

June 30, 1964

Charlton
11/30/73

Honorable Joe F. Burdett
Secretary of State
State of West Virginia
Capitol Building
Charleston, West Virginia

Dear Mr. Burdett:

Enclosed are two (2) copies of regulations issued by the State Tax Department regarding the Privilege Tax on Certain Carrier Corporations, commonly referred to as Transportation Privilege Tax. These regulations are designated Series II of Chapter 11-12A of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Department on June 30, 1964.

Very truly yours,

G. Thomas Battle

G. Thomas Battle
State Tax Commissioner

GFB/LST/jb

Encls. (2)

cc: Mr. Louis E. Tabit, Director
Business and Occupation Tax Division

Filed in Office of the Secretary of State
of West Virginia

June 30, 1964
JOE F. BURDETT
SECRETARY OF STATE

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX COMMISSIONER

Chapter 11-12A
(1964)

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(1964)

Subject: PRIVILEGE TAX ON CERTAIN CARRIER CORPORATIONS, COMMONLY AND HEREAFTER REFERRED TO AS THE TRANSPORTATION PRIVILEGE TAX.

This is a tax for the privilege of engaging in business in West Virginia levied on railroad corporations, steamboats, steamships or other floating property, motor vehicle carriers, railroad car corporations, telephone and telegraph corporations and airline corporations.

With the exception of railroad corporations, the tax is measured by the application of rates against gross income from all business beginning and ending within the State of West Virginia, and in addition by the application of rates to a percentage of total net income, such percentage being determined as provided by Section 5 of the law. The tax on railroad corporations is measured by the application of rates to the value of the total property, tangible and intangible, in this State as determined by the Board of Public Works for the purposes of the general property tax, and in addition by the application of rates to a percentage of total net income, such percentage being determined as provided by Section 5 of the law.

Activities subject to the Transportation Privilege Tax are not subject to Business and Occupation Tax.

Section 1. GENERAL.

TPT 1.01 Scope.--These regulations establish general operating rules and procedures in the office of the Transportation Privilege Tax Division.

TPT 1.02 Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 12A.

TPT 1.03 Effective Date.--These regulations are promulgated on June 30, 1964, and become effective on sixty days thereafter.

TPT 1.04 Filing Date.--These regulations were filed in the Office of the Secretary of State on June 30, 1964.

TPT 1.05 Certification.--These regulations are certified authentic by the State Tax Commissioner by certification number II.

TPT 1.06 Motor Vehicle Carrier. The Transportation Privilege Tax Law defines a "motor vehicle carrier" as "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."

TPT 1.07 Common and Contract Carriers. The tax is applicable to both "common" and "contract" carriers.

TPT 1.08 Measure of the Tax. Every motor vehicle carrier operating on the public highways of West Virginia shall report the



gross income from all business beginning and ending entirely within the State. Motor vehicle carriers not operating exclusively within this State shall also report the net income earned within the State. The net income attributable to this State is determined in the following manner: (a) By reducing the total net income by an amount bearing the proportion to such total net income that the gross income from all business beginning and ending entirely within the State bears to its total gross income from the entire business; and further, (b) By ascertaining a sum bearing the proportion to the total net income from passenger and/or freight traffic so reduced that the business done in West Virginia, measured in motor vehicle-miles operated in this State as to passenger and/or freight traffic in motor vehicle-miles bears to all business done, measured in like fashion.

Only the gross income of a motor vehicle carrier from the transportation of passenger and/or freight in intrastate commerce, as well as income received from intrastate business incidental thereto, shall be included in the measure of the tax to be reported under the Transportation Privilege Tax Return, Column 1, Item A, Page 1. The net income, which after proration under Schedule A, Page 2 of the tax return and carried forward to Column 1, Item A, Page 1, shall include only the net income earned from the transportation of passenger and/or freight, together with income earned from activities incidental thereto.



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Gross income means the gross amount received as payment for the transportation of passenger and/or freight traffic without any deductions for the cost of material used, labor costs, taxes, royalties, interest or discount paid, or any other expense whatsoever.

In the event a motor vehicle carrier is engaged in an independent business, a question to be determined from the facts in each case, the gross income received from such business shall be reported under the appropriate classification of the Business and Occupation Tax Law.

TPT 1.09 Date of Payment of the Tax. The assessment of the tax and the returns required therefor shall be for the year ending on the thirty-first day of December. If the taxpayer keeps the books on a fiscal year basis, he may, with assent of the Tax Commissioner, file his annual returns and pay tax on a fiscal year basis. Where the taxpayer keeps the books on a calendar year basis, the total amount of the tax shall be paid on or before the first day of April following the close of the calendar year. Where the taxpayer keeps the records on a fiscal year basis, the total amount of tax shall be paid on or before the first day of the fourth month following the close of the fiscal year.

TPT 1.10 Payment of the Tax in Quarterly Installments. The taxpayer may, by writing filed with the Tax Commissioner, elect to pay the tax in four quarterly installments, due respectively on the



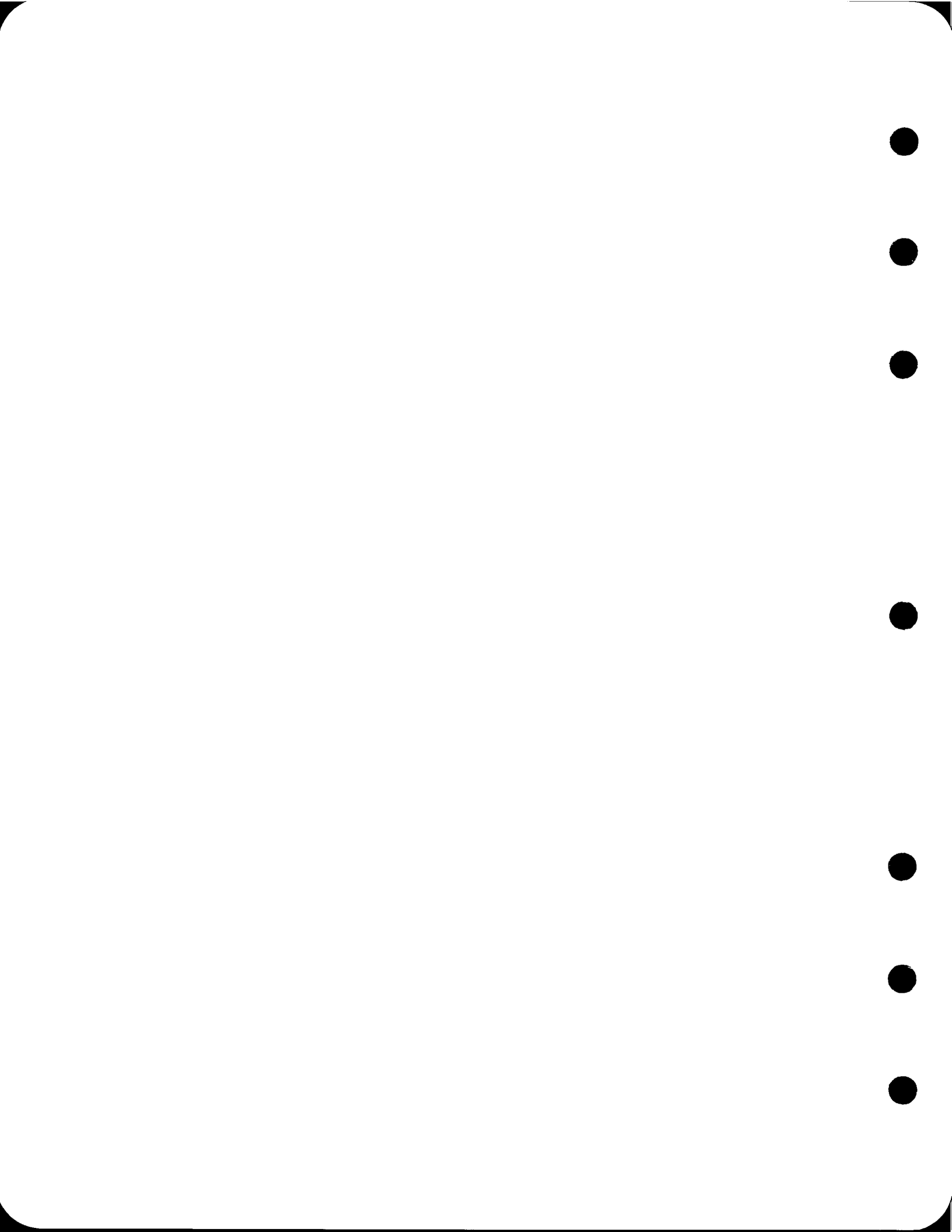
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first day of the fourth month; first day of the seventh month; first day of the tenth month, and first day of the thirteenth month following the close of the tax year. To illustrate, due dates for the year ended December 31, 1962, are: 1st installment due April 1, 1963; 2nd installment due July 1, 1963; 3rd installment due October 1, 1963 and 4th installment due January 1, 1964.

TPT 1.11 Quarterly Installment Payment Option Forfeited by Delinquency. If the annual return is not filed and remittance made of the first installment payment on or before the date due, the taxpayer will be considered to have forfeited his option to make quarterly installment payments, and the entire amount of tax due for the year is delinquent as of the date on which the annual return is due.

When the annual return is timely filed and remittance made of the first quarterly installment payment on or before the date due, the taxpayer will be considered to have exercised his option and the remaining installment payments are due as set forth in TPT 1.10 above.

TPT 1.12 Application of Penalty. A penalty of one percent (1%) per month shall be added to the amount of tax from the date on which the tax is due, for each month, or fraction thereof, of delinquency.



TPT 1.13 Extensions of Time for Filing Annual Returns. Upon written application by the taxpayer and for good cause shown thereon, the Tax Commissioner may extend the time for filing the annual return and may grant such reasonable time within which to file the same, as he may deem advisable.

Such extensions will not be granted as a means of delaying payment and should be requested only when unusual circumstances make it impossible to file the return before the due date.

TPT 1.14 Books and Records. The Tax Commissioner is not concerned with the system of bookkeeping or accounting of any taxpayer. However, records must be so kept that every business transaction may be readily verified when examination of such records is made. Records of West Virginia business should be kept within the State when practicable. Where records must be kept out of state, the taxpayer shall, upon being notified by the Tax Commissioner that an examination is to be made, make accessible such records to the Tax Commissioner or his representatives. The taxpayer may either transport promptly the required records to West Virginia and notify the Tax Commissioner that such are available for audit; or if the taxpayer's out-of-state records are not transported to West Virginia, the taxpayer may notify the Tax Commissioner of the time and place that such records will be available for examination out of state. The Tax Commissioner, after examining such



records of the taxpayer or after making other investigation, may assess additional tax that such examination or investigation shows to be due. The Commissioner will notify the taxpayer in writing of such assessment.

TPT 1.15 Refund. Under the provisions of Chapter 11, Article 1, Section 2a, West Virginia Code of 1931, as amended, any person claiming to be aggrieved through being required unlawfully to pay the tax may, within three years from the date of such payment, and not after, file with the State Tax Commissioner a petition in writing, duly verified, setting forth therein the facts in support of the alleged claim for refund. In the filing of a petition for refund, the taxpayer shall append thereto amended tax returns for the period involved and any other evidence in support thereof. Upon receipt of the petition, amended tax returns and any other supporting evidence, the Commissioner shall review the same and make a determination. If, in the Commissioner's opinion, the taxpayer is entitled to a refund, the taxpayer may, at his option, request the issuance of a credit memorandum to be applied to his future tax liability or may request the issuance of a state warrant.

TPT 1.16 Receipts From Charges to State and Federal Government. Receipts from the State or Federal Governments or any of their instrumentalities or subdivisions are not exempt from Transportation Privilege Tax.



TPT 1.17 Deductions. (a) Federal Excise tax on transportation of persons and property is considered a consumers' tax and is not to be included in gross income. (b) The amount of cash discounts allowed and taken by the customer is not to be included in gross income. (c) Net bad debts (charge-offs minus recoveries) are not to be included in gross income where a taxpayer reports on an accrual basis. Net bad debts may be deducted from gross income for the year in which the debts are determined to be worthless and are charged off. Taxpayers reporting on a cash basis may not deduct net bad debts.

TPT 1.18 Exemptions. The Transportation Privilege Tax shall not apply to: (a) motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers; (b) motor vehicles owned and operated by the United States of America, the State of West Virginia, or any county, municipality, or county board of education, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the Public Service Commission may specifically authorize; (c) motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry, and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries,



railway shipping points, and cold storage plants, and in the transportation of agricultural or horticultural supplies to such farms or orchards to be used thereon; (d) motor vehicles used exclusively in the transportation of human or animal excreta; (e) motor vehicles used exclusively in ambulance service; (f) motor vehicles used exclusively for volunteer fire department service; (g) motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers; ⁽¹⁾ and (h) motor vehicles used exclusively in the transportation of gasoline and/or oil by bulk plant agents operating on a commission basis. ⁽²⁾

Even though the above are exempt from the Transportation Privilege Tax, the gross income received from the above operations is subject to tax under the Business and Occupation Tax Law, Section 2h, service classification, unless the vehicles are owned and operated by the Federal and State Governments or subdivisions thereof, or unless a master-servant relationship exists between the employer and the operator in which case neither the Transportation Privilege Tax nor the Business and Occupation Tax is applicable to the income received therefrom.

(1) (a) through (g), effective March 13, 1959

(2) (h), effective June 9, 1939

TPT 1.19 Allocation of Income From Hauling on Routes Partially on Public Highways and Partially on Private Property not Permitted.

Income received from operating motor vehicles for hire in which the route is partially on public highways and partially on private property must be reported in its entirety under the Transportation Privilege Tax Law. However, the holder of a permit or certificate of convenience or convenience and necessity is not required to report under the Transportation Privilege Tax Law income received from operating a motor vehicle carrier on a route which is entirely on private property. Such income is subject to the tax levied under the Business and Occupation Tax Law, Section 2h, service classification.

TPT 1.20 Taxable Income of Motor Vehicle Carriers. Only the gross income received by a carrier for the transportation of passengers and property in intrastate commerce, as well as income received from intrastate business incidental to, and in furtherance of, its transportation business, should be included in the measure of the tax under Section 4 of the subject law. In the event a carrier is engaged in an independent business, which is a question to be determined from the facts of each case, that income should be taxed under the appropriate section of the Business and Occupation Tax Law. The net income which is to be prorated under Section 5 of the subject law should include only the net income earned from the



transportation of passengers and freight, together with income earned from activities incidental to, and in furtherance of, the transportation business.

TPT 1.21 Persons Holding a Permit or Certificate of Convenience or Convenience and Necessity Required to File Returns Until the Permit or Certificate is Transferred or Discontinued. Regardless of whether or not business is transacted, a return must be filed and in the event no income is received in any particular year the return for that year should state "no income received". The final return should give the date of transfer or date on which the business was discontinued.

TPT 1.22 Corporations Required to File Returns Until Dissolved or Withdrawn from the State. Domestic corporations and foreign corporations licensed to do business in West Virginia are required to file a return regardless of whether or not a liability exists. No corporation may receive a dissolution of charter or make an orderly withdrawal from this State without first filing a final return and paying or providing for payment of the tax due.

TPT 1.23 Gross Income from Business Beginning and Ending Entirely in West Virginia is the Sole Measure of the Tax Levied on Persons Operating a Steamboat, Steamship or other Floating Property for the Transportation of Passengers or Freight. The tax is only applicable with respect to gross income from business beginning



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and ending entirely within West Virginia.

TPT 1.24 Ferry Boats. The tax is applicable to the gross income received from the operation of a ferry on inland waters of the State. The tax is not applicable to gross income received where the ferry route is from the West Virginia shore to the shore of a state bordering West Virginia.



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