WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED
Committee Substitute for
SENATE BILL NO. 251

(By Mr. Common Finance)

PASSED March 13, 1959

In Effect July 1, 1959

Filed in Office of the Secretary of State of West Virginia MAR 28 1959 MAR 21 1959
JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one and six, article fourteen, and by adding thereto a new article, designated article fourteen-a, providing additional revenues to be used for the construction, maintenance and support of state roads and highways by imposing a tax upon certain motor carriers operating on said roads and highways based upon the amount of gasoline used by such motor carriers in this
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state; providing for the collection, adjustment and administra-
tion of such tax and appeals in connection therewith;
conferring powers and imposing duties upon certain state
officials and other persons in relation to such tax, and pro-
viding penalties.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended, by
amending and reenacting sections one and six, article four-
teen, and by adding thereto a new article, to be designated
article fourteen-a, to read as follows:


Section 1. Definitions; Gasoline, Person, Company,
Distributor, Retail Dealer, Importer, Sale, Purchase and
Motor Vehicles.—When used in this article: The term
“gasoline” means and includes casing head or natural
gasoline, benzol, benzine, naphtha and any other liquid
prepared, advertised, offered for sale, sold for use as, or
used for the generation of power for the propulsion of
motor vehicles, and Diesel oil, oil or other liquids used in
Diesel engines or in internal combustion engines for the
propulsion of motor vehicles, including any product obtained by blending together any one or more products of petroleum, with or without other products, if the resultant product is capable of such use.

The term "person" or the term "company" shall include any individual, firm, copartnership, joint adventure, association, corporation, trust and any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context, and when used in connection with the penalties imposed by this article, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint adventure, association, corporation, trust or any other group acting as a unit.

The term "distributor" shall mean and include every person who refines, produces, manufactures, compounds, or blends gasoline in this state for use or for sale to jobbers or consumers, and every person who is now engaged, or who may hereafter engage, in his own name or in the name of his representative or agent in this state, in the selling of gasoline for the purpose or resale or dis-
tribution; and persons operating tank wagons into this state from places of business located outside this state and selling gasoline in quantities as desired by purchasers in this state without definite orders having been placed prior to the delivery of the product, shall be deemed distributors in this state.

The term "retail dealer" shall mean and include any person not a distributor who sells gasoline in this state to consumers only.

The term "importer" shall mean any person who purchases or obtains gasoline in the amount of twenty-five gallons or more outside this state and uses the same within the state.

The term "sale" shall include any exchange, gift, or other disposition, and "purchase" shall include any acquisition of ownership.

The term "motor vehicle" shall mean automobiles, motor trucks and motorcycles, and shall include all other vehicles, engines or machines which are operated or propelled by combustion of gasoline.
Sec. 6. Importer's Monthly Statement; Payment of Tax.

2 —Every importer shall, within thirty days after the close
3 of each month, transmit to the tax commissioner a state-
4 ment, on such forms as the tax commissioner shall pre-
5 scribe, of all gallonage received by such importer during
6 the month to be covered, which statement shall show the
7 name and address of the person from whom each purchase
8 was made; the point from which shipped or delivered;
9 the point at which received; the date of each shipment or
10 purchase; and the quantity of each shipment or purchase;
11 and he shall at the same time pay to the tax commissioner
12 the amount of tax due for such month.

Article 14-A, Motor Carrier Road Tax.

Section 1. Short Title.—This article shall be known, and
2 may be cited, as the “Motor Carrier Road Tax”.

Sec. 2. Definitions.—The following words, terms and
2 phrases, when used in this article, shall have the meaning
3 ascribed to them by this section, except where the context
4 clearly indicates a different meaning:
5 “Motor carrier” means every person, firm or corporation
6 who operates or causes to be operated on any highway
in this state any passenger vehicle that has seats for more
than nine passengers in addition to the driver, or any road
tractor, or any tractor truck, or any truck having more
than two axles.

“Operations” means operations of all such vehicles,
whether loaded or empty, whether for compensation or
not for compensation, and whether owned by or leased to
the motor carrier who operates them or causes them to be
operated.

“Gasoline” means and includes casing head or natural
gasoline, benzol, benzine, nephtha and any other liquid
prepared, advertised, offered for sale, sold for use as, or
used for the generation of power for the propulsion of
motor vehicles, and Diesel oil, oil or other liquids used in
Diesel engines or in internal combustion engines for the
propulsion of motor vehicles, including any product ob-
tained by blending together any one or more products of
petroleum, with or without other products, if the resultant
product is capable of such use.

“Commissioner” means the state tax commissioner of
West Virginia.
Sec. 3. Imposition of Tax; Amount. — Every motor carrier shall pay a road tax equivalent to the amount of tax per gallon of gasoline assessed by article fourteen of this chapter calculated on each gallon of gasoline used in its operations in this state.

Sec. 4. Credit for Payment of Gasoline Tax; Refunds; Hearing upon Commissioner's Refusal to Make Refund.— Every motor carrier subject to the tax herein imposed shall be entitled to a credit on such tax equivalent to the amount of tax per gallon of gasoline assessed by article fourteen of this chapter on all gasoline purchased by such carrier within this state for use in operations either within or without this state and upon which gasoline the tax imposed by the laws of this state has been paid: Provided, however, That such credit shall not be allowed for any gasoline taxes for which any motor carrier has applied for, or received, a refund of the taxes imposed by said article fourteen, and no person applying for such credit or refund under this section shall be entitled to the refund under article fourteen of this chapter. Evidence of the payment of such tax in such form as may be required by the com-
missioner shall be furnished by each motor carrier claiming the credit herein allowed. When the amount of the credit herein provided exceeds the amount of the tax for which the carrier is liable for the same quarter, such excess shall, under regulations of the commissioner, be allowed as a credit on the tax for which the carrier would be otherwise liable for any of the four succeeding quarters. The commissioner is, under regulations to be established by him, hereby authorized to refund from the funds collected under the provisions of this article the amount of the credit, if the motor carrier by duly filed petition requests the commissioner to do so and the commissioner is satisfied that said motor carrier is entitled to said refund and that said motor carrier has not applied for a refund of the tax imposed by article fourteen of this chapter.

Provided, however, That such refund shall not be made until after audit of the applicant’s records by the commissioner or upon the posting of a surety company bond by the applicant in an amount fixed by the commissioner conditioned to pay all road taxes due hereunder: Provided further, That said credit or refund shall in no case be
allowed to reduce the amount of tax to be paid by a motor
carrier below the amount due as tax on gasoline used in
this state as provided by article fourteen of this chapter.
If the commissioner shall refuse to allow a refund or
credit in the amount claimed by the applicant, the appli-
cant may request a hearing on said application. Such hear-
ing shall be held within a reasonable time after such re-
quest is made and after notice to the applicant of not less
than ten days.
The hearing shall be informal and may be conducted by
an examiner designated by the tax commissioner. At such
hearing evidence may be offered in support of the claim
of credit or refund or to prove that such claim is incorrect.
After such hearing the tax commissioner shall, within a
reasonable time, give notice in writing of the decision.
Unless an appeal is taken within thirty days from the
service of this notice, the tax commissioner's decision
shall be final.
An appeal may be taken by the taxpayer to the circuit
court of Kanawha county, within thirty days after he
shall have received notice from the tax commissioner of his determination as provided in this section.

The court shall hear the appeal in equity, and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct his decision accordingly and allow the credit or refund as decreed by said court.

An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state in the same manner that appeals are taken in equity.

Sec. 5. Refunds to Carriers Who Give Bond.—A motor carrier may give a surety company bond in the amount of ten thousand dollars payable to the state of West Virginia and conditioned that the carrier will pay all taxes due and to become due under this article from the date of the bond to the date when either the carrier or the bonding company notifies the commissioner that the bond has been cancelled. The surety shall be a corporation author-
ized to write surety bonds in West Virginia. So long as
the bond remains in force the commissioner may order
refunds to the motor carrier in the amounts appearing to
be due on applications duly filed by the carrier under sec-
tion four of this article without first auditing the records
of the carrier. The surety shall be liable for all omitted
taxes assessed against the carrier including the penalties
and interest provided hereinafter, even though the assess-
ment is made after cancellation of the bond, but only for
taxes due and payable while the bond was in force, and
penalties and interest on said taxes.

Sec. 6. Penalty for False Statements.—Any person who
willfully and knowingly makes a false statement orally,
or in writing, or in the form of a receipt for the sale of
gasoline, for the purpose of obtaining or attempting to
obtain or to assist any other person, partnership or cor-
poration to obtain or attempt to obtain a credit or refund
or reduction of liability for taxes under this article shall
be guilty of a misdemeanor punishable by a fine of not
less than fifty dollars nor more than one thousand dollars
or imprisonment for not more than six months, or both such fine and imprisonment.

Sec. 7. Report of Carriers.—Every motor carrier subject to the tax imposed by this article shall on or before the thirtieth day of April, July, October and January of every year make to the commissioner such reports of its operations during the quarter ending the last day of the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. The commissioner may, if he deems proper, in lieu of said quarterly report, require only an annual report from a motor carrier domiciled in this state and whose entire operations are within this state, provided all gasoline used by said motor carrier is purchased within this state. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

Sec. 8. Joint Reports by Carriers.—Two or more motor carriers regularly engaged in the transportation of passengers on through busses on through tickets in pool service may, at their option, make joint reports of their entire
operations in this state. The taxes imposed shall be calculated on the basis of such joint reports as though such carriers were a single carrier; and the carriers making such reports shall be jointly and severally liable for the taxes. Such joint reports shall show the total number of over-the-road miles traveled in this state and the total number of gallons of gasoline purchased in this state by the reporting carriers. Credits to which the carriers making a joint return are entitled shall not be allowed as credits to any other carrier; but carriers filing joint reports shall permit all carriers engaged in this state in pool operations with them to join in filing joint reports. The vehicles of carriers filing joint reports shall be deemed to have consumed on the average one gallon of gasoline for each six miles traveled unless persuasive evidence discloses that a different amount was consumed.

Sec. 9. Payment of Tax.—The tax hereby imposed shall be paid by each motor carrier quarterly to the commissioner on or before the thirtieth day of April, July, October and January of each year and calculated upon the amount of gasoline used in its operations within this state.
Sec. 10. Disposition and Use of Taxes.—All taxes collected under the provisions of this article shall be paid into the state treasury and shall be credited to the state road fund.

Sec. 11. How Amount of Gasoline Used in State to be Ascertained.—The amount of gasoline used in the operation of any motor carrier within this state shall be such proportion of the total amount of such gasoline used in its entire operations within and without this state as the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

Sec. 12. Identification Required of Motor Carriers; Fees; Emergencies; Penalties.—No motor carrier shall operate or cause to be operated in this state any vehicle subject to this article without first securing from the tax commissioner a registration card and an identification marker for such vehicle. The registration card shall be of such form and design as the commissioner shall prescribe. The regis-
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A registration card shall be carried in the vehicle for which it was issued at all times when the vehicle is within this state. Each identification marker for a particular vehicle shall bear a number, which number shall be the same as that appearing on the registration card for the same vehicle. The identification marker shall be displayed on the vehicle as required by the commissioner. The registration cards and markers herein provided for shall be valid for a period of one year. A fee of one dollar shall be paid to the commissioner for issuing each registration card and identification marker. Upon satisfactory proof being offered by a motor carrier, the commissioner may replace lost or damaged registration cards or identification markers. Provided, however, That all taxes due under this article shall be paid before the issuance of a new or replacement card or marker.

In an emergency, the commissioner, by letter or telegram, may authorize a vehicle to be operated without a registration card or identification marker for not more than ten days.

Upon conviction for failure to obtain, carry and display
the registration card and identification marker provided herein, a motor carrier shall be fined not less than twenty nor more than one hundred dollars; and each day of such failure shall constitute a separate offense.

Sec. 13. *Assessment of Tax When Insufficiently Returned; Inspection and Audit of Books and Records.*—If the tax commissioner believes that the tax imposed by this article is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor. The commissioner and his authorized agents and representatives shall have the right, at any reasonable time, to inspect and audit the books and records of any motor carrier subject to this article.

Sec. 14. *Department of Public Safety; Enforcement.*—The state department of public safety is hereby authorized and directed to assist in the enforcement of the provisions as directed by the tax commissioner.
Sec. 15. Exemptions.—Nothing in this article shall apply to any vehicle operated by or on behalf of any department, board, bureau, commission, or other agency of the federal government or of the state of West Virginia or any political subdivision thereof, nor shall the provisions of this article apply to any school bus operated by, for or on behalf of the state of West Virginia, any political subdivision thereof, or any private or privately operated school or schools.

Sec. 16. Tax in Addition to All Other Taxes.—The taxes imposed on motor carriers by this article are in addition to any taxes of whatever character imposed on such carriers by any other provisions of law.

Sec. 17. Penalties.—The commissioner may, after a hearing had upon notice, duly served not less than ten days prior to the date set for such hearing, impose a penalty, which shall be in addition to any other penalty imposed by this article, not less than fifty dollars and not more than five hundred dollars, upon any motor carrier which fails to file any report within the time prescribed which may be required by this article or by the commissioner
pursuant to this article, or which violates any other provision of this article, or which fails to comply with any regulation of the commissioner promulgated pursuant to this article, each such failure or violation constituting a separate offense. The penalty shall be collectible by the process of the commissioner as provided by law. In addition to imposing such penalty, or without imposing any penalty, the commissioner may suspend or revoke any certificate, permit or other evidence or right issued by the commissioner which the motor carrier so found in fault holds.

Sec. 18. Appeal.—Any motor carrier penalized under section seventeen of this article shall have the right to appeal to the circuit court of Kanawha county in the same manner as provided by section four of this article.

Sec. 19. Severability.—If any of the provisions of this article are held invalid, such invalidation shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1959, passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within  this the

day of , 1959.

[Signature]
Governor