WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 288

(By Mr. , Mr. President, and Mr. , original sponsors)

PASSED March 8, 1967

In Effect July 1, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-17-67
AN ACT to repeal article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and enact in lieu thereof a new article twelve-a of said chapter, relating to an annual tax on incomes of certain carriers.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article twelve-a of said chapter be enacted in lieu thereof, to read as follows:
ARTICLE 12A. ANNUAL TAX ON THE INCOMES OF CERTAIN CARRIERS.

§11-12A-1. Definitions.

When used in this article, the term "person" or the term "company" or "carrier", herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or 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.

The phrase "urban or suburban bus line" in this state, is hereby defined to mean bus lines the majority of whose passengers use the buses for traveling a distance of not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools.

The phrase "motor vehicle carrier" shall mean any person engaged in the transportation of passengers or property, or both, for compensation by motor propelled vehicle for the operation of which a permit or certificate of convenience or convenience and necessity is required by law.
The term “ton-mile” shall be a unit of transportation meaning transportation of one net ton in weight a distance of one mile.

The term “passenger-mile” means the transportation of one passenger a distance of one mile.

The term “car-mile” means the operation of a railroad car over a distance of one mile.

The term “barrel-mile” means the transportation of the equivalent of a barrel of oil or the transportation of the equivalent of a barrel of liquid coal or slurry a distance of one mile.

The phrase “one thousand cubic feet-mile” means the transportation of one thousand cubic feet of gas, measured at sixty degrees Fahrenheit and a pressure of thirty inches of mercury, a distance of one mile.

The term “wire-mile” means the equivalent of a single metallic telephone or telegraph conductor one mile in length.

The phrase “motor vehicle mile” means the operation of a motor vehicle carrier over a distance of one mile.
§11-12A-2. Imposition of annual tax on gross income of certain carriers.

Every motor vehicle carrier operating on the public highways of this state and every railroad car carrier, railroad carrier, express company, pipe line company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in the state shall pay to the state an annual tax for each calendar year. This tax shall be equal to the gross income from all business beginning and ending within the state multiplied by the respective rates as follows: Motor vehicle carriers, railroad car carrier, railroad carrier, express companies, pipe line companies, airline companies, any person operating a steamboat or other watercraft and telegraph companies, three per cent; and telephone companies, three and four-tenths per cent: Provided, That any motor vehicle carrier which is an urban or suburban bus line shall be taxed at the rate of two per cent of such gross income.
§11-12A-3. Imposition of annual tax on net income of certain carriers.

In addition to the tax imposed in the preceding section, every motor vehicle carrier operating on the public highways of the state and every railroad carrier, railroad car carrier, express company, pipe line company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in this state shall pay an annual tax for each calendar year on the net income earned within the state equal to three and four-tenths per cent of such net income for telephone companies and six per cent of such net income for all other carriers included in this section, such net income to be determined as follows:

(a) The net income of motor vehicle carriers earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the motor vehicle carrier that its business done in West Virginia measured in motor vehicle miles of motor vehicle carrier operation, bears to all business done, measured in like fashion;
(b) The net income of railroad carriers earned within the state shall be determined by ascertaining a sum bearing the proportion to total net income of the carriers that its business done in West Virginia, measured in ton-miles, bears to all business done, measured in like fashion;

(c) The net income of railroad car carriers and express companies earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the carriers or company that its business done in West Virginia, measured in car-miles of car operation, bears to all business done, measured in like fashion:

Provided, however, That nothing in this article shall be construed as applying to railroad freight car carriers not owned by railroad carriers or their subsidiaries;

(d) The net income of pipe line companies earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the company that its business done in West Virginia, measured in barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, bears to all business done, measured in like fashion;
(e) The net income of airline companies and any person operating a steamboat or other watercraft for the transportation of passengers or freight earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the corporation that its business done in West Virginia, measured in passenger-miles in the case of airline companies and ton-miles in the case of any person operating a steamboat or other watercraft, bears to all business done, measured in like fashion;

(f) The net income of telephone and telegraph companies shall be determined by ascertaining a sum bearing the proportion to the total net income of the companies that its business done in West Virginia, measured in wire-miles, bears to all business done, measured in like fashion;

(g) In computing the tax imposed by this section, the total net income of a taxpayer, who shall have been taxed under the preceding section, shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer which is the measure of the tax under the preceding section bears to its
63 total gross income from all business done wherever con-
64 ducted. No county, city, town, village or other political
65 subdivision of the state shall levy a license, net income
66 or any other kind of tax on the business taxed under this
67 article.

§11-12A-4. Effective date.

The provisions of sections two and three shall be given
2 effect in determining the taxes due and payable under
3 this article for all tax years or portion thereof beginning
4 on or after the first day of January, one thousand nine
5 hundred sixty-seven.

§11-12A-5 Effect of rate changes during a tax year.

If any rate of tax imposed by this article changes to
2 become effective after the thirty-first day of December,
3 one thousand nine hundred sixty-six, and if the tax year
4 includes the effective date of change (unless that date is
5 the first day of the tax year), then: (1) the total taxes
6 due and payable under this article shall be computed by
7 applying the rate of tax for the period before the effective
8 date of the change, and the rate of tax for the period on
9 and after such date, against gross income as provided in
section two and against net income as provided in section
three of this article for the entire tax year; and (2) the
tax for such tax year shall be the sum of that portion of
the total taxes due and payable which the number of
days in each period bears to the number of days in the
entire tax year.

§11-12A-6. Annual return.

The taxpayer under this article shall file an annual re-
turn with the state tax commissioner upon a form pre-
scribed by the commissioner setting out the following and
such other information as that officer may deem necessary
or useful in aid of the assessment and computation of the
tax:

(1) The gross income from all transportation business
done within the state, namely, business beginning and
ending entirely within the state;

(2) The total gross income of the business wherever
conducted;

(3) The net transportation income of the business
wherever conducted. For this purpose the tax commis-
sioner may consider as relevant any determination of net
transportation income as made by the taxpayer for purposes of the net income tax due the government of the United States;

(4) The total amount of business done in this state, measured in the units hereinbefore prescribed. The tax commissioner may designate a single month in the tax year as the period for which the amount of business done in this state, measured in the units hereinbefore prescribed, shall be reported and shall fix the total amount of business done in the state for the whole tax year by multiplying the amount determined for the designated month by twelve.

(5) The total amount of business done, wherever conducted, measured in the units hereinbefore prescribed.

Every return shall be signed and sworn to by the taxpayer, if a natural person, and if a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer.


If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing
the tax assessable against him, the tax commissioner shall
correct such error or reassess the proper amount of taxes,
and notify the taxpayer of his action by mailing to him
promptly a copy of the corrected assessment, and any
additional tax for which such taxpayer may be liable shall
be paid within fifteen days after the receipt of such state-
ment.

If the amount already paid exceeds that which should
have been paid on the basis of the tax so recomputed, the
excess so paid shall be immediately refunded to the tax-
payer upon the requisition of the tax commissioner to
the state auditor, who shall issue his warrant on the treas-
urer, which shall be payable out of any funds available
for the purpose. The taxpayer may, at his election, apply
an overpayment credit resulting from any clerical error
to taxes subsequently accruing hereunder.

§11-12A-8. Tax year.

The assessment of taxes under this article and the re-
turns required therefor shall be for the year ending on
the thirty-first day of December, one thousand nine hun-
dred sixty-seven and any tax year thereafter. If the tax-
payer keeps the books reflecting the same on a basis other
than the calendar year, he may, with the assent of the tax
commissioner, make his annual returns and pay taxes for
the year covering his accounting period as shown by the
method of keeping his books. For a fractional part of a
tax year, the annual tax shall be computed in like pro-
portion to the tax for a full year.


The total amount of tax imposed by this article shall be
paid on or before the fifteenth day of March following the
close of the calendar year, or if the returns should be made
on the basis of a taxpayer's fiscal year, then on or before
the fifteenth day of the third month following the close of
the fiscal year. The taxpayer may by writing, filed with
the tax commissioner, elect to pay the tax in two equal
installments in which case the first installment shall be
paid on the date hereinabove prescribed and the second
installment shall be paid on the fifteenth day of the third
month after such date.

§11-12A-10. Assessment of tax when insufficiently returned.

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 er-
eroneous, he may proceed to investigate and determine or
estimate the tax liability of the taxpayer and make an
assessment therefor.


If the tax commissioner believes that the collection of
any tax which he is required to administer will be jeop-
ardized by delay, he shall thereupon make an assessment
of the tax, noting that fact upon the assessment. The
amount assessed shall be immediately due and payable.
Unless the taxpayer against whom a jeopardy assessment
is made petitions for reassessment within twenty days
after service of notice of the jeopardy assessment, such an
assessment becomes final.

A petition for reassessment by a taxpayer against whom
a jeopardy assessment has been made must be accom-
panied by such security as the tax commissioner may
deem necessary to insure compliance with this article.

The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by certified mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become due and be deemed conclusive and the amount thereof shall be payable at the end of the thirty day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for
reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it 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 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 the county in which the activity taxed was engaged or in 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 section twelve.

The appeal shall be taken by a written notice and a petition served upon the tax commissioner as an original notice. When said notice and petition is so served it shall, with the return thereon, be filed in the office of the clerk
of the circuit court and docketed as other cases with the
taxpayer as plaintiff and the tax commissioner as de-
defendant. Before the appeal is heard, the plaintiff shall file
with such clerk a bond for the use of the defendant, with
sureties approved by said clerk, the penalty of the bond
to be not less than the total amount of the tax and pen-
alties appealed from, and conditioned that the plaintiff
shall perform the orders of the court; except that in lieu
of said bond, the tax commissioner may upon a proper
showing find and certify to said clerk that the properties
of the plaintiff subject to the liens imposed by sections
sixteen and seventeen of this article are adequate to se-
cure the performance of the orders of the court.

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. In such appeal a
certified copy of the tax commissioner's assessment shall
be admissible and shall constitute prima facie evidence of
the tax due under the provisions of this article. 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 the assessment
in accordance with said decree. 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.


Any written notice required by this article shall, unless
otherwise specifically provided, be served upon the tax-
payer personally or by certified mail.

§11-12A-15. Tax imposed is in addition to other license taxes
and charges.

The tax imposed under this article shall be in addition
to other license taxes and charges imposed by the laws
of this state. It is the purpose of this article to rest a fair
share of the tax burden upon the incomes of any person
who benefits by doing business within the state and tax-
able under this article.

§11-12A-16. Lien of tax; penalty.

The amount of the tax imposed by this article shall be a
debt due the state. It shall be a personal obligation of the
taxpayer and shall be a lien upon all property used in the
business or occupation upon which such tax is imposed, and said lien shall have priority over all other liens and obligations except those given priority by the laws of the United States. A penalty of one per cent per month shall be added to the amount of the tax for each month of delinquency and shall be secured by said lien: Provided, that if such delinquency is due to reasonable cause the tax commissioner may waive or remit in whole or in part said penalties.

§11-12A-17. Creation and release of lien.

The tax commissioner for the more effective collection of such taxes, may file with the clerk of the county court of any county a certified copy of any assessment of taxes under this article. A certificate so filed shall be recorded in a book provided for the purpose and shall thereby create a lien upon all property and assets of the taxpayer located in the county, which lien shall likewise be binding against all other parties whose interest may arise after such recordation. Upon payment of taxes delinquent under this article and for which such lien shall have been perfected as herein provided, the tax commissioner shall
12 certify in duplicate the fact and amount of payment and
13 the balance due, if any, and shall forward the certificate,
14 one to the taxpayer and one to the clerk of the county
15 court of the county wherein such certificate of assessment
16 shall have been recorded. The clerk of the county court
17 shall record the certificate in the book in which releases
18 are recorded, without payment of any fee, and the recorda-
19 of such certificate, certifying to the payment in full of
20 such delinquent taxes, shall constitute a release and full
21 discharge of said lien.


The tax commissioner may distraint upon any goods,
2 chattels or intangibles represented by negotiable evi-
3 dences of indebtedness, of any taxpayer delinquent under
4 this article for the amount of all taxes and penalties ac-
5 crued. The commissioner may require the assistance of
6 the sheriff of any county of the state in levying such dis-
7 tress in the county of which such sheriff is an officer.
8 A sheriff so collecting taxes due hereunder shall be en-
9 titled to compensation in the amount of all penalties col-
10 lected over and above the principal amount of the tax due,
but in no case shall such compensation exceed twenty-five dollars. All taxes and penalties so collected shall be reported within ten days after collection to the tax commissioner, who shall prescribe by general regulation the manner of remittance of such funds and of allowing the collecting officer the compensation due him under this section. The lien created by this article on real estate may be enforced by suit in equity, and the provisions of section seven, article two, chapter eleven-a of this code may also be invoked for the collection of taxes accruing under this article.

§11-12A-19. Payment before certificate of dissolution or withdrawal issues.

The secretary of state shall withhold the issuance of a certificate of dissolution of any corporation organized under the laws of this state, or a certificate of withdrawal to any foreign corporation authorized to do business in this state, until notified in writing by the tax commissioner that all taxes imposed against such corporation have been paid in full.
§11-12A-20. Contracts with political subdivisions; final payment withheld until taxes paid by contractor.

All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold final settlement under such contracts until notified in writing by the tax commissioner that all taxes imposed by this article against such contractors have been paid.

§11-12A-21. Taxes paid first by fiduciary; personal liability.

In the distribution of the estate of any person, firm or corporation, arising out of a creditor's suit, bankruptcy or receivership proceeding, or assignment for the benefit of creditors, all unpaid taxes accruing under this article shall be paid from the first moneys available for distribution for that purpose, in conformity with the liens created by this article. Any person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.
§11-12A-22. Offenses; penalties.

It shall be unlawful for any person to refuse to make the return required to be made by section six of this article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make, or permit to be made, for any corporation or association any false return or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. A person violating any of the provisions of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail or punished by both fine and imprisonment, at the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to
or verify any false or fraudulent return, or any return
containing any false or fraudulent statement, with the
intent aforesaid, shall be guilty of the offense of false
swearing, and, on conviction thereof, shall be punished in
the manner provided by law. Any corporation for which
a false return, or a return containing a false statement as
aforesaid, shall be made, shall be guilty of a misdemeanor
and may be punished by a fine of not more than one thou-
sand dollars. The circuit and criminal courts of the
county in which the offender resides, or, if a corporation,
in which it carries on business, shall have concurrent juris-
diction to enforce this section.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

William T. Tampa
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

James McPeek
Clerk of the Senate

E.A. Blankenship
Clerk of the House of Delegates

Howard McCaslin
President of the Senate

H.E. Fagans White
Speaker House of Delegates

The within approved this the 17

day of March, 1967.

Hulet C. Smith
Governor