more clearly reflect gross value.

208 (9) "Severing" or "severed" means the physical
209 removal of the natural resources from the earth or
210 waters of this state by any means: *Provided*, That
211 "severing" or "severed" shall not include the removal
212 of natural gas from underground storage facilities into
213 which the natural gas has been mechanically injected
214 following its initial removal from earth: *Provided*,
215 *however*, That "severing" or "severed" oil and natural
216 gas shall not include any separation process of oil or
217 natural gas commonly employed to obtain marketable
218 natural resource products.

219 (10) "Stock" includes shares in an association, joint-
220 stock company or corporation.

221 (11) "Taxpayer" means and includes any individual,
222 partnership, joint venture, association, corporation,
223 receiver, trustee, guardian, executor, administrator,
224 fiduciary or representative of any kind engaged in the
225 business of severing or processing (or both severing
226 and processing) natural resources in this state for sale
227 or use. In instances where contracts (either oral or
228 written) are entered into whereby persons, organiza-
229 tions or businesses are engaged in the business of
230 severing or processing (or both severing and process-
231 ing) a natural resource but do not obtain title to or do
232 not have an economic interest therein, the party who
233 owns the natural resource immediately after its
234 severance or has an economic interest therein is the
235 taxpayer.

236 (d) *Specific definitions for persons providing health*
237 *care items or services. —*

238 (1) "Behavioral health center" means behavioral
239 health center as defined in section one, article two-a,

240 chapter twenty-seven of this code or section one,
241 article nine, of said chapter.

242 (2) "Community care provider" means a provider of
243 home and community care services furnished pursu-
244 ant to an individual plan of care which also includes
245 senior citizens groups which provide said services but
246 does not include home health agencies.

247 (3) "Ambulance or ambulance services" means
248 ambulance or ambulance services as defined in section
249 three, article four-c, chapter sixteen of this code.

**§11-13A-3. Privilege of severing certain natural resources
and furnishing certain health care items or
services.**

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 severing, extracting, reducing to possession and pro-
4 ducing for sale, profit or commercial use coal, lime-
5 stone, sandstone, natural gas or oil, or in the business
6 of furnishing certain health care services and not
7 taxed under articles thirteen and twenty-seven of this
8 chapter, there is hereby levied and shall be collected
9 from every person exercising such privilege an annual
10 privilege tax.

11 (b) *Rate and measure of tax.* — The tax imposed in
12 subsection (a) of this section shall be five percent of
13 the gross value of the natural resource produced or
14 the health care service provided, as shown by the
15 gross income derived from the sale thereof by the
16 producer or the provider of the health care service,
17 except as otherwise provided in this article. In the case
18 of coal, this five percent rate of tax includes the thirty-
19 five one hundredths of one percent additional sever-
20 ance tax on coal imposed by the state for the benefit
21 of counties and municipalities as provided in section
22 six of this article.

23 (c) *"Certain health care services" defined.* — For
24 purposes of this section, the term "certain health care
25 services" means, and is limited to, health care trans-
26 portation, behavioral health centers and community

27 care providers.

28 (d) *Tax in addition to other taxes.* — The tax
29 imposed by this section, shall apply to all persons
30 severing or processing (or both severing and process-
31 ing) in this state natural resources enumerated in
32 subsection (a) of this section, and to all persons
33 providing certain health care services in this state as
34 enumerated in subsection (c) of this section, except as
35 provided in subsection (a) of this section, and shall be
36 in addition to all other taxes imposed by law.

37 (e) *Effective date.* — This section as amended in the
38 year one thousand nine hundred ninety-three, shall
39 apply to gross proceeds received after the thirtieth day
40 of April of such year. The language of section three of
41 this article, as in effect on the first day of January of
42 such year, shall apply to gross proceeds received prior
43 to the first day of May of such year and, with respect
44 to such gross proceeds shall be fully and completely
45 preserved.

§11-13A-3a. Privilege of severing timber.

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 severing timber for sale, profit or commercial use,
4 there is hereby levied and shall be collected from
5 every person exercising such privilege an annual
6 privilege tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be three and
9 twenty-two hundredth percent of the gross value of
10 the timber produced, as shown by the gross proceeds
11 derived from the sale thereof by the producer, except
12 as otherwise provided in this article.

13 (c) *Tax in addition to other taxes.* — The tax
14 imposed by this section shall apply to all persons
15 severing timber in this state, and shall be in addition
16 to all other taxes imposed by law.

17 (d) *Effective date.* — This section as amended in the
18 year one thousand nine hundred ninety-three, shall
19 apply to gross proceeds received after the thirtieth day

20 of April of such year. The language of section three of
21 this article, as in effect on the first day of January of
22 such year, shall apply to gross proceeds received prior
23 to the first day of May of such year and, with respect
24 to such gross proceeds shall be fully and completely
25 preserved.

§11-13A-3b. Privilege of severing other natural resources.

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 severing, extracting, reducing to possession and pro-
4 ducing for sale, profit or commercial use any other
5 natural resource product or product not taxed under
6 section three or four of this article, there is hereby
7 levied and shall be collected from every person
8 exercising this privilege and annual privilege tax.

9 (b) *Rate and measure of tax.* — The tax imposed in
10 subsection (a) of this section shall be four percent of
11 the gross value of the natural resource produced, as
12 shown by the gross proceeds derived from the sale
13 thereof by producer, except as otherwise provided in
14 this article: *Provided*, That beginning the first day of
15 July, one thousand nine hundred ninety-three, the tax
16 imposed by this section shall be levied and collected at
17 the rate of four and one-half percent, and beginning
18 the first day of July, one thousand nine hundred
19 ninety-four, the tax imposed by this section shall be
20 levied and collected at the rate of five percent.

21 (c) *Tax in addition to other taxes.* — The tax
22 imposed by this section shall apply to all persons
23 severing timber in this state, and shall be in addition
24 to all other taxes imposed by law.

25 (d) *Effective date.* — This section as amended in the
26 year one thousand nine hundred ninety-three, shall
27 apply to gross proceeds received after the thirtieth day
28 of April of such year. The language of this section as
29 in effect on the first day of January of such year, shall
30 apply to gross proceeds received prior to the first day
31 of May of such year and, with respect to such gross
32 proceeds shall be fully and completely preserved.

§11-13A-7. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the taxes
2 imposed by this article, a taxpayer's taxable year shall
3 be the same as the taxpayer's taxable year for federal
4 income tax purposes. If taxpayer has no taxable year
5 for federal income tax purposes, then the calendar
6 year shall be taxpayer's taxable year under this
7 article.

8 (b) *Change of taxable year.* — If a taxpayer's taxable
9 year is changed for federal income tax purposes,
10 taxpayer's taxable year for purposes of this article
11 shall be similarly changed. The taxpayer shall provide
12 a copy of the authorization from the Internal Revenue
13 Service for such change with taxpayer's annual return
14 for the taxable year filed under this article.

15 (c) *Methods of accounting.* —

16 (1) *Same as federal.* — A taxpayer's method of
17 accounting under this article shall be the same as the
18 taxpayer's method of accounting for federal income
19 tax purposes, except as provided in subdivision (2) of
20 this subsection. In the absence of any method of
21 accounting for federal income tax purposes, the
22 accrual method of accounting shall be used, except as
23 provided in said subdivision, unless the tax commis-
24 sioner, in writing, consents to use of another method.

25 (2) *Exception.* — A person taxable under this article
26 who provides health care items or services shall, with
27 respect to gross proceeds derived from such business
28 activity, determine such person's tax liability using the
29 cash method of accounting, whether or not that
30 method is used by such person for federal income tax
31 purposes, unless the tax commissioner, in writing,
32 consents to use of another method.

33 (3) *Change of accounting methods.* — If a taxpayer's
34 method of accounting is changed for federal income
35 tax purposes, the taxpayer's method of accounting for
36 purposes of this article shall similarly be changed,
37 except as provided in subdivision (2) of this subsection.
38 The taxpayer shall provide a copy of the authorization

39 for such change from the Internal Revenue Service
40 with its annual return for the taxable year filed under
41 this article.

§11-13A-8. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the
2 end of the taxable year, every taxpayer subject to a
3 tax imposed by this article shall make and file an
4 annual return for the entire taxable year showing
5 such information as the tax commissioner may require
6 and computing the amount of taxes due under this
7 article for the taxable year. Returns made on the basis
8 of a calendar year shall be filed on or before the
9 thirty-first day of January following the close of the
10 calendar year. Returns made on the basis of a fiscal
11 year shall be filed on or before the last day of the first
12 month following the close of the fiscal year.

§11-13A-9. Payment of estimated tax in periodic installment payments.

1 (a) *General rule.* — Every person subject to a tax
2 imposed by this article must make estimated tax
3 payments for a taxable year in which such person's
4 tax liability can reasonably be expected to exceed fifty
5 dollars per month.

6 (b) *Small businesses.* — If a person's tax liability is
7 reasonably expected to be more than fifty dollars per
8 month but not more than one thousand dollars per
9 month, three fourths of such person's estimated tax
10 liability must be remitted in installment payments
11 during the tax year. Installment payments are due on
12 the last day of the fourth, seventh and tenth months
13 of the tax year, for gross receipts received during the
14 preceding quarter of the tax year: *Provided*, That any
15 installment payment due on the thirtieth day of June
16 each year shall be remitted by the fifteenth day of
17 June. The balance of tax due must be paid by the last
18 day of the first month following the close of the
19 taxpayer's tax year.

20 (c) *All other taxpayers.* — If a person's tax liability

21 can reasonably be expected to be more than one
22 thousand dollars per month of the tax year, eleven
23 twelfths of such person's estimated tax liability must
24 be remitted in monthly installment payments during
25 that tax year. Installment payments are due on the
26 last day of the second through the twelfth months of
27 the tax year for gross receipts received during the
28 preceding month: *Provided*, That any installment
29 payment due on the thirtieth day of June each year
30 shall be remitted to the tax commissioner by the
31 fifteenth day of June. The balance of tax due must be
32 paid by the last day of the first month following the
33 close of taxpayer's tax year.

34 (d) *Remittance form.* — Each installment payment
35 taxpayer shall file a remittance form as shall be
36 prescribed by the tax commissioner and require such
37 information as the commissioner deems necessary for
38 the efficient administration of this article.

39 (e) *Exception.* — Notwithstanding the provisions of
40 subsections (a) and (b) of this section, the tax commis-
41 sioner, if the commissioner deems it necessary to
42 ensure payment of the tax, may require the return
43 and payment under this section for periods of shorter
44 duration than those required in subsection (a), (b) or
45 (c) of this section.

§11-13A-10. Time for paying tax; annual tax credit.

1 (a) *General rule.* — A person required to make an
2 annual return under this article shall pay to the tax
3 commissioner any tax shown to be due by such return,
4 without assessment, notice or demand to the tax
5 commissioner on or before the date fixed for filing the
6 annual return (determined without regard to any
7 extension of time for filing the return).

8 (b) *Credit.* — Every taxpayer subject to any tax
9 imposed by this article shall be allowed one annual
10 credit of five hundred dollars against the taxes due
11 under this article, to be applied at the rate of forty-one
12 dollars and sixty-seven cents per month for each
13 month the taxpayer was engaged in business in this
14 state exercising a privilege taxable under this article.

15 Persons providing health care items or services who
16 become subject to a tax imposed by this article
17 beginning on the first day of May, one thousand nine
18 hundred ninety-three, shall be allowed a proportional
19 credit under this subsection for months in their tax
20 year that begin on or after the first day of May, one
21 thousand nine hundred ninety-three.

§11-13A-11. Extension of time for filing returns and other documents.

1 The tax commissioner may, upon written request
2 received on or prior to the due date of the annual
3 return or other document, grant a reasonable exten-
4 sion of time for filing any return or other document
5 required by this article, upon such terms as the
6 commissioner may by regulation prescribe, or by
7 contract require, if good cause satisfactory to the tax
8 commissioner is provided by the taxpayer. No such
9 extension shall be for more than six months.

§11-13A-12. Extension of time for paying tax.

1 (a) *Amount determined on return.* — The tax
2 commissioner may extend the time for payment of the
3 amount of tax shown, or required to be shown, on any
4 return required by this article (or any periodic
5 installment payment), for a reasonable period not to
6 exceed six months from the date fixed by statute for
7 the payment thereof.

8 (b) *Amount determined as deficiency.* — Under
9 regulations prescribed by the tax commissioner, the
10 commissioner may extend the time for payment of the
11 amount determined as a deficiency of the taxes
12 imposed by this article for a period not to exceed
13 eighteen months from the due date of the deficiency.
14 In exceptional cases, a further period of time, not to
15 exceed twelve months may be granted. An extension
16 under this subsection may be granted only where it is
17 shown to the satisfaction of the tax commissioner that
18 payment of a deficiency upon the date fixed for
19 payment thereof will result in undue hardship to the
20 taxpayer.

21 (c) *No extension for certain deficiencies.* — No
 22 extension shall be granted under this section for any
 23 deficiency if the deficiency is due to negligence, to
 24 intentional disregard of rules and regulations, or to
 25 fraud with intent to evade tax.

§11-13A-13. Place for filing returns and other documents.

1 Tax returns, statements or other documents, or
 2 copies thereof, required by this article or by regula-
 3 tions shall be filed with the tax commissioner by
 4 delivery in person, or by mail postage prepaid, to the
 5 tax commissioner's office in Charleston, West Virginia:
 6 *Provided*, That the tax commissioner may, by regula-
 7 tion, prescribe the place for filing such returns,
 8 statements or other documents, or copies thereof.

§11-13A-19. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
 2 Procedure and Administration Act" set forth in article
 3 ten of this chapter shall apply to the taxes imposed by
 4 this article, except as otherwise expressly provided in
 5 this article, with like effect as if said act were appli-
 6 cable only to the taxes imposed by this article and
 7 were set forth in extenso in this article.

§11-13A-20. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax
 2 Crimes and Penalties Act" set forth in article nine of
 3 this chapter shall apply to the taxes imposed by this
 4 article with like effect as if said act were applicable
 5 only to the taxes imposed by this article and were set
 6 forth in extenso in this article.

§11-13A-20a. Dedication of tax.

1 (a) The amount of taxes collected under this article
 2 from providers of health care items or services,
 3 including any interest, additions to tax and penalties
 4 collected under article ten of this chapter, less the
 5 amount of allowable refunds and any interest payable
 6 with respect to such refunds, shall be deposited into
 7 the special revenue fund created in the state treasur-
 8 er's office and known as the medicaid tax revenue

9 fund. Said fund shall have separate accounting for
10 those health care providers as set forth in articles
11 four-b and four-c, chapter nine of this code.

12 (b) The amount of taxes collected under this article
13 from all other persons, including any interest, addi-
14 tions to tax and penalties collected under article ten of
15 this chapter, less the amount of allowable refunds and
16 any interest payable with respect to such refunds,
17 shall be deposited into the general revenue fund.

§11-13A-21. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to
6 the provision thereof directly involved in the contro-
7 versy in which such judgment shall have been ren-
8 dered, and the applicability of such provision to other
9 persons or circumstance shall not be affected thereby.

§11-13A-25. Effective date.

1 This act of the Legislature shall take effect the first
2 day of May, one thousand nine hundred ninety-three.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-20. Transition rules; effective date.

1 (a) The tax imposed by this article shall not apply to
2 medicaid reimbursement payments received by health
3 care providers after the thirtieth day of April, one
4 thousand nine hundred ninety-three, as amended.

5 (b) All persons subject to the tax imposed by this
6 article prior to the first day of May, one thousand nine
7 hundred ninety-three, shall make and file a final
8 return with the tax commissioner on or before the last
9 day of May, one thousand nine hundred ninety-three,
10 reporting such information as the tax commissioner
11 may require. With this return, shall be remitted the
12 balance of any tax due under this article with respect
13 to medicaid reimbursement payments received before
14 the said first day of May.

15 (c) When a health care provider bills the department
16 of health and human resources before the first day of
17 June, one thousand nine hundred ninety-three, for
18 medicaid services rendered before the first day of
19 May, one thousand nine hundred ninety-three, the
20 secretary is directed to reimburse the health care
21 provider using the appropriate fee schedule in effect at
22 the time the medicaid service was rendered. If a
23 health care provider bills the department of health
24 and human resources after the thirty-first day of May,
25 one thousand nine hundred ninety-three, for services
26 rendered before the first day of May, one thousand
27 nine hundred ninety-three, the amount of the reim-
28 bursement payment shall be determined based upon
29 fee schedules in effect on the thirty-first day of
30 December, one thousand nine hundred ninety-one, or,
31 funds permitting and in the discretion of the secretary,
32 under fee schedules in effect when the department
33 receives the bill for medicaid services.

34 (d) Any medicaid tax owed to the tax commissioner
35 which is not remitted by the first day of June, one
36 thousand nine hundred ninety-three, becomes delin-
37 quent as of the second day of June, one thousand nine
38 hundred ninety-three, notwithstanding any provision
39 of this article or article ten of this chapter to the
40 contrary. Any delinquent medicaid taxes shall be
41 remitted to the tax commissioner by the fifteenth day
42 of June, one thousand nine hundred ninety-three.

43 (e) Any person required to pay medicaid tax under
44 this article who fails to pay the amount due by the
45 fifteenth day of June, one thousand nine hundred
46 ninety-three, shall be subject to a civil penalty equal
47 to two hundred percent of the delinquent medicaid tax
48 owed by such person.

49 (f) The provisions of this section shall take effect on
50 the first day of May, one thousand nine hundred
51 ninety-three.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) Medicaid provides access to basic medical care for
3 our citizens who are not physically, mentally or
4 economically able to provide for their own care.

5 (b) Inadequate compensation of health care provid-
6 ers rendering medicaid services is a barrier to indigent
7 persons obtaining access to health care services.

8 (c) Without adequate compensation for the provision
9 of medicaid services, this state cannot attract or retain
10 a sufficient number of health care providers necessary
11 to serve our indigent population.

12 (d) While participation by a state in the medicaid
13 program created by Title XIX of the Social Security
14 Act is voluntary, the reality is that states, and partic-
15 ularly this state, have no choice but to participate. The
16 alternative is to deprive indigent citizens and particu-
17 larly the children of indigent families of basic medical
18 services.

19 (e) The federal government sets the criteria for
20 eligibility to obtain medicaid services. The federal
21 government also requires that certain services be
22 provided as part of a state's medicaid program.

23 (f) Enactment by the United States Congress in 1991
24 of Public Law 102-234, amending Section 1903 of the
25 Social Security Act, places limitations and restrictions
26 on the flexibility states have to raise state share for its
27 medical assistance program.

28 (g) The tax enacted in this article is intended to
29 conform with the requirements of Public Law 105-234.

§11-27-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia
2 Health Care Provider Tax Act of 1993". No inference,
3 implication or presumption of legislative construction
4 shall be drawn or made by reason of the location or
5 grouping of any particular section, provision or portion
6 of this article. No legal effect shall be given to any
7 descriptive matter or heading relating to any part,
8 section, subdivision or paragraph of this article.

§11-27-3. Definitions.

1 (a) *General.* — When used in this article, words

2 defined in subsection (b) of this section have the
3 meaning ascribed to them in this section, except in
4 those instances where a different meaning is distinctly
5 expressed or the context in which the word is used
6 clearly indicates that a different meaning is intended.

7 (b) *Definitions.* —

8 (1) “Business” includes all health care activities
9 engaged in, or caused to be engaged in, with the object
10 of gain or economic benefit, direct or indirect, and
11 whether engaged in for profit, or not for profit, or by
12 a governmental entity: *Provided*, That “business” does
13 not include services rendered by an employee within
14 the scope of his or her contract of employment.
15 Employee services, services by a partner on behalf of
16 his or her partnership, and services by a member of
17 any other business entity on behalf of that entity, are
18 the business of the employer, or partnership, or other
19 business entity, as the case may be, and reportable as
20 such for purposes of the taxes imposed by this article.

21 (2) “Broad-based health care related tax” means a
22 broad-based health care related tax as defined in
23 Section 1903 of the Social Security Act.

24 (3) “Contractual allowances” means gross patient
25 revenues less the actual amount received from third
26 party payors.

27 (4) “Corporation” includes associations, joint-stock
28 companies and insurance companies. It also includes
29 governmental entities when and to the extent such
30 governmental entities engaged in activities taxable
31 under this article.

32 (5) “Gross patient revenues” means the value, at the
33 provider’s full established rate, or services rendered
34 and goods sold to patients during a given time period.

35 (6) “Gross receipts” means and includes the gross
36 receipts of a taxpayer received as compensation, in
37 whole or in part, from taxpayer’s exercise of the
38 privilege taxable under this article, whether such
39 compensation is received in money or any other form
40 of consideration, without deduction for any expenses

41 or other costs incurred in exercising the taxable
42 privilege.

43 (7) "Includes" and "including" when used in a
44 definition contained in this article shall not be deemed
45 to exclude other things otherwise within the meaning
46 of the term being defined.

47 (8) "Inpatient hospital services" means those servi-
48 ces that are inpatient hospital services for purposes of
49 Section 1903(w) of the Social Security Act.

50 (9) "Intermediate care facility services for the
51 mentally retarded" means those services that are
52 intermediate care facility services for purposes of
53 Section 1903(w) of the Social Security Act.

54 (10) "Nursing facility services" means those services
55 that are nursing facility services for purposes of
56 Section 1903(w) of the Social Security Act.

57 (11) "Outpatient hospital services" means those
58 services that are outpatient hospital services for
59 purposes of Section 1903(w) of the Social Security Act.

60 (12) "Partner" includes a member in a "partner-
61 ship", as defined in this section.

62 (13) "Partnership" includes a syndicate, group, pool,
63 joint venture or other unincorporated organization
64 through or by means of which any privilege taxable
65 under this article is exercised, and which is not within
66 the meaning of this article a trust or estate or
67 corporation.

68 (14) "Person" means any individual, partnership,
69 association, company, corporation or other entity
70 providing services.

71 (15) "Physicians' services" means those services of a
72 physician that are physicians' services for purposes of
73 Section 1903(w) of the Social Security Act.

74 (16) "Social Security Act" means the Social Security
75 Act of the United States, as amended by Public Law
76 102-234, and codified in Title 42, Section 1396b of the
77 United States Code.

78 (17) "Tax" means any tax imposed by this article
79 and, for purposes of administration and collection of
80 such tax, includes any interest, additions to tax or
81 penalties imposed with respect thereto under article
82 ten of this chapter.

83 (18) "Taxable year" means the calendar year, or the
84 fiscal year ending during such calendar year, upon the
85 basis of which the tax imposed by this article is
86 computed. In the case of a return made under this
87 article, or regulations of the tax commissioner, for a
88 fractional part of a year, the term taxable year means
89 the period for which such return is made.

90 (19) "Taxpayer" means any person subject to any
91 tax imposed by this article.

92 (20) "Code" means the code of West Virginia, one
93 thousand nine hundred thirty-one, as amended.

94 (21) "State" means the state of West Virginia.

95 (22) "Withholding agent" means any person required
96 to deduct and withhold the tax imposed by this article
97 under regulations promulgated by the tax
98 commissioner.

§11-27-4. Imposition of tax on providers of inpatient hospital services.

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 providing inpatient hospital services, there is hereby
4 levied and shall be collected from every person
5 rendering such service an annual broad-based health
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be two and one-half
9 percent of the gross receipts, excluding medicare
10 revenues, received by the taxpayer during the taxable
11 year from rendering inpatient hospital services. This
12 measure of tax shall be determined using the cash
13 method of accounting.

14 (c) *Effective date.* — The tax imposed by this section
15 shall apply to gross receipts received after the thirtieth

16 day of April, one thousand nine hundred ninety-three,
17 regardless of when the transaction or activity generat-
18 ing the gross receipts occurred.

**§11-27-5. Imposition of tax on providers of outpatient
hospital services.**

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 providing outpatient hospital services, there is hereby
4 levied and shall be collected from every person
5 rendering such service an annual broad-based health
6 care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be two and one-half
9 percent of the gross receipts, excluding medicare
10 revenues, received by the taxpayer during the taxable
11 year from rendering outpatient hospital services. This
12 measure of tax shall be determined using the cash
13 method of accounting.

14 (c) *Effective date.* — The tax imposed by this section
15 shall apply to gross receipts received after the thirtieth
16 day of April, one thousand nine hundred ninety-three,
17 regardless of when the transaction or activity generat-
18 ing the gross receipts occurred.

**§11-27-6. Imposition of tax on providers of nursing facility
services other than services of intermediate
care facilities for the mentally retarded.**

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 providing nursing facility services (other than services
4 of intermediate care facilities for the mentally
5 retarded), there is hereby levied and shall be collected,
6 from every person rendering such service an annual
7 broad-based health care related tax.

8 (b) *Rate and measure of tax.* — The tax imposed in
9 subsection (a) of this section shall be five and one-half
10 percent of the gross patient revenues, excluding
11 medicare revenues, prior to contractual allowances,
12 derived by the taxpayer during the taxable year from
13 providing nursing facility services, other than services

14 of intermediate care facilities for the mentally
15 retarded. This measure of tax shall be determined
16 using the accrual method of accounting.

17 (c) *Effective date.* — The tax imposed by this section
18 shall apply to gross patient revenues received after the
19 thirtieth day of April, one thousand nine hundred
20 ninety-three, regardless of when the transaction or
21 activity generating the gross receipts occurred.

**§11-27-7. Imposition of tax on providers of intermediate care
facility services for the mentally retarded.**

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 providing intermediate care facility services for the
4 mentally retarded, there is hereby levied and shall be
5 collected, from every person rendering such service,
6 an annual broad-based health care related tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be five and one-half
9 percent of the gross receipts derived by the taxpayer
10 during the taxable year from providing intermediate
11 care facility services for the mentally retarded. This
12 measure of tax shall be determined using the cash
13 method of accounting.

14 (c) *Effective date.* — The tax imposed by this section
15 shall apply to gross receipts received after the thirtieth
16 day of April, one thousand nine hundred ninety-three,
17 regardless of when the transaction or activity generat-
18 ing the gross receipts occurred.

**§11-27-8. Imposition of tax on providers of physicians'
services.**

1 (a) *Imposition of tax.* — For the privilege of engag-
2 ing or continuing within this state in the business of
3 providing physicians' services, there is hereby levied
4 and shall be collected from every person rendering
5 such service an annual broad-based health care related
6 tax.

7 (b) *Rate and measure of tax.* — The tax imposed in
8 subsection (a) of this section shall be two percent of

9 the gross receipts, excluding medicare revenues,
10 derived by the taxpayer during the taxable year from
11 rendering physicians' services. This measure of tax
12 shall be determined using the cash method of
13 accounting.

14 (c) *Effective date.* — The tax imposed by this section
15 shall apply to gross receipts received after the thirtieth
16 day of April, one thousand nine hundred ninety-three,
17 regardless of when the transaction or activity giving
18 rise to the gross receipts occurred.

§11-27-9. Apportionment of gross receipts.

1 When a service is rendered partially in this state and
2 partially in another state, gross receipts attributable to
3 such service shall be allocated or apportioned in
4 accordance with uniform rules promulgated by the tax
5 commissioner.

§11-27-10. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the tax imposed
2 by this article, a taxpayer's taxable year shall be the
3 same as taxpayer's taxable year for federal income tax
4 purposes. If taxpayer has no taxable year for federal
5 income tax purposes, then the calendar year shall be
6 taxpayer's taxable year under this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable
8 year is changed for federal income tax purposes,
9 taxpayer's taxable year for purposes of this article
10 shall be similarly changed. The taxpayer shall be
11 provided a copy of the authorization from the Internal
12 Revenue Service for such change with taxpayer's
13 annual return for the taxable year filed under this
14 article.

15 (c) *Cash method of accounting required.* — A tax-
16 payer's method of accounting under this article shall
17 be the cash method of accounting, whether or not
18 taxpayer uses that method of accounting for federal
19 income tax purposes.

§11-27-11. Time for filing returns and other documents.

1 (a) *Annual return.* — Every person subject to a tax

2 imposed by this article shall file an annual return with
3 the tax commissioner. Returns made on the basis of a
4 calendar year shall be filed on or before the thirty-
5 first day of January following the close of the calendar
6 year. Returns made on the basis of a fiscal year shall
7 be filed on or before the last day of the first month
8 following the close of the fiscal year.

9 (b) *Extension of time for filing return.* — The tax
10 commissioner may, upon written request received on
11 or before the due date of the annual return or other
12 document, grant a reasonable extension of time for
13 filing any return, declaration or statement, or other
14 document required to be filed by this article or by
15 regulations, upon such terms as the commissioner may
16 by rule prescribe, or by contract require, if good cause
17 satisfactory to the tax commissioner is provided by the
18 taxpayer. No such extension shall be for more than six
19 months.

§11-27-12. Payment of estimated tax; withholding.

1 (a) *General rule.* — Every person subject to a tax
2 imposed by this article must make estimated tax
3 payments for a taxable year in which such person's
4 tax liability can reasonably be expected to exceed fifty
5 dollars per month.

6 (b) *Small businesses.* — If a person's tax liability is
7 reasonably expected to be more than fifty dollars per
8 month but not more than one thousand dollars per
9 month, three fourths of such person's estimated tax
10 liability must be remitted in installment payments
11 during the tax year. Installment payments are due on
12 the fifteenth day of the fourth, seventh and tenth
13 months of the tax year, for gross receipts received
14 during the preceding quarter of the tax year. The
15 balance of tax due must be paid by the last day of the
16 first month following the close of the taxpayer's tax
17 year.

18 (c) *All other taxpayers.* — If a person's tax liability
19 can reasonably be expected to be more than one
20 thousand dollars per month of the tax year, eleven
21 twelfths of such person's estimated tax liability must

22 be remitted in monthly installment payments during
23 that tax year. Installment payments are due on the
24 fifteenth day of the second through the twelfth
25 months of the tax year for gross receipts received
26 during the preceding month. The balance of tax due
27 must be paid by the last day of the first month
28 following the close of taxpayer's tax year.

29 (d) *Withholding.* — The tax commissioner may
30 establish, by procedural rule, a program for the
31 withholding of any tax imposed by this article from
32 medicaid reimbursement payments made to such
33 health care providers by the department of health and
34 human resources, or by any other state agency. The
35 percentage of tax withheld shall be uniform as to all
36 persons who pay any tax imposed by this article, but
37 the percentage may vary from tax to tax as long as all
38 persons who pay a particular tax are treated alike for
39 purposes of that tax. In no case shall the percentage of
40 withholding for a tax imposed by this article exceed
41 that percentage of medicaid reimbursement payments
42 generally paid to that class of health care provider
43 which represents the state revenue portion of such
44 reimbursement payments.

§11-27-13. Additions to tax for underpayment of estimated tax.

1 (a) *General rule.* — A taxpayer must remit estimat-
2 ed tax based on actual gross income received during
3 the period to which the installment payment relates
4 unless taxpayer elects to use the method set forth in
5 subsection (b) of this section.

6 (1) If a person required to make quarterly install-
7 ment payments of estimated tax timely pays estimated
8 tax during tax year equal to seventy-five percent or
9 more of such person's actual liability for that tax year,
10 no additions to tax will be imposed under this section
11 for failure to pay estimated tax. Estimated tax is
12 timely paid if at least one fourth of the tax due for the
13 year is paid by the due date of each installment for
14 that year.

15 (2) If a person required to make monthly installment

16 payments of estimated tax timely pays estimated tax
17 during the tax year equal to eleven twelfths or more
18 of such person's actual tax liability for the taxable
19 year, no additions to tax will be imposed under this
20 section for failure to timely pay estimated tax. Esti-
21 mated tax is timely paid if at least one eleventh of the
22 tax due for the year is paid by the due date of each
23 installment for that year.

24 (b) *Estimated tax payments based on last year's*
25 *gross receipts.* — A taxpayer may elect to remit
26 estimated tax for the current tax year using the
27 amount of gross receipts taxpayer received during the
28 preceding tax year, if that year was a taxable year of
29 twelve months and if gross receipts were received in
30 each of those twelve months. If this election is made,
31 then:

32 (1) If a person required to make quarterly install-
33 ment payments of estimated tax timely pays estimated
34 tax during the tax year equal to seventy-five percent,
35 or more, of the tax determined using last year's gross
36 receipts and this year's rate of tax, no additions to tax
37 will be imposed under this section for failure to timely
38 pay estimated tax. Estimated tax is timely paid if at
39 least one fourth is paid by the due date of each
40 installment for the tax year to which the installment
41 relates.

42 (2) If a person required to make monthly installment
43 payments of estimated tax timely pays estimated tax
44 during the tax year equal eleven twelfths, or more, of
45 the tax determined using last year's gross receipts and
46 this year's rate of tax, no additions to tax will be
47 imposed for failure to timely pay estimated tax.
48 Estimated tax is timely paid if at least one twelfth is
49 paid by the due date of each installment for the tax
50 year to which the installment relates.

51 (c) *Addition to tax for underpayment of estimated*
52 *tax.* — If there is an underpayment of estimated tax,
53 there shall be added to the tax due under this article
54 for the tax year, an amount determined by applying
55 the rate established under section seventeen or seven-

56 teen-a, article ten of this chapter, as appropriate for
57 the tax year (and if two or more such rates apply, the
58 weighted average thereof), to the amount of underpay-
59 ment of estimated tax for the period of underpayment.

60 (d) *Period of underpayment.* — The period of under-
61 payment of an installment shall run from the date the
62 installment was required to be paid (due date) to
63 whichever of the following dates is the earlier:

64 (1) The due date of the annual return following the
65 close of the tax year for which the installment was due
66 (determined without regard to any extension of time
67 for filing such annual return); or

68 (2) With respect to any portion of the underpayment,
69 the date on which such portion is paid. For purposes
70 of this subdivision, a payment of estimated tax shall be
71 credited against unpaid required installments in the
72 order in which such installments are required to be
73 paid.

74 (e) *Application when tax is withheld.* — For pur-
75 poses of applying this section, the amount of any tax
76 imposed by this article that is withheld from taxpayer
77 pursuant to section twelve of this article, shall be
78 deemed a payment of estimated tax, and an equal part
79 of such amount shall be deemed a payment of estimat-
80 ed tax on each installment payment due date, unless
81 taxpayer establishes the specific dates on which all
82 amounts were actually withheld, in which case the
83 amounts so withheld shall be deemed payments of
84 estimated tax on the dates on which such amounts
85 were actually withheld.

86 (f) *Waiver in certain cases.* — No addition to tax
87 shall be imposed under this section with respect to any
88 underpayment of estimated tax if and to the extent
89 the tax commissioner determines that by reason of
90 casualty, disaster or other unusual circumstances the
91 imposition of such addition would be against equity
92 and good conscience.

93 (g) *Short tax years.* — This section shall apply to
94 short tax years under rules promulgated by the tax

95 commissioner.

96 (h) Section eighteen-a, article ten of this chapter
97 shall not apply to the taxes imposed by this article.

§11-27-14. Time for paying tax.

1 (a) *General rule.* — The person required to make an
2 annual return under this article shall, without assess-
3 ment or notice and demand from the tax commission-
4 er, pay such tax at the time and place fixed for filing
5 the annual return, determined without regard to any
6 extension of time for filing such return.

7 (b) *Extension of time for paying tax.* — The tax
8 commissioner may extend the time for payment of the
9 amount of tax shown, or required to be shown, on any
10 annual return required by this article (or any periodic
11 installment payment), for a reasonable period not to
12 exceed six months from the date fixed by statute for
13 the payment thereof.

14 (c) *Amount determined as deficiency.* — Under rules
15 prescribed by the tax commissioner, the commissioner
16 may extend the time for payment of the amount
17 determined as a deficiency of the taxes imposed by
18 this article for a period not to exceed eighteen months
19 from the due date of the deficiency. In exceptional
20 cases, a further period of time, not to exceed twelve
21 months may be granted. The tax commissioner may
22 grant an extension of time under this subsection only
23 where it is shown to the tax commissioner's satisfac-
24 tion that payment of a deficiency upon the date fixed
25 for payment thereof will result in undue hardship to
26 the taxpayer.

27 (d) *No extension in certain circumstances.* — The tax
28 commissioner may not grant an extension of time
29 under this section if the failure to timely pay tax, or
30 if the deficiency in payment of tax, is due to negli-
31 gence, to intentional disregard of rules or regulations,
32 or to fraud.

§11-27-15. Place for filing returns and other documents.

1 Tax returns, statements or other documents, or

2 copies thereof, required by this article or by rules shall
3 be filed with the tax commissioner by delivery, in
4 person or by mail, postage prepaid, to the tax commis-
5 sioner's office in Charleston, West Virginia: *Provided*,
6 That the tax commissioner may, by rule, prescribe the
7 place for filing such returns, statements or other
8 documents, or copies thereof, at one or more other
9 locations.

§11-27-16. Signing of returns and other documents.

1 (a) *General.* — Any return, statement or other
2 document required to be made under the provisions of
3 this article shall be signed in accordance with instruc-
4 tions or regulations prescribed by the tax
5 commissioner.

6 (b) *Signing of corporation returns.* — The president,
7 vice president, treasurer, assistant treasurer, chief
8 accounting officer or any other duly authorized officer
9 shall sign the return of a corporation. In the case of a
10 return made for a corporation by a fiduciary, the
11 fiduciary shall sign the return. The fact that an
12 individual's name is signed on the return is *prima*
13 *facie* evidence that the individual is authorized to sign
14 the return on behalf of the corporation.

15 (c) *Signing of partnership returns.* — Any one of the
16 partners shall sign the return of a partnership. The
17 fact that a partner's name is signed on the return is
18 *prima facie* evidence that that partner is authorized to
19 sign the return on behalf of the partnership.

20 (d) *Signature presumed authentic.* — The fact that
21 an individual's name is signed to a return, statement
22 or other document is *prima facie* evidence for all
23 purposes that the return, statement or other document
24 was actually signed by him or her.

25 (e) *Verification of returns.* — Except as otherwise
26 provided by the tax commissioner, any return, decla-
27 ration or other document required to be made under
28 this article shall contain or be verified by a written
29 declaration that it is made under the penalties of
30 perjury.

§11-27-17. Records.

1 (a) Every person liable for reporting or paying any
2 tax under this article shall keep such records, receipts,
3 invoices and other pertinent papers in such forms as
4 the tax commissioner may require.

5 (b) Every person liable for reporting or paying any
6 tax under this article shall keep such records for not
7 less than three years after the annual return required
8 under this article is filed, unless the tax commissioner,
9 in writing, authorizes their earlier destruction. An
10 extension of time for making an assessment shall
11 automatically extend the time period for keeping the
12 records for all years subject to audit covered in the
13 agreement for extension of time.

§11-27-18. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter applies to the taxes imposed by this
4 article, except as otherwise expressly provided in this
5 article, with like effect as if that act were applicable
6 only to the taxes imposed by this article and were set
7 forth in extenso in this article.

§11-27-19. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of
3 this chapter applies to the taxes imposed by this article
4 with like effect as if that act were applicable only to
5 the taxes imposed by this article and were set forth in
6 extenso in this article.

§11-27-20. Dedication of tax.

1 The amount of taxes collected under this article
2 including any interest, additions to tax and penalties
3 collected under article ten of this chapter, less the
4 amount of allowable refunds and any interest payable
5 with respect to such refunds, shall be deposited into
6 the special revenue fund created in the state treasurer's
7 office and known as the medicaid tax revenue
8 fund. Said fund shall have separate accounting for

9 those health care providers as set forth in articles
10 four-b and four-c, chapter nine of this code.

§11-27-21. Abrogation.

1 This tax abrogates and is of no further force and
2 effect, without any further action by the Legislature,
3 upon the earliest of the following dates:

4 (a) The date upon which an act of Congress becomes
5 effective which prohibits the inclusion of revenue
6 from these broad-based health care related taxes in
7 state share when obtaining matching federal dollars:
8 *Provided, That: (A) If such act specifies a later date on*
9 *which such prohibition takes effect, that later effective*
10 *date controls; and (B) if such act prohibits the inclu-*
11 *sion revenue from some but not all of the broad-based*
12 *health care related taxes imposed by this article, then*
13 *only those sections of this article imposing taxes which*
14 *cannot be used to obtain federal matching dollars shall*
15 *abrogate on such date, and the remaining tax or taxes*
16 *shall remain in effect.*

17 (b) The date upon which a judgment or order of a
18 court of competent jurisdiction becomes final prohib-
19 iting the inclusion of revenue from these broad-based
20 health care related taxes when determining the
21 amount of state expenditures that are claimable as
22 medical assistance for purposes of obtaining federal
23 matching dollars: *Provided, That: (A) If such judgment*
24 *or order specifies a later date on which the prohibition*
25 *takes effect, that later effective date controls; and (B)*
26 *if such judgment or order prohibits the inclusion*
27 *revenue from some but not all of the broad-based*
28 *health care related taxes imposed by this article, then*
29 *only those sections of this article imposing taxes which*
30 *cannot be used to obtain federal matching dollars shall*
31 *abrogate on such date, and the remaining tax or taxes*
32 *shall remain in effect.*

33 (c) The date upon which any federal administrative
34 rule or regulation promulgated in conformity with
35 federal law becomes effective which negates the effect
36 or purposes of this article: *Provided, That: (A) If such*
37 *rule or regulation specifies a later date on which the*

38 prohibition takes effect, that later effective date
39 controls; and (B) if such rule or regulation prohibits
40 the inclusion of revenue from some but not all of the
41 broad-based health care related taxes imposed by this
42 article when determining the amount of state expen-
43 ditures that are claimable as medical assistance of
44 purposes of obtaining federal matching dollars, then
45 only those sections of this article imposing taxes which
46 cannot be used to obtain federal matching dollars shall
47 abrogate on such date, and the remaining tax or taxes
48 shall remain in effect.

§11-27-22. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to
6 the provision thereof directly involved in the contro-
7 versy in which such judgment shall have been ren-
8 dered, and the applicability of such provision to other
9 persons or circumstances shall not be affected thereby.

§11-27-23. Effective date.

1 This act of the Legislature shall take effect upon its
2 passage in the year one thousand nine hundred
3 ninety-three: *Provided*, That the taxes imposed by this
4 article shall not be levied on gross receipts received
5 before the first day of May, one thousand nine hun-
6 dred ninety-three, and shall be levied on gross receipts
7 received on or after that date.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

.....
Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within ~~is~~ *disapproved* this the *23rd*
day of *April*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/22/93

Time 4:30 pm

✓