

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Com. Sub. for
SENATE BILL NO. 288

(By Mr. *Cannon* [Mr. President] and
Mr. *McCoy* original sponsors)

PASSED March 8, 1967

In Effect July 1, 1967 ~~Passage~~

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-17-67

#288

ENROLLED

FINANCE

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 288

(MR. CARSON [MR. PRESIDENT] and MR. McCOURT original sponsors).

[Passed March 8, 1967; in effect July 1, 1967.]

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article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article twelve-a of said chapter be enacted in lieu thereof, to read as follows: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
2 "company" or "carrier", herein used interchangeably, in-
3 cludes any individual, firm, copartnership, joint adven-
4 ture, association, corporation, trust or any other group or
5 combination acting as a unit, and the plural as well as the
6 singular number, unless the intention to give a more lim-
7 ited meaning is disclosed by the context.

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

14 The phrase "motor vehicle carrier" shall mean any per-
15 son engaged in the transportation of passengers or prop-
16 erty, or both, for compensation by motor propelled vehicle
17 for the operation of which a permit or certificate of con-
18 venience or convenience and necessity is required by law.

19 The term "ton-mile" shall be a unit of transportation
20 meaning transportation of one net ton in weight a distance
21 of one mile.

22 The term "passenger-mile" means the transportation of
23 one passenger a distance of one mile.

24 The term "car-mile" means the operation of a railroad
25 car over a distance of one mile.

26 The term "barrel-mile" means the transportation of the
27 equivalent of a barrel of oil or the transportation of the
28 equivalent of a barrel of liquid coal or slurry a distance
29 of one mile.

30 The phrase "one thousand cubic feet-mile" means the
31 transportation of one thousand cubic feet of gas, measured
32 at sixty degrees Fahrenheit and a pressure of thirty inches
33 of mercury, a distance of one mile.

34 The term "wire-mile" means the equivalent of a single
35 metallic telephone or telegraph conductor one mile in
36 length.

37 The phrase "motor vehicle mile" means the operation
38 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
2 highways of this state and every railroad car carrier, rail-
3 road carrier, express company, pipe line company, tele-
4 phone and telegraph company, airline company and any
5 person operating a steamboat or other watercraft, for the
6 transportation of passengers or freight, doing business in
7 the state shall pay to the state an annual tax for each cal-
8 endar year. This tax shall be equal to the gross income
9 from all business beginning and ending within the state
10 multiplied by the respective rates as follows: Motor ve-
11 hicle carriers, railroad car carrier, railroad carrier, express
12 companies, pipe line companies, airline companies, any
13 person operating a steamboat or other watercraft and
14 telegraph companies, three per cent; and telephone com-
15 panies, three and four-tenths per cent: *Provided*, That any
16 motor vehicle carrier which is an urban or suburban bus
17 line shall be taxed at the rate of two per cent of such
18 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,
2 every motor vehicle carrier operating on the public high-
3 ways of the state and every railroad carrier, railroad car
4 carrier, express company, pipe line company, telephone
5 and telegraph company, airline company and any person
6 operating a steamboat or other watercraft, for the trans-
7 portation of passengers or freight, doing business in this
8 state shall pay an annual tax for each calendar year on
9 the net income earned within the state equal to three and
10 four-tenths per cent of such net income for telephone
11 companies and six per cent of such net income for all other
12 carriers included in this section, such net income to be
13 determined as follows:

14 (a) The net income of motor vehicle carriers earned
15 within the state shall be determined by ascertaining a
16 sum bearing the proportion to the total net income of the
17 motor vehicle carrier that its business done in West Vir-
18 ginia measured in motor vehicle miles of motor vehicle
19 carrier operation, bears to all business done, measured in
20 like fashion;

21 (b) The net income of railroad carriers earned within
22 the state shall be determined by ascertaining a sum bear-
23 ing the proportion to total net income of the carriers that
24 its business done in West Virginia, measured in ton-miles,
25 bears to all business done, measured in like fashion;

26 (c) The net income of railroad car carriers and express
27 companies earned within the state shall be determined
28 by ascertaining a sum bearing the proportion to the total
29 net income of the carriers or company that its business
30 done in West Virginia, measured in car-miles of car oper-
31 ation, bears to all business done, measured in like fashion:
32 *Provided, however,* That nothing in this article shall be
33 construed as applying to railroad freight car carriers not
34 owned by railroad carriers or their subsidiaries;

35 (d) The net income of pipe line companies earned
36 within the state shall be determined by ascertaining a
37 sum bearing the proportion to the total net income of the
38 company that its business done in West Virginia, meas-
39 ured in barrel-miles in the case of oil and liquid coal or
40 slurry and of thousand cubic feet-miles in the case of gas,
41 bears to all business done, measured in like fashion;

42 (e) The net income of airline companies and any per-
43 son operating a steamboat or other watercraft for the
44 transportation of passengers or freight earned within the
45 state shall be determined by ascertaining a sum bearing
46 the proportion to the total net income of the corporation
47 that its business done in West Virginia, measured in pas-
48 senger-miles in the case of airline companies and ton-
49 miles in the case of any person operating a steamboat or
50 other watercraft, bears to all business done, measured in
51 like fashion;

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

57 (g) In computing the tax imposed by this section, the
58 total net income of a taxpayer, who shall have been taxed
59 under the preceding section, shall be reduced by an
60 amount bearing the proportion to such total net income
61 that the gross income of the taxpayer which is the meas-
62 ure 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

10 section two and against net income as provided in section
11 three of this article for the entire tax year; and (2) the
12 tax for such tax year shall be the sum of that portion of
13 the total taxes due and payable which the number of
14 days in each period bears to the number of days in the
15 entire tax year.

§11-12A-6. Annual return.

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

- 7 (1) The gross income from all transportation business
8 done within the state, namely, business beginning and
9 ending entirely within the state;
- 10 (2) The total gross income of the business wherever
11 conducted;
- 12 (3) The net transportation income of the business
13 wherever conducted. For this purpose the tax commis-
14 sioner may consider as relevant any determination of net

15 transportation income as made by the taxpayer for pur-
16 poses of the net income tax due the government of the
17 United States under the laws of the United States;

18 (4) The total amount of business done in this state,
19 measured in the units hereinbefore prescribed. The tax
20 commissioner may designate a single month in the tax
21 year as the period for which the amount of business done
22 in this state, measured in the units hereinbefore pre-
23 scribed, shall be reported and shall fix the total amount
24 of business done in the state for the whole tax year by
25 multiplying the amount determined for the designated
26 month by twelve.

27 (5) The total amount of business done, wherever con-
28 ducted, measured in the units hereinbefore prescribed.

29 Every return shall be signed and sworn to by the tax-
30 payer, if a natural person, and if a corporation, shall be
31 signed and sworn to by its president, vice president, sec-
32 retary or principal accounting officer.

§11-12A-7. Erroneous computation.

If the taxpayer shall make any clerical error which
2 shall be apparent on the face of the return in computing

3 the tax assessable against him, the tax commissioner shall
4 correct such error or reassess the proper amount of taxes,
5 and notify the taxpayer of his action by mailing to him
6 promptly a copy of the corrected assessment, and any
7 additional tax for which such taxpayer may be liable shall
8 be paid within fifteen days after the receipt of such state-
9 ment.

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

§11-12A-8. Tax year.

The assessment of taxes under this article and the re-
2 turns required therefor shall be for the year ending on
3 the thirty-first day of December, one thousand nine hun-
4 dred sixty-seven and any tax year thereafter. If the tax-

5 payer keeps the books reflecting the same on a basis other
6 than the calendar year, he may, with the assent of the tax
7 commissioner, make his annual returns and pay taxes for
8 the year covering his accounting period as shown by the
9 method of keeping his books. For a fractional part of a
10 tax year, the annual tax shall be computed in like pro-
11 portion to the tax for a full year.

§11-12A-9. Payment.

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

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

If the tax commissioner believes that the tax imposed

2 by this article is insufficiently returned by a taxpayer,
3 either because the taxpayer has failed to properly remit
4 the tax or has failed to make a return, or has made a
5 return which is incomplete, deficient or otherwise er-
6 roneous, he may proceed to investigate and determine or
7 estimate the tax liability of the taxpayer and make an
8 assessment therefor.

§11-12A-11. Jeopardy assessments.

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

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

§11-12A-12. Notice of assessment; petition for reassessment; hearing.

The tax commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (except in the case of jeopardy assessments), either per-
6 sonally or by certified mail, file with the tax commissioner
7 a petition in writing, verified under oath by said taxpayer
8 or his duly authorized agent, having knowledge of the
9 facts, setting forth with definiteness and particularity the
10 items of the assessment objected to, together with the
11 reason for such objections, said assessments shall become
12 due and be deemed conclusive and the amount thereof
13 shall be payable at the end of the thirty day period. In
14 every case where a petition for reassessment as above
15 described is filed, the tax commissioner shall assign a
16 time and place for the hearing of same and shall notify
17 the petitioner of such hearing by written notice at least
18 twenty days in advance thereof and such hearing shall be
19 held within sixty days from the filing of the petition for

20 reassessment unless continued by agreement or by the tax
21 commissioner for good cause. The hearing shall be in-
22 formal and may be conducted by an examiner designated
23 by the tax commissioner. At such hearing evidence may
24 be offered to support the assessment or to prove that it is
25 incorrect. After such hearing the tax commissioner shall,
26 within a reasonable time, give notice in writing of the
27 decision. Unless an appeal is taken within thirty days
28 from service of this notice, the tax commissioner's de-
29 cision shall be final.

§11-12A-13. Appeal.

An appeal may be taken by the taxpayer to the circuit
2 court of the county in which the activity taxed was en-
3 gaged or in the circuit court of Kanawha county, within
4 thirty days after he shall have received notice from the
5 tax commissioner of his determination as provided in
6 section twelve.

7 The appeal shall be taken by a written notice and a
8 petition served upon the tax commissioner as an original
9 notice. When said notice and petition is so served it shall,
10 with the return thereon, be filed in the office of the clerk

11 of the circuit court and docketed as other cases with the
12 taxpayer as plaintiff and the tax commissioner as de-
13 fendant. Before the appeal is heard, the plaintiff shall file
14 with such clerk a bond for the use of the defendant, with
15 sureties approved by said clerk, the penalty of the bond
16 to be not less than the total amount of the tax and pen-
17 alties appealed from, and conditioned that the plaintiff
18 shall perform the orders of the court; except that in lieu
19 of said bond, the tax commissioner may upon a proper
20 showing find and certify to said clerk that the properties
21 of the plaintiff subject to the liens imposed by sections
22 sixteen and seventeen of this article are adequate to se-
23 cure the performance of the orders of the court.

24 The court shall hear the appeal in equity and determine
25 anew all questions submitted to it on appeal from the
26 determination of the tax commissioner. In such appeal a
27 certified copy of the tax commissioner's assessment shall
28 be admissible and shall constitute prima facie evidence of
29 the tax due under the provisions of this article. The court
30 shall render its decree thereon and a certified copy of said
31 decree shall be filed by the clerk of said court with the

32 tax commissioner who shall then correct the assessment
33 in accordance with said decree. An appeal may be taken
34 by the taxpayer or the tax commissioner to the supreme
35 court of appeals of this state in the same manner that
36 appeals are taken in equity.

§11-12A-14. Service of notice.

Any written notice required by this article shall, unless
2 otherwise specifically provided, be served upon the tax-
3 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
2 to other license taxes and charges imposed by the laws
3 of this state. It is the purpose of this article to rest a fair
4 share of the tax burden upon the incomes of any person
5 who benefits by doing business within the state and tax-
6 able under this article.

§11-12A-16. Lien of tax; penalty.

The amount of the tax imposed by this article shall be a
2 debt due the state. It shall be a personal obligation of the
3 taxpayer and shall be a lien upon all property used in the

4 business or occupation upon which such tax is imposed,
5 and said lien shall have priority over all other liens and
6 obligations except those given priority by the laws of the
7 United States. A penalty of one per cent per month shall
8 be added to the amount of the tax for each month of de-
9 linquency and shall be secured by said lien: *Provided,*
10 That if such delinquency is due to reasonable cause the
11 tax commissioner may waive or remit in whole or in part
12 said penalties.

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

The tax commissioner for the more effective collection
2 of such taxes, may file with the clerk of the county court
3 of any county a certified copy of any assessment of taxes
4 under this article. A certificate so filed shall be recorded
5 in a book provided for the purpose and shall thereby
6 create a lien upon all property and assets of the taxpayer
7 located in the county, which lien shall likewise be binding
8 against all other parties whose interest may arise after
9 such recordation. Upon payment of taxes delinquent
10 under this article and for which such lien shall have been
11 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.

§11-12A-18. Collection by distraint.

The tax commissioner may distrain 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,

11 but in no case shall such compensation exceed twenty-five
12 dollars. All taxes and penalties so collected shall be re-
13 ported within ten days after collection to the tax com-
14 missioner, who shall prescribe by general regulation the
15 manner of remittance of such funds and of allowing the
16 collecting officer the compensation due him under this
17 section. The lien created by this article on real estate may
18 be enforced by suit in equity, and the provisions of section
19 seven, article two, chapter eleven-a of this code may also
20 be invoked for the collection of taxes accruing under this
21 article.

**§11-12A-19. Payment before certificate of dissolution or with-
drawal issues.**

The secretary of state shall withhold the issuance of a
2 certificate of dissolution of any corporation organized
3 under the laws of this state, or a certificate of withdrawal
4 to any foreign corporation authorized to do business in
5 this state, until notified in writing by the tax commissioner
6 that all taxes imposed against such corporation have been
7 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
2 agents making contracts on behalf of the state of West
3 Virginia or any political subdivision thereof shall with-
4 hold final settlement under such contracts until notified
5 in writing by the tax commissioner that all taxes imposed
6 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
2 corporation, arising out of a creditor's suit, bankruptcy or
3 receivership proceeding, or assignment for the benefit of
4 creditors, all unpaid taxes accruing under this article shall
5 be paid from the first moneys available for distribution
6 for that purpose, in conformity with the liens created by
7 this article. Any person charged with the administration
8 of an estate who shall violate the provisions of this section
9 shall be personally liable for any taxes accrued and un-
10 paid under this article, which are chargeable against the
11 person, firm or corporation whose estate is in adminis-
12 tration.

§11-12A-22. Offenses; penalties.

It shall be unlawful for any person to refuse to make
2 the return required to be made by section six of this
3 article; or to make any false or fraudulent return or false
4 statement in any return, with intent to defraud the state
5 or to evade the payment of the tax, or any part thereof,
6 imposed by this article; or for any person to aid or abet
7 another in any attempt to evade the payment of the tax,
8 or any part thereof, imposed by this article; or for the
9 president, vice president, secretary or treasurer of any
10 corporation to make, or permit to be made, for any cor-
11 poration or association any false return or any false state-
12 ment in any return required in this article, with the intent
13 to evade the payment of any tax hereunder. A person
14 violating any of the provisions of this section shall be
15 guilty of a misdemeanor, and, on conviction thereof, shall
16 be fined not more than one thousand dollars or imprisoned
17 not exceeding one year in the county jail or punished by
18 both fine and imprisonment, at the discretion of the court,
19 within the limitations aforesaid. In addition to the fore-
20 going penalties, any person who shall knowingly swear to

21 or verify any false or fraudulent return, or any return
22 containing any false or fraudulent statement, with the
23 intent aforesaid, shall be guilty of the offense of false
24 swearing, and, on conviction thereof, shall be punished in
25 the manner provided by law. Any corporation for which
26 a false return, or a return containing a false statement as
27 aforesaid, shall be made, shall be guilty of a misdemeanor
28 and may be punished by a fine of not more than one thou-
29 sand dollars. The circuit and criminal courts of the
30 county in which the offender resides, or, if a corporation,
31 in which it carries on business, shall have concurrent juris-
32 diction to enforce this section.

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

William Tompos
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Howard Meares
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard Holman
President of the Senate

H. Latham White
Speaker House of Delegates

The within *approved* this the *17*
day of *March*, 1967.

Hullett C. Smith
Governor



PRESENTED TO THE

GOVERNMENT

Date 3/17/67

Time 9:30am