

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 112

(By Mr. McCourt, Mr. Perzeland and Mr. Hubbert, original sponsors)

PASSED March 11 1972

In Effect July 1, 1972 ~~Passage~~

112

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

MAR 29 11 35 PM '72

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72

ENROLLED

COMMITTEE SUBSTITUTE FOR

Senate Bill No. 112

(MR. McCOURT, MR. PRESIDENT, and MR. HUBBARD,
original sponsors)

[Passed March 11, 1972; in effect July 1, 1972.]

AN ACT to amend and reenact article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing a motor carrier road tax act; defining terms; levying a motor carrier road tax; providing for the computation of such tax; requiring reports and records and specifying requirements with respect thereto and subpoena thereof; authorizing joint reports; specifying the due date of such tax; relating to registration cards and identification markers for motor carriers and fees therefor; providing exceptions as to such cards and markers in the event of an emergency; establishing criminal offenses; providing criminal penalties; providing exemptions from such tax; relating to credits against such tax; relating to refunds of such tax and specifying procedures and the time for filing of petitions for such refunds; relating to taxpayer surety bonds or pledges of property in lieu thereof; relating to the enforcement powers of the tax commissioner and his agents and employees and bonds of such agents and employees; authorizing deductions from such tax for the cost of administration and enforcement; providing for the uses to be made of the tax collected; providing for assessment and collection of taxes, interest, and penalties; providing for hearings and appeals; providing for injunctions; providing for sales or discontinuances of business; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-1. Short title; arrangement of sections or portions of article.

1 This article shall be known and may be cited as the
2 "Motor Carrier Road Tax Act." No inference, implication
3 or presumption of legislative construction shall be drawn
4 or made by reason of the location or grouping of any par-
5 ticular action or portion of this article.

§11-14A-2. Definitions.

1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the
3 tax commissioner of the state of West Virginia or his duly
4 authorized agent.

5 (2) "Gallon" means two hundred thirty-one cubic
6 inches of liquid measurement, by volume: *Provided,*
7 That the commissioner may by rule and regulation pre-
8 scribe other measurement or definition of gallon.

9 (3) "Gasoline" means any product commonly or com-
10 mercially known as gasoline, regardless of classification,
11 suitable for use as fuel in an internal combustion engine,
12 except special fuel as hereinafter defined.

13 (4) "Highway" means every way or place of whatever
14 nature open to the use of the public as a matter of right
15 for the purpose of vehicular travel, which is maintained
16 by this state or some taxing subdivision or unit thereof
17 or the federal government or any of its agencies.

18 (5) "Identification marker" means the decal issued by
19 the commissioner for display upon a particular motor
20 carrier.

21 (6) "Lease" means any oral or written contract for
22 valuable consideration granting the use of a motor car-
23 rier.

24 (7) "Motor carrier" means any passenger vehicle which
25 has seats for more than nine passengers in addition to the
26 driver, or any road tractor, or any tractor truck, or any
27 truck having more than two axles which is operated or
28 caused to be operated by any person on any highway in
29 this state.

30 (8) "Operation" means any operation of any motor
31 carrier, whether loaded or empty, whether for compensa-
32 tion or not, and whether owned by or leased to the per-
33 son who operates or causes to be operated such motor
34 carrier.

35 (9) "Person" means and includes any individual, firm,
36 partnership, limited partnership, joint adventure, associa-
37 tion, company, corporation, organization, syndicate, re-
38 ceiver, trust, or any other group or combination acting as
39 a unit, in the plural as well as the singular number, and
40 means and includes the officers, directors, trustees, or
41 members of any firm, partnership, limited partnership,
42 joint adventure, association, company, corporation, or-
43 ganization, syndicate, receiver, trust, or any other group
44 or combination acting as a unit, in the plural as well as
45 the singular number, unless the intention to give a more
46 limited meaning is disclosed by the context.

47 (10) "Pool operation" means any operation whereby
48 two or more taxpayers combine to operate or cause to be
49 operated a motor carrier or motor carriers upon any high-
50 way in this state.

51 (11) "Purchase" means and includes any acquisition of
52 ownership of property or of a security interest for a con-
53 sideration.

54 (12) "Registration card" means the card issued by the
55 commissioner and authorizing a person to operate or cause
56 to be operated a motor carrier upon the highway in this
57 state.

58 (13) "Road tractor" means every motor carrier de-
59 signed and used for drawing other vehicles and not so
60 constructed as to carry any load thereon either inde-
61 pendently or any part of the weight of a vehicle or load
62 so drawn.

63 (14) "Sale" means any transfer, exchange, gift, barter,
64 or other disposition of any property or security interest
65 for a consideration.

66 (15) "Special fuel" means any gas or liquid, other than
67 gasoline, used or suitable for use as fuel in an internal
68 combustion engine. The term "special fuel" shall include
69 products commonly known as natural or casinghead gaso-

70 line, but shall not include any petroleum product or
71 chemical compound such as alcohol, industrial solvent,
72 heavy furnace oil, lubricant, etc., not commonly used nor
73 practicably suited for use as fuel in an internal combus-
74 tion engine.

75 (16) "Tax" includes, within its meaning, interest, addi-
76 tions to tax and penalties, unless the intention to give it
77 a more limited meaning is disclosed by the context.

78 (17) "Taxpayer" means any person liable for any tax,
79 interest, additions to tax or penalty under the provisions
80 of this article and article ten of this chapter.

81 (18) "Tractor truck" means every motor carrier de-
82 signed and used primarily for drawing other vehicles and
83 not so constructed as to carry a load other than a part of
84 the weight of the vehicle and load so drawn.

85 (19) "Truck" means every motor carrier designed, used
86 or maintained primarily for the transportation of property
87 and having more than two axles.

§11-14A-3. Imposition of tax.

1 Every person who operates or causes to be operated on
2 any highway in this state any motor carrier shall pay a
3 road tax on each motor carrier equivalent to the amount of
4 tax per gallon of gasoline or special fuel imposed by
5 article fourteen of this chapter, calculated on each gallon
6 of gasoline or special fuel used as fuel in each motor
7 carrier's operations in this state.

8 The tax imposed by this article shall be in addition to
9 all other taxes of whatever character imposed upon such
10 person by any other provisions of law.

§11-14A-4. Computation of tax.

1 Computation of the tax is based upon the amount of
2 gallons of gasoline or special fuel used in the operation of
3 any motor carrier within this state and shall be in such
4 proportion of the total amount of such gasoline or special
5 fuel used in any person's operations within and without
6 this state as the total number of gallons bears to the
7 total number of highway miles traveled within and with-
8 out this state.

§11-14A-5. Report of carriers; joint reports; records; examination of records; subpoena.

1 Every taxpayer subject to the tax imposed by this
2 article shall on or before the last day of January, April,
3 July and October of every calendar year make to the
4 commissioner such reports of its operations during the
5 quarter ending the last day of the preceding month as the
6 commissioner may require and such other reports from
7 time to time as the commissioner may deem necessary.
8 For good cause shown, the commissioner may extend the
9 time for filing said reports for a period not exceeding
10 thirty days.

11 Two or more taxpayers regularly engaged in the trans-
12 portation of passengers on through buses on through
13 tickets in pool operation may, at their option and upon
14 proper notice to the commissioner, make joint reports of
15 their entire operations in this state. The taxes imposed
16 shall be calculated on the basis of such joint reports as
17 though such taxpayers were a single taxpayer; and the tax-
18 payers making such reports shall be jointly and severally
19 liable for the taxes. Such joint reports shall show the
20 total number of highway miles traveled in this state and
21 the total number of gallons of gasoline or special fuel
22 purchased in this state by the reporting taxpayers.
23 Credits to which the taxpayers making a joint return are
24 entitled shall not be allowed as credits to any other tax-
25 payer; but taxpayers filing joint reports shall permit all
26 taxpayers engaged in this state in pool operations with
27 them to join in filing joint reports.

28 A taxpayer shall keep such records necessary to verify
29 the highway miles traveled within and without the state
30 of West Virginia, the number of gallons of gasoline and
31 special fuel used and purchased within and without West
32 Virginia and any other records the commissioner by regu-
33 lation may prescribe.

34 The commissioner may inspect or examine the records,
35 books, papers, storage tanks, meters and any equipment
36 records or records of highway miles traveled within and
37 without West Virginia and the records of any other person
38 to verify the truth and accuracy of any statement or re-

39 port to ascertain whether the tax imposed by this article
40 has been properly paid.

41 As a further means of obtaining the records, books and
42 papers of a taxpayer or any other person and ascertaining
43 the amount of taxes and reports due under this article,
44 the commissioner shall have the power to examine wit-
45 nesses under oath; and if any witness shall fail or refuse
46 at the request of the commissioner to grant access to the
47 books, records and papers, the commissioner shall certify
48 the facts and names to the circuit court of the county
49 having jurisdiction of the party and such court shall there-
50 upon issue a subpoena duces tecum to such party to ap-
51 pear before the commissioner, at a place designated within
52 the jurisdiction of such court, on a day fixed.

§11-14A-6. Tax due.

1 The tax hereby imposed by this article shall be paid
2 by each taxpayer quarterly to the commissioner on or be-
3 fore the last day of January, April, July and October of
4 each calendar year, and calculated upon the amount of
5 gasoline or special fuel used as fuel in the operation of
6 each motor carrier operated or caused to be operated by
7 said taxpayer during the quarter ending with the last
8 day of the preceding month.

**§11-14A-7. Registration card; identification marker; fees; emer-
gency permits; fine.**

1 No person shall operate or cause to be operated in this
2 state any motor carrier subject to this article without
3 first securing from the commissioner a registration card
4 and an identification marker for each such motor car-
5 rier. The registration card shall be of such form, design
6 and color as the commissioner shall prescribe. The
7 registration card shall be carried in the motor carrier
8 for which it was issued at all times when the motor
9 carrier is within this state. Each identification marker
10 for a particular motor carrier shall bear a number, which
11 number shall be the same as that appearing on the regi-
12 stration card for that particular motor carrier. The identi-
13 fication marker shall be displayed on the motor carrier
14 as required by the commissioner. The registration cards

15 and identification markers herein provided for shall be
 16 valid for the period of one year, ending June thirty of
 17 each year. A fee of one dollar shall be paid to the com-
 18 missioner for issuing each registration card and identifica-
 19 tion marker: *Provided*, That all tax or reports due
 20 under this article shall be paid or reports filed before the
 21 issuance of a new registration card and identification
 22 marker. Failure by a taxpayer to file the returns or pay
 23 the taxes imposed by this article shall give cause to the
 24 commissioner to revoke or refuse to renew the registration
 25 card and identification marker previously issued.

26 In an emergency, the commissioner upon request may
 27 authorize, in writing, a motor carrier to be operated with-
 28 out a registration card or an identification marker for
 29 not more than ten days.

30 Upon conviction for failure to obtain, carry and display
 31 the registration card and identification marker in or on
 32 each motor carrier, the person which operates or causes
 33 to be operated said motor carrier shall be fined not less
 34 than twenty nor more than one hundred dollars per day;
 35 and each day of such failure shall constitute a separate
 36 offense.

§11-14A-8. Exemptions.

1 Nothing in this article shall apply to any motor car-
 2 rier operated or caused to be operated by or on behalf
 3 of any department, board, bureau, commission or other
 4 agency of the federal government or of this or any other
 5 state or any political subdivision thereof, nor shall the
 6 provisions of this article apply to any school bus operated
 7 or caused to be operated by or on behalf of this state
 8 or any political subdivision thereof or any private or
 9 privately operated school or schools.

§11-14A-9. Credits against tax due.

1 Every taxpayer subject to the road tax herein imposed
 2 shall be entitled to a credit on such tax equivalent to the
 3 amount of tax per gallon of gasoline or special fuel im-
 4 posed by article fourteen of this chapter on all gasoline
 5 or special fuel purchased by said taxpayer for fuel in

6 each motor carrier which it operates or causes to be
7 operated within this state, and upon which gasoline or
8 special fuel the tax imposed by the laws of this state has
9 been paid: *Provided*, That such credit shall not be
10 allowed for any gasoline or special fuel taxes for which
11 any taxpayer has applied or received a refund of gaso-
12 line or special fuel tax under article fourteen of this
13 chapter. Evidence of the payment of such tax in such
14 form as may be required by the commissioner shall be
15 furnished by the taxpayer claiming the credit herein
16 allowed. When the amount of the credit herein provided
17 for exceeds the amount of the tax for which the tax-
18 payer is liable in the same quarter, such excess shall,
19 upon written request by the taxpayer, be allowed as a
20 credit on the tax for which the taxpayer would be other-
21 wise liable for any of the four succeeding quarters.

§11-14A-10. False statements; penalty.

1 Any person who willfully and knowingly makes a
2 false statement orally or in writing in reference to the
3 purchase or sale of gasoline, special fuel or highway miles
4 traveled for the purpose of obtaining or attempting to
5 obtain or to assist any other person to obtain or attempt
6 to obtain a credit, refund or reduction of liability for
7 taxes under the provisions of this article, shall be guilty
8 of a misdemeanor, and, upon conviction thereof, shall
9 be fined not less than fifty nor more than one thousand
10 dollars or imprisoned for not more than six months or
11 both fined and imprisoned.

§11-14A-11. Refund; petition for refund; surety bond.

1 The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article
3 and article fourteen of this chapter, the amount of the
4 credit accrued for gallons of gasoline or special fuel
5 purchased in this state but consumed outside of this state,
6 if the taxpayer by duly filed petition requests the com-
7 missioner to issue a refund and if the commissioner is
8 satisfied that said taxpayer is entitled to said refund
9 and that said taxpayer has not applied for a refund of the

10 tax imposed by article fourteen of this chapter: *Provided*,
11 That the commissioner shall not approve a petition for
12 refund when such petition for such refund is filed after
13 thirteen months from the close of the quarter in which
14 the tax was paid or the credit, as provided for in section
15 nine of this article, was allowed: *Provided, however*,
16 That such refund shall not be made until after audit of
17 the petitioner's records by the commissioner or until after
18 a surety bond has been furnished by the petitioner, as
19 hereinafter provided, in an amount fixed by the com-
20 missioner, conditioned to pay all road taxes due here-
21 under: *Provided further*, That said credit or refund shall
22 in no case be allowed to reduce the amount of tax to be
23 paid by a taxpayer below the amount due as tax on
24 gasoline or special fuel used as fuel in this state as pro-
25 vided by article fourteen of this chapter. The right to
26 receive any refund under the provisions of this article
27 shall not be assignable and any attempt at assignment
28 thereof shall be void and of no effect.

29 A taxpayer may furnish a continuous surety bond in
30 an amount fixed by the commissioner, but such amount
31 shall not be less than the total refunds due or to be
32 paid within one year. Upon completion of the filing of
33 such surety bond an annual notice of renewal, only,
34 shall be required thereafter.

35 The surety must be authorized to engage in business
36 within this state. The bond shall be conditioned upon
37 faithful compliance with the provisions of this article,
38 including the filing of the returns and payment of all
39 tax prescribed by this article. Such bond shall be ap-
40 proved by the commissioner as to sufficiency and by
41 the attorney general as to form, and shall indemnify the
42 state against any loss arising from the failure of the tax-
43 payer to pay for any cause whatever the motor carrier
44 road tax imposed by this article.

45 So long as the bond remains in force the commissioner
46 may order refunds to the taxpayer in the amounts ap-
47 pearing to be due on petitions duly filed by the tax-
48 payer under the provisions of this article without first
49 auditing the records of the carrier.

50 Any surety on a bond furnished hereunder shall be re-
51 lieved, released and discharged from all liability accruing
52 on such bond after the expiration of sixty days from the
53 date the surety shall have lodged, by certified mail, with
54 the commissioner a written request to be discharged.
55 This shall not relieve, release or discharge the surety
56 from liability already accrued, or which shall accrue be-
57 fore the expiration of the sixty-day period. Whenever
58 any surety shall seek discharge as herein provided, it
59 shall be the duty of the principal of such bond to supply
60 the commissioner with another bond, or pledge of prop-
61 erty equal in value to the original bond, such pledge to
62 be in the form of a tax lien on the property pledged and
63 said lien shall be duly perfected in the office of the clerk
64 of the county court of the county wherein such property
65 is situated and shall be submitted to the commissioner
66 along with a certified appraisal statement as to the
67 value of the property pledged prior to the expiration of
68 the original bond. Failure to provide such bond or pledge
69 may result in the commissioner cancelling any registration
70 card and identification marker previously issued to said
71 person.

§11-14A-12. Enforcement powers.

1 (1) Any employee or agent of the commissioner so
2 authorized by the commissioner shall have all the lawful
3 powers delegated to members of the department of public
4 safety to enforce the provisions of this article, when
5 bonded as hereinafter provided in this section.

6 (2) Such employee or agent so authorized by the com-
7 missioner shall execute a bond with security in the sum
8 of thirty-five hundred dollars, payable to the state of
9 West Virginia, conditioned for the faithful performance
10 of his duties, as such, and such bond shall be approved
11 as to form by the attorney general, and the same shall be
12 filed with the secretary of state and preserved in his
13 office.

**§11-14A-13. Disposition of tax collected; amounts allowed for
administration and enforcement.**

1 All tax collected under the provisions of this article

2 shall be paid into the state treasury and shall be used only
 3 for the purpose of construction, reconstruction, main-
 4 tenance and repair of highways, payment of the interest
 5 and sinking fund obligations on state bonds issued for
 6 highway purposes and the cost of administration and en-
 7 forcement of this article (and article fourteen of this
 8 chapter) by the commissioner, which costs of administra-
 9 tion and enforcement shall not exceed one percent of the
 10 total tax collected during each fiscal year.

11 Unless necessary for such bond requirements, five-
 12 fourteenths of the tax collected under the provisions of
 13 this article shall be used for feeder and state local service
 14 highway purposes.

§11-14A-14. Assessment of tax when insufficiently returned.

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

§11-14A-15. Jeopardy assessments.

1 If the commissioner believes that the collection of any
 2 tax which he is required to administer will be jeopardized
 3 by delay, he shall thereupon make an assessment of tax,
 4 noting that fact upon the assessment. The amount assessed
 5 shall be immediately due and payable. Unless the tax-
 6 payer against whom a jeopardy assessment is made peti-
 7 tions for reassessment within twenty days after service of
 8 notice of the jeopardy assessment such an assessment
 9 becomes final. A petition for reassessment by a person
 10 against whom a jeopardy assessment has been made must
 11 be accompanied by such security as the commissioner
 12 may deem necessary to insure compliance with this article.

§11-14A-16. Interest; additions to tax; penalties; fraudulent returns; willful failure to file.

1 (1) *Interest.*—Taxes imposed by this article, if not paid
 2 when due, shall bear interest at the rate of six percent

3 per annum from the due date of the return. Each assess-
4 ment or deficiency notice made by the commissioner shall
5 bear interest at the rate of six percent per annum. In all
6 cases of delinquency or extensions of time, interest shall
7 be assessed and collected.

8 (2) *Additions to tax; penalty.*—In the case of any
9 failure to make or file a return or whenever the full
10 amount of the tax or any portion or deficiency thereof
11 has not been paid, as required by this article, unless it be
12 shown that such failure is due to reasonable cause and not
13 due to willful neglect, there shall be added to the tax five
14 per centum if a failure is for not more than thirty days,
15 with an additional five per centum for each additional
16 thirty days or fraction thereof during which failure shall
17 continue, not to exceed twenty-five per centum in the
18 aggregate. If no tax is due, the penalty will be twenty-
19 five dollars per month or fraction thereof for failure to
20 file a tax return.

21 (3) *Fraudulent returns; willful failure to file.*—In the
22 case of the filing of any false or fraudulent return with
23 intent to evade the tax imposed by this article, or in the
24 case of a willful failure to file a return with intent to
25 evade the tax, or the filing of a false claim for credit or
26 refund, there shall be added to the tax due a penalty in
27 an amount equal to one hundred per centum of the tax
28 due. The burden of proving fraud, willfulness, or intent
29 to evade tax shall be upon the commissioner.

§11-14A-17. Notice of assessment; petition for reassessment.

1 The 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 (twenty days in the case of jeopardy assessments), either
6 personally or by certified mail, file with the 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 particularity the items of the
10 assessment objected to, together with the reasons for ob-
11 jections, said assessment shall become final and con-

12 clusive, not subject to administrative or judicial review,
13 and the amount thereof shall be payable at the end of the
14 thirty-day period (twenty days in the case of jeopardy as-
15 sessments). A petition for reassessment shall be deemed
16 to be timely filed if the postmark date thereon is clearly
17 within said thirty days (twenty days in case of a jeopardy
18 assessment) of receipt of said assessment by the taxpayer
19 or is received within such period. If the thirtieth day
20 (twentieth day in case of a jeopardy assessment) falls on
21 a Saturday or Sunday, filing will be considered timely if
22 it is done on the next succeeding day which is not a
23 legal holiday.

§11-14A-18. Hearing; appeals.

1 In every case where a petition for reassessment as above
2 described is filed, the commissioner shall assign a time
3 and place for the hearing of same and shall notify the
4 petitioner of such hearing by written notice at least twenty
5 days in advance thereof, and such hearing shall be held
6 within sixty days from the filing of the petition for re-
7 assessment unless continued by agreement or by the
8 commissioner for good cause. The hearing shall be in-
9 formal and may be conducted by an examiner designated
10 by the commissioner. At such hearing the assessment
11 shall constitute prima facie evidence of the claim of the
12 state and the burden of proof shall be upon the taxpayer
13 assessed to show that the assessment is incorrect and
14 contrary to law. In every case where a petition for refund
15 as above described is filed and the commissioner has re-
16 fused to allow said refund in whole or in part, the peti-
17 tioner may file within thirty days after receipt of the
18 commissioner's decision a written request for a hearing.
19 In every case where a request for hearing is filed, the com-
20 missioner shall proceed to assign and hold such hearing in
21 accordance with the methods herein prescribed for a peti-
22 tion for reassessment. After any such hearing the com-
23 missioner shall, within a reasonable time, give notice in
24 writing of the decision. Unless an appeal is taken within
25 thirty days from service of this notice, the commissioner's
26 decision shall be final.

27 Every assessment made by the commissioner under

28 this article which becomes final and conclusive shall con-
29 stitute a judgment and may be collected as judgments are
30 collected.

31 An appeal may be taken by the taxpayer to the circuit
32 court of the county in which the activity taxed was
33 engaged, or in which the taxpayer resides, or in the
34 circuit court of Kanawha county, within thirty days after
35 he shall have received notice from the commissioner of
36 his determination as provided in this section.

37 The appeal shall be taken by written notice to the
38 commissioner and served as an original notice. When said
39 notice is so served it shall, with the return thereon, be
40 filed in the office of the clerk of the circuit court and
41 docketed as other cases with the taxpayer as plaintiff and
42 the commissioner as defendant. Before the appeal is heard,
43 the plaintiff shall file with such clerk a bond for the use
44 of the defendant, with sureties approved by said clerk,
45 the penalty of the bond to be not less than the total
46 amount of the tax, interest, additions to tax and penalties
47 appealed from, and conditioned that the plaintiff shall
48 perform the orders of the court.

49 The court shall hear the appeal and determine anew all
50 questions submitted to it on appeal from the determina-
51 tion of the commissioner. In such appeal a certified copy
52 of the commissioner's assessment shall be admissible and
53 shall constitute prima facie evidence of the tax due under
54 the provisions of this article. The court shall render its
55 decree thereon and a certified copy of said decree shall
56 be filed by the clerk of said court with the commissioner
57 who shall then correct the assessment in accordance with
58 said decree. An appeal may be taken by the taxpayer or
59 the commissioner to the supreme court of appeals of this
60 state.

§11-14A-19. Sale or discontinuance of business.

1 Whenever any person liable for the tax imposed by this
2 article, by reason of sale or discontinuance, ceases busi-
3 ness at any location, the taxes, interest, additions to tax
4 and penalties imposed by this article shall become due
5 and payable immediately and such person shall make a

6 final return within fifteen days after the date of sale
7 or discontinuance. The taxes, interest, additions to tax
8 and penalties shall be a lien upon the property of such
9 person. In the event of sale, the person purchasing said
10 business shall withhold sufficient of the purchase money
11 to cover the amount of such taxes, interest, additions to
12 tax and penalties due and unpaid until such time as the
13 former owner shall produce a receipt from the commis-
14 sioner showing that the taxes, interest, additions to tax
15 and penalties have been paid, or a certificate indicating
16 no taxes are due. If the purchaser of the business fails to
17 withhold purchase money, as above provided, he shall be
18 personally liable for the payment of the taxes, interest,
19 additions to tax and penalties accrued and unpaid and the
20 same shall be recoverable by the commissioner by action
21 or suit as provided by this article.

§11-14A-20. Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.

1 The secretary of state shall withhold the issuance of
2 any certificate of dissolution or withdrawal in the case
3 of any corporation organized under the laws of this state,
4 or organized under the laws of another state and admitted
5 to do business in this state, until the receipt of a notice
6 from the commissioner to the effect that the tax levied
7 under this article against any such corporation has been
8 paid or provided for, if any such corporation is a taxpayer
9 under this article, or until he shall be notified by the
10 commissioner that the applicant is not subject to pay a
11 tax hereunder.

§11-14A-21. Collection by distraint; report of collection.

1 The commissioner may distrain upon any goods, chattels
2 or intangibles represented by negotiable evidences of
3 indebtedness, of any taxpayer delinquent under this arti-
4 cle for the amount of all taxes, interest, additions to tax
5 and penalties accrued and unpaid hereunder. The com-
6 missioner may require the assistance of the sheriff of any
7 county of the state in levying such distress in the county
8 of which such sheriff is an officer. A sheriff so collecting
9 taxes due hereunder shall be entitled to compensation in

10 the amount of all additions to tax collected over and
11 above the principal amount of the tax due, but in no
12 case shall such compensation exceed twenty-five dollars.
13 All taxes, interest, additions to tax and penalties so
14 collected shall be reported within ten days after collection
15 to the commissioner, who shall prescribe by general regu-
16 lation the manner of remittance of such fund and of allow-
17 ing the collecting officer the compensation due him under
18 this section.

19 The sheriff shall within five days after receipt of the
20 warrant file with the clerk of the county court a copy
21 thereof and thereupon the clerk shall enter in the judg-
22 ment docket the name of the taxpayer mentioned in the
23 warrant and the amount of the tax, interest, additions to
24 tax and penalties for which the warrant is issued and
25 the date when such copy is filed and thereupon the amount
26 so docketed shall become a lien upon the title to and
27 interest in real property or chattels real of the person
28 against whom it is issued, in the same manner as a judg-
29 ment duly docketed in the office of such clerk. The said
30 sheriff shall thereupon proceed upon the same in all
31 respects, with like effect, and in the same manner pre-
32 scribed by law in respect to executions issued against
33 property upon judgment of a court of record. If a warrant
34 be returned not satisfied in full, the commissioner shall
35 have the same remedies to enforce the claim for the taxes
36 against the taxpayer as if the state had recovered judg-
37 ment against the taxpayer for the amount of the tax.

§11-14A-22. Collection by action or suit; injunction.

1 The commissioner may collect any tax, interest, addi-
2 tions to tax and penalties due and unpaid under the pro-
3 visions of this article by appropriate legal proceedings in
4 the county in which (a) the activity taxed was engaged
5 or (b) the taxpayer resides; or by a suit to enforce the
6 lien therefor in any county in which property of the tax-
7 payer may be found; or if the tax due and unpaid under
8 this article is three hundred dollars or less, by suit in the
9 court of any justice having jurisdiction of the taxpayer
10 or his property. If the failure of any taxpayer to comply
11 with the provisions of this article shall have continued

12 sixty days, the commissioner may proceed to obtain an
 13 injunction restraining the taxpayer from doing business
 14 in this state until he fully complies with the provisions of
 15 this article. In any proceeding under this section upon
 16 judgment or decree for the plaintiff he shall be awarded
 17 his costs.

18 In the event that motor carriers of a person subject to
 19 the tax imposed by this article shall be operated in con-
 20 nection with a receivership or insolvency proceeding, the
 21 court under whose direction such motor carriers are
 22 operated or were caused to be operated shall, by entry of
 23 a proper order in the cause, make provisions for the
 24 regular payment of such taxes as the same become due.

§11-14A-23. Forms; rules and regulations.

1 The commissioner is hereby invested with full power
 2 and authority and it is hereby made his duty to prescribe
 3 the necessary forms and to promulgate rules and regula-
 4 tions necessary to ascertain, assess and collect the taxes
 5 imposed by this article and to enforce the provisions
 6 thereof.

**§11-14A-24. Secrecy of returns and reciprocal exchange of in-
 formation.**

1 (1) Except when required in an official investigation,
 2 administrative tax hearing or proceedings in court in-
 3 volving taxes payable under this article, and except as
 4 provided in subsection two of this section, it shall be
 5 unlawful for any officer or employee of the state to divulge
 6 or make known in any manner the amount of income or
 7 any particulars set forth or disclose in any report, state-
 8 ment, or return required to be filed with the commissioner
 9 by this article or any regulation of the commissioner is-
 10 sued hereunder.

11 (2) The commissioner or his duly authorized agent
 12 may upon request permit the proper officer or representa-
 13 tive of the United States or any state, territory or politi-
 14 cal subdivision of the United States, to inspect reports,
 15 statements, or returns filed with the commissioner or
 16 may furnish to such officer or representative a copy of
 17 any such document, provided such other jurisdiction

18 grants substantially similar privileges to the commissioner
19 of this state. Subsection one of this section shall not be
20 construed to prohibit the publication of statistics so classi-
21 fied as to prevent the identification of particular reports,
22 statements, and returns and the items therein.

23 (3) Any taxpayer under this article may, in writing,
24 waive the secret rules provided in subsection one of this
25 section for such purpose and such period as he shall
26 therein state, and the commissioner, if he so determines
27 may thereupon release to designated recipient(s) said
28 taxpayer's tax return or other particulars filed under the
29 provisions of this article.

§11-14A-25. Tax a debt; lien of unpaid tax; recordation of lien.

1 A tax due and unpaid under this article shall be a debt
2 due the state. It shall be a personal obligation of the tax-
3 payer and shall be a lien upon the property of the tax-
4 payer: *Provided*, That such lien shall be subject to the
5 restrictions and conditions embodied in article ten-c,
6 chapter thirty-eight of the code of West Virginia, one
7 thousand nine hundred thirty-one, and any amendment
8 made or which may hereafter be made thereto.

§11-14A-26. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

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

Russell G. Beale
Chairman Senate Committee

Phyllis J. Ruedge
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1972.

Howard Hanson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

E. Harbort
President of the Senate

Louis N. M. Mansur
Speaker House of Delegates

The within approved this the 27th
March
day of _____, 1972.

Richard S. Roane, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/72

Time 12:30 p.m.