

Title 110
Legislative Rules

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

~~STATE TAX DEPARTMENT~~

~~LEGISLATIVE~~

~~Chapter 11-10~~
~~Series XII-A~~ 12
~~(1974)~~

Subject: Annual Tax on Incomes of Certain Carriers

Section 1. General

1.01. Type of Regulations

These regulations are "legislative rules" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.02. Scope

These regulations are an explanation and clarification of the West Virginia annual tax on incomes of certain carriers, W. Va. Code § 11-12A-1 et. seq.

1.03. Authority W. Va. Code § 11-10-5a

~~These regulations are issued under the authority of W. Va. Code § 11-10-5a.~~

1.04. Filing Date

These regulations were promulgated on August 1, 1973 and filed with the Office of the Secretary of State on August 1, 1973. In compliance with W. Va. Code § 29A-2-5 (1982), these regulations were refiled with the Secretary of State on December 29, 1982.

1.05. Effective Date

These regulations became effective on January 1, 1974.

1.06. Citation

These regulations may be cited as W. Va. Leg. Reg. (ATC)
11-10, Series XII-A § _____, page _____ (1974).

Section 2. Definitions.

2.01. For purposes of these rules and regulations, the following terms are hereby defined.

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LMI(a) (a) The terms "person", "company", or "carrier", herein used interchangeably, shall include any individual, firm, partnership, 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.

(b) The term "tax" shall mean the annual tax on incomes of certain carriers. Said tax is imposed by Article 12A, Chapter 11 of the Code of West Virginia and is referred to as either tax or carrier tax within these rules.

(c) The term "taxpayer", as used in these rules and regulations, shall mean any person liable for annual tax on incomes of certain carriers, and said term is herein used interchangeably with person, company and carrier.

(d) The term "urban or suburban bus line" in this State shall mean bus lines the majority of whose passengers use the buses for traveling a distance of less than forty (40) miles measured one way on the same day between their places of abode and their places of work, shopping areas or school. In other words, to qualify as an urban or suburban bus line, the bus company's passengers must use the bus as a commuter type service between home and work, school or shopping. Travel of more than forty (40) miles one way or travel other than commuter type by a

majority of the passenger will cause the carrier to be taxable as a motor vehicle carrier for the purposes of the annual tax on incomes of certain carriers rather than as an urban or suburban bus line.

(e) The term "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.

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(1) The required permit or certificate is subject to the jurisdiction of the Public Service Commission of West Virginia or a similar agency of any state or of the federal government. Any motor vehicle carrier operating in violation of the rules and regulations of the Public Service Commission without the required permit or certificate also is liable for the annual tax on incomes of certain carriers. Such person does not avoid taxation by operating in violation of law.

(2) It is to be noted that the term "motor vehicle carrier" includes taxi companies, cab companies, urban or suburban bus lines and any companies which haul waste, refuse or garbage. These companies or persons are motor vehicle carriers for purposes of the annual tax on incomes of certain

carriers with the exception of rates of tax. These particular carriers are not subject to rates of tax as motor vehicle carriers. Specific rates of tax are provided for these particular carriers.

(f) The term "ton-mile" shall be a unit of transportation meaning transportation of one net ton in weight a distance of one mile.

(g) The term "passenger-mile" means the transportation of one passenger a distance of one mile.

(h) The term "car-mile" means the operation of a railroad car over a distance of one mile.

(i) 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.

(j) 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.

(k) The term "wire-mile" means the equivalent of a single metallic telephone or telegraph conductor one mile in length.

(l) The phrase "motor vehicle mile" means the operation of a motor vehicle carrier over a distance of one mile.

(m) The term "pass-through business" shall mean, when used herein, that business, mileage or activity of a carrier which originates outside this State but passes through this State to other states.

(n) The term "one-point business" shall mean that business, mileage or activity of a carrier which originates within this State and is destined for another state, and that business, mileage or activity of a carrier that originates outside this State and is destined to a point within this State.

(o) The term "two-point business" shall mean that business, mileage or activity of a carrier which originates within this State and is destined to a point within this State. Two-point business when used herein, shall mean business beginning and ending within West Virginia.

Section 3. Imposition of Annual Tax on Gross Income of Certain Carriers

3.01. Persons Subject to Tax.

(a) Persons subject to the annual carrier tax on gross income from doing business in this State are:

- (1) Motor vehicle carriers operating on the public highways of this State;
- (2) railroad car carriers;
- (3) railroad carriers;
- (4) express companies;
- (5) pipeline companies;
- (6) telephone companies;
- (7) telegraph companies;
- (8) airline companies, and
- (9) any person operating a steamboat or other watercraft.

(b) All such persons or taxpayers, as enumerated above, shall pay to the State an annual tax on the gross income derived from doing business in this State. Gross income from doing business in this State shall constitute that gross income derived from all business beginning and ending within West Virginia.

3.02. Tax Rates. -- The rates of tax to be applied against gross income from business done in West Virginia are set forth below for each type of carrier.

<u>Carrier</u>	<u>Rate of Tax</u>
Motor vehicle carriers	Three and three-tenths percent
Railroad car carriers	Three and three-tenths percent
Railroad carriers	Three and three-tenths percent
Express companies	Three and three-tenths percent
Pipeline companies	Three and three-tenths percent
Airline companies	Three and three-tenths percent
Steamboat or other watercraft	Three and three-tenths percent
Telegraph companies	Three and three-tenths percent
Telephone companies	Three and seventy-four one hundredths percent
Urban or suburban bus line	One and sixty-five one hundredths percent
Taxi or cab companies	Two and five-tenths percent
Haulers of waste, refuse or garbage	Two and five-tenths percent

3.03. Exclusions from Gross Income.

(a) Nontransportation income.

- (1) Since the gross income from all business done within the State is that business which begins and ends entirely within West Virginia, the measure of the tax shall include only gross income derived from transportation business. In arriving at the amount of tax on gross income, the taxpayer should exclude, from the measure of the tax, that income derived from activities within this State which is nonoperating income. Items of income which are

not attributable to transportation business should not be included in the computation of tax.

- (2) Certain items of nonoperating income or income not in furtherance of the carrier's transportation business, even though not subject to carrier tax, are subject to West Virginia's business and occupation tax. To illustrate: A trucking company receives income from the rental of an office building within this State. Such income is not subject to carrier tax but must be reported under the rental classification on the business and occupation tax return. See West Virginia Code ch. 11, art. 13.
- (3) Items of nonoperating income which are not subject to carrier tax on gross income include:
 - (A) income from rental of buildings, real estate, etc.;
 - (B) income from the production of natural resources;
 - (C) royalties;
 - (D) interest, dividends and capital gains;
 - (E) income from dining rooms, restaurants and hotels.
- (4) Any inquiries as to whether a particular income item is subject to carrier tax or business and

occupation tax should be forwarded to the Tax Department.

(b) Income from interstate activities.

- (1) The gross income of carriers subject to tax is only that gross income derived from intrastate activities. The tax is applied against that gross income derived from transportation activities within this State, such activities being business beginning and ending within West Virginia. Therefore, income derived from interstate activities is not subject to the tax on gross income. Business or mileage which originates without West Virginia and passes through this State to other jurisdictions, or that which originates within this State and is carried to other states and that which originates outside this State and has a destination point herein is not subject to the tax on gross income. "Pass-through" business and "one-point" business do not begin and end within West Virginia; therefore, gross income derived from said activities is interstate income and is not subject to the annual tax on gross income.
- (2) All gross income, from transportation activities, derived from "two-point" (beginning and ending within West Virginia) business is subject to the annual tax on carriers.

Section 4. Imposition of Annual Tax on Net Income.

4.01. Persons Subject to Tax.

(a) In addition to the annual tax imposed on gross income (see §3 of these rules and regulations), every carrier doing business in this State shall pay an annual tax on its net income earned within this State.

(b) The annual tax on net income shall apply to carriers who have income from transportation activities beginning and ending (two-point business) within this State, and who also have one-point or pass-through business in this State. The annual tax on net income also applies to persons who have no two-point business in West Virginia but have one-point business or pass-through business in West Virginia and who also have minimal connection within this State. For example: A trucking company with its home offices in Covington, Virginia, transports goods from Virginia to Elkins, West Virginia. On its return trips from Elkins to Virginia, said carrier transports goods that were taken aboard in Elkins. In Elkins, the carrier owns a terminal, maintains a small office and employs several persons. The activities mentioned in the preceding sentence are sufficient to subject the trucking company to the tax on net income, even though the trucker has no transportation activities which begin and end in the State and is not subject to the tax on gross income. Therefore, the trucker must compute his motor vehicle miles within West Virginia (from the border to Elkins and return) and compute

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his tax liability on net income by the formula method set forth in section 3.03(a) of this rule.

(c) Types of carriers subject to the tax on net income are the same as those carriers listed in section 3.01 of these rules and regulations and also in section 4.02.

4.02. Tax Rates. -- The rates of tax to be applied against net income earned within West Virginia are set forth below for each type of carrier.

<u>Carrier</u>	<u>Rate of Tax</u>
Motor vehicle carriers	Six and six-tenths percent
Railroad car carriers	Six and six-tenths percent
Railroad carriers	Six and six-tenths percent
Express companies	Six and six-tenths percent
Pipeline companies	Six and six-tenths percent
Airline companies	Six and six-tenths percent
Steamboat or other watercraft	Six and six-tenths percent
Telegraph companies	Six and six-tenths percent
Telephone companies	Three and seventy-four one hundredths percent
Urban or suburban bus line	Five percent
Taxi or cab companies	Five percent
Haulers of waste, refuse or garbage	Five percent

4.03. Determination of Net Income. The net income earned within this State against which the tax rate is to be applied shall be determined as follows:

(a) Motor vehicles.

- (1) Net income of motor vehicles shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in motor vehicle miles bears to all business done everywhere in motor vehicle miles.
- (3) To illustrate: A trucking company has total net income of \$1,000. Said company has total gross income for the taxable year of \$25,000 and has West Virginia gross income (beginning and ending) of \$10,000. Therefore, West Virginia gross income is forty percent (40%) of total gross income. This forty percent (West Virginia gross as compared to total gross) is applied against the carrier's total net income of \$1,000 and reduces said income to \$600, which is to be further apportioned and reduced by the mileage factor.

(4) The trucker, in this illustration, had total mileage, in all states, of 5,000 miles. His mileage in West Virginia, both intrastate and interstate, was 1,000 miles. Therefore, his West Virginia mileage factor is twenty percent (20%) of his total mileage (1,000 miles ÷ 5,000 miles = 20%). This West Virginia mileage factor of 20% is applied against the reduced net income of \$600 and results in West Virginia taxable income of \$120.

(b) Railroad carriers.

- (1) Net income of railroad carriers shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in ton-miles bears to all business done everywhere in ton-miles.
- (3) In computing the annual tax on the net income of a railroad carrier, passenger-miles within or without West Virginia are not to be considered.

(c) Railroad car carriers and express companies.

- (1) Net income of railroad car carriers and express companies shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in car-miles bears to all business done everywhere in car-miles.

(d) Pipeline companies.

- (1) Net income of pipeline companies shall be determined by reducing the total net income of the company by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the company that its business done in this State 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) Airline companies and steamboat or other watercraft.

- (1) Net income of airlines, steamboats or other watercraft shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income 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.
- (3) Airline companies, in computing the mileage factor, are to use only passenger-miles.

(f) Telephone and telegraph companies.

- (1) Net income of telephone and telegraph companies shall be determined by reducing the total net income of the company by a amount bearing the proportion to such total net income that its West

Virginia gross income bears to its total gross income from all business done everywhere.

- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the company that its business done in this State in wire-miles bears to all business done everywhere in wire-miles.

4.04. Exclusions from Income.

(a) For the purpose of computing the amount of annual tax on net income, the taxpayer must exclude all nontransportation income. Therefore, the amounts employed in the formula which are designated total gross income and West Virginia gross income must contain only items of income from transportation activities. See section 3.03(a) of these rules and regulations as to nontransportation income.

(b) Total net income as used in the preceding paragraph shall mean net transportation income of the business. Net transportation income may be determined by employing those rules that are used to compute net income tax due the federal government. However, in determining total net income, the taxpayer may exclude all items of nontransportation income (see section 3.03(a) of these rules) and must exclude any expenses incurred in relation to the nontransportation income. In other words, net transportation income is that income computed by federal guidelines without items of nontransportation income or expenses reflected therein.

4.05. Persons Not Subject to Tax on Net Income. -- Any person who engages in business within West Virginia only (has only two-point business in West Virginia) is not subject to the annual tax on net income. Such person is, of course, subject to the annual tax on gross income and must report the entire amount of his gross income from transportation activities thereunder.

Section 5. Problems, Examples and Solutions Relating to
Carriers.

5.01. Set forth below are several examples of problems which arise in regard to the carrier tax. These are presented for further clarification of the effect and substance of the annual tax on incomes of certain carriers and of these rules and regulations. The principles to which these examples relate are contained within subsection 2 and 3 of these rules and regulations.

(a) Example 1. Mountain Transit Company operates a bus line wholly within this State. The company has two operations: (1) a run from Parkersburg to Vienna and return, and (2) a run from Parkersburg to Clarksburg and return.

For the taxable year 1972, the bus company had the following items and amounts of income:

(1) Parkersburg-Vienna run	\$102,000
(2) Parkersburg-Clarksburg run	258,000
(3) Restaurants in terminals	49,000
(4) Rent from office building	11,000
(5) Dividends	1,000
(6) Rental of buses to other carriers	<u>9,000</u>
TOTAL INCOME	<u>\$430,000</u>

For the purpose of the annual tax on gross income, the bus company will report on its 1972 carrier tax return those items enumerated above as (1) and (2). Item (1) qualifies as an "urban

or suburban bus line" (see section 1 of these rules) inasmuch as the Parkersburg - Vienna operation is less than forty miles measured one way and the majority of such passengers are using this bus service as a commuter type service. Therefore, the gross income received from this operation qualifies for the reduced tax rate and is to be reported under the urban or suburban classification.

The income received from item (2) above does not qualify as urban or suburban and must be taxed as income to any other motor vehicle would be taxed. Inasmuch as such activity began and ended within this State, the entire amount must be reported under the gross income column of the carrier tax return.

Item (3) above is income from restaurant operations and is classified as nontransportation income. Therefore, said income is not subject to carrier tax but must be reported for business and occupation tax purposes.

Items (4) and (6) above qualify for the same treatment as item (3).

Inasmuch as dividends are not considered transportation income, item (5) is not subject to carrier tax; nor are dividends, except as to banking and financial businesses, subject to business and occupation tax.

A prepared 1972 carrier income tax return for Mountain Transit Company is presented at the next page. It is to be noted that Mountain Transit is not, under this example, required to

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compute the annual tax on net income; for the carrier has only beginning and ending business within this State.

leave one whole page for each of the forms.

WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS 1972

ALL QUESTIONS MUST BE ANSWERED
 1. FOR YEAR ENDING _____ ON FROM _____ TO _____ STATE EXACT DATE BUSINESS BEGAN March 14 1937
 2. IF FISCAL YEAR IS USED, WHEN DOES YEAR END? _____ IN DURING THE PERIOD COVERED BY THIS RETURN BUSINESS BEGAN: _____
 3. WHERE ARE YOUR RECORDS KEPT? POST OFFICE: Parkersburg, W. Va. HAS BURT BUSINESS? No EXACT DATE: _____
 4. PRINCIPAL PLACE OF BUSINESS IN WEST VA. Same WILL BE OTHER STATE OR FOREIGN BUSINESS? No
 5. IF BUSINESS SOLD, GIVE NAME AND ADDRESS OF NEW OWNER: N/A EXACT DATE: _____

55-1357924
 Mountain Transit Co.
 83 Main St.
 Parkersburg, W. Va. 26100

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

Check One	
INDIVIDUAL	<input type="checkbox"/>
CORPORATION	<input checked="" type="checkbox"/>
PARTNERSHIP	<input type="checkbox"/>
ASSOCIATION	<input type="checkbox"/>
TRUST	<input type="checkbox"/>
JOINT ADVENTURE	<input type="checkbox"/>

BUSINESS CLASSIFICATIONS		GROSS INCOME INTRA-STATE	PRO-RATED NET INCOME * COMPLETE PAGE 2	RATE PER \$100	TAXES DUE	CODE
BUSES		258,000 -	- 0 -	2.00 GROSS 6.80 NET	8,514 -	22
BUSES (URBAN OR SUBURBAN RD) (EXCLUDING 40 MILLS ONE WAY)		102,000 -	- 0 -	1.85 GROSS 5.80 NET	1,683 -	23
TAXI CABS OR LIMOUSINE DRIVERS				2.50 GROSS 5.80 NET		24
TRUCKERS AND TRAILER COMPANIES				2.50 GROSS 6.80 NET		25
STEAM POWERED VEHICLES, CARRIERS, RAILROAD CARS, TROLLEYS, CORPORATIONS OR COMPANIES				2.50 GROSS 6.80 NET		26
RAILROAD CORPORATIONS				3.74 GROSS 3.74 NET		27
RAILROAD CORPORATIONS				2.00 GROSS 6.80 NET		28
RAILROAD CORPORATIONS				2.00 GROSS 6.80 NET		29
RAILROAD CORPORATIONS OPERATING A STEAM BOAT, STEAMSHIP OR AIRLINE				2.00 GROSS 5.80 NET		30
RAILROAD CORPORATIONS				2.00 GROSS 6.80 NET		31
1. TOTAL AMOUNT OF TAX DUE					10,197 -	
2. ADD PENALTY OF 1% FOR FIRST MONTH OR FRACTION THE REST; AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THE REST OF DELINQUENCY						
3. BALANCE DUE PAYABLE 17 MARCH 15; 17 JUNE 15 -						
4. AMOUNT OF REMITTANCE ENCLOSED						

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE.

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-feet in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME.

A. Total Net Income (used for federal tax purposes) of taxpayer	_____
B. Total Gross Income of taxpayer	_____
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	_____
D. Remaining Gross Income	_____
E. Net Income of taxpayer to be further prorated for taxation (To ascertain (E) multiply (A) by (D) and divide resulting amount by (B))	_____
F. Carrier-miles in West Virginia	_____
G. Total of miles in all states	_____
H. Net income earned within West Virginia (To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G))	_____

DEFINITIONS.

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

(Official title, if made on behalf of a corporation; President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____ 19____

Seal of Officer Taking Affidavit _____

My commission expires on the _____ day of _____ 19____

(b) Example 2. BC, a barge line company, moves coal barges on the Monongahela River from Morgantown, West Virginia, to Pittsburgh, Pennsylvania. It has no other transportation activities within this State but does own docking facilities and maintains several employees within this State. Therefore, BC is subject to the tax on net income but is not subject to the tax on gross income inasmuch as it has no transportation business which begins and ends within West Virginia.

For purposes of this illustration, it is assumed that the barge trip from Morgantown to Pittsburgh is 75 miles, 15 of which are within this State. It is also assumed that for the entire year that BC had activities from everywhere that totaled 7,500 ton-miles and West Virginia ton-miles of 1,500.

BC's total gross income for the year was \$50,000. Its total net income was \$2,000 and was computed by employing federal rules. In arriving at total net income, to be used as the starting point to determine tax on net income, BC eliminated all nontransportation income and expenses pertaining thereto. Non-transportation income was also eliminated to arrive at total gross income.

A prepared 1972 carrier income tax return for BC is presented at the next page.

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WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS 1972

ALL QUESTIONS MUST BE ANSWERED

(1) FOR YEAR ENDED _____ OR FROM _____ TO _____ (2) STATE EXACT DATE BUSINESS BEGAN September 11 1963
 (3) IF FISCAL YEAR IS USED, WHICH DOES YEAR END? _____ (4) DURING THE PERIOD COVERED BY THIS RETURN DID YOU
 (5) WHERE ARE YOUR RECORDS KEPT? (POST OFFICE) Pittsburgh, Pa. (6) QUOT BUSINESS? No EXACT DATE _____
 (7) PRINCIPAL PLACE OF BUSINESS IN WEST VA. Morgantown (8) WILL OR OTHERWISE DISPOSE OF YOUR BUSINESS? No
 (9) IF BUSINESS SELL, GIVE NAME AND ADDRESS OF NEW OWNER N/A EXACT DATE: _____

77-7531642
 BC Barge Co., Inc.
 22 5th Avenue
 Pittsburgh, Pennsylvania 77001

Check One
 INDIVIDUAL _____
 CORPORATION
 PARTNERSHIP _____
 ASSOCIATION _____
 TRUST _____
 JOINT ADVENTURE _____

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

(10) NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL)

BUSINESS CLASSIFICATIONS	GROSS INCOME INTRA-STATE	PRO-RATED NET INCOME * COMPLETE PAGES	RATE PER STEEL		TAXES DUE	CODE
			CANCELS	NET		
BUSES			3.20	CANCELS		27
			6.00	NET		
BUSES URBAN OR SUBURBAN NOT EXCEEDING 40 MILES ONE WAY			1.85	CANCELS		23
			5.80	NET		
TAXIS REFUSE OR GARBAGE HAULERS			2.50	CANCELS		24
			5.80	NET		
TRUCKERS AND TRANSFER COMPANIES			3.20	CANCELS		25
			6.00	NET		
OTHER MOTOR VEHICLES, GARRAGE, RAILROAD CAR, EXPRESS CORPORATIONS OR COMPANIES			3.20	CANCELS		26
			6.00	NET		
TELEPHONE CORPORATIONS			3.74	CANCELS		27
			3.74	NET		
TELEGRAPH CORPORATIONS			2.20	CANCELS		28
			6.00	NET		
RRM LINE CORPORATIONS			3.20	CANCELS		29
			6.00	NET		
FERRIES OR CORPORATIONS OPERATING A STEAM-BOAT, STEAMSHIP OR AIRLINE	- 0 -	400 -	6.00	NET	26 40	30
RAILROAD CORPORATIONS			3.20	CANCELS		31
			6.00	NET		
1 TOTAL AMOUNT OF TAX DUE					26 40	
2 ADD PENALTY OF 1% FOR FIRST MONTH OR FRACTION THEREOF, AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THEREOF OF DELINQUENCY						
3 BALANCE DUE (PAYABLE BY MARCH 15, 1972 JUNE 15)						
4 AMOUNT OF REMITTANCE ENCLOSED						

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE.

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME.

A. Total Net Income (used for federal tax purposes) of taxpayer	\$ 2,000.00
B. Total Gross Income of taxpayer	\$50,000.00
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	-0-
D. Remaining Gross Income	\$50,000.00
E. Net Income of taxpayer to be further prorated for taxation (To ascertain (E) multiply (A) by (D) and divide resulting amount by (B))	\$ 2,000.00
F. Carrier-miles in West Virginia	1,500
G. Total of miles in all states	7,500
H. Net Income earned within West Virginia (To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G))	400

DEFINITIONS

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

 (Official title, if made on behalf of a corporation: President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____, 19____.

Seal of Officer Taking Affidavit _____

My commission expires on the _____ day of _____, 19____.

(c) Example 3. XY Railroad Co., a railroad carrier, has the following operations in connection with West Virginia:

- (1) Daily operation of a passenger train from Cincinnati, Ohio, to Washington, D.C., and return. This run, for the year 1972, totaled 4,000 passenger-miles of which 1,800 were pass-through miles within West Virginia. Total income from this run was \$500,000.
- (2) Daily operation of a freight train between the same two localities. This run totaled 7,000 ton-miles of which 3,000 were pass-through miles within West Virginia. Total income was \$1,000,000.
- (3) Operation of a freight train from Charleston, West Virginia, to Richmond, Virginia, and return. This run totaled 5,000 ton-miles of which 3,000 were within this State. Total income was \$580,000.
- (4) Operation of a freight train from Charleston, West Virginia, to Logan, West Virginia, and return. This run totaled 8,000 ton-miles of which all were within this State. Income from this run, for the taxable year, was \$990,000.
- (5) Income from demurrage in the amount of \$9,000 was received and \$1,000 was attributable to this State.

(6) Income from switching in the amount of \$21,000 was received and \$9,000 thereof was attributable to this State in that such portion began and ended here.

(d) Solution to Example 3.

(1) Computation of annual tax on gross income. -- In order to determine the tax on gross income, the taxpayer must compute income arising from transportation activities which began and ended within the State.

(A) Item (1) above is not subject to the tax on gross income since such traffic did not begin and end within this State.

(B) Item (2) above also does not meet the essential requirements of two-point business; therefore, such item is not reported for the tax on gross income.

(C) Item (3) above is not taxable on gross income. Same reason as Items (1) and (2) applies.

(D) Item (4) above is subject to the tax on gross income inasmuch as such income arose from two-point activities.

(E) Item (5) above contains some income (\$1,000) which is taxable on the gross income column

of the carrier tax return. Demurrage is considered a transportation activity.

- (F) Item (6) above contains some income (\$9,000) which is taxable on the gross income column of the carrier tax return. Switching is a transportation activity.

Therefore, under the gross income column of the carrier tax return, XY Railroad Co. will report taxable income of \$1,000,000. Said amount is the sum of Item (4) in whole, Item (5) in part and Item (6) in part.

- (2) Computation of annual tax on net income. -- In order to determine its tax liability on net income, XY Railroad Co. must prepare the formula on the reverse side of the carrier tax return. The explanation which follows of such computation is numbered and set forth as the apportionment formula is on the return.

- (A) Total Net Income. -- It is assumed for this illustration that XY's net income, computed by the federal method, was \$200,000. Items of income, loss, gain and deduction which pertain to nontransportation activities have been excluded from net income.

- (B) Total Gross Income. -- This is the gross amount of all transportation income from wherever derived. The total of Items (a) through (f) is \$3,100,000. Any nontransportation income received by a carrier is not to be reflected within this amount.
- (C) West Virginia Gross Income. -- West Virginia gross income is that income which inures to XY as a result of two-point transportation activities within the State. In other words, this amount should equal that reported under the gross income column (\$1,000,000) on the carrier return.
- (D) Remaining Gross Income. -- This figure is arrived at by subtracting C. from B. Therefore, \$3,100,000 less \$1,000,000 equals \$2,100,000.
- (E) Net Income to be Prorated. -- This amount of net income is found by multiplying (A) by (D) and dividing the result by (B). The result in this situation is \$135,484.
- (F) Carrier-miles in West Virginia. -- At this point, XY must total all ton-miles traveled in this State. Said amount is derived from all ton-miles traveled in West Virginia, both

intrastate and interstate movements. In other words, ton-miles in West Virginia are those ton-miles moved in one-point, two-point and pass-through business.

(i) In computing mileage for this line of the formula, XY will exclude that mileage in Item (a) above. Passenger-miles are not included in the computation of this mileage factor, except for airline companies and motor vehicle carriers. A railroad carrier would, however, report gross income and pay tax thereon from a passenger operation which begins and ends in the State. But passenger-miles, for railroad carriers, are excluded from the formula.

(ii) Total ton-miles in West Virginia are 14,000, composed of 3,000 ton-miles from Item (b), 3,000 ton-miles from Item (c) and 8,000 ton-miles from Item (d).

(G) Miles in all States. -- For railroad carriers ton-miles in all states must be computed. Passenger-miles are again excluded. Therefore, in computing this line item of the formula, XY will ignore Item (A) above.

Total ton-miles in all states will be computed from Items (B), (C), and (D). These three total 20,000 ton-miles.

(H) West Virginia Net Income. -- This reduced amount of West Virginia taxable income is determined by multiplying (E) by (F) and dividing the result by (G). This computation results in a figure of \$94,839 which is XY's West Virginia taxable net income to be reported under the net income column of the carrier income tax return.

(2) A prepared 1972 carrier income tax return, for this example, follows at the next page.

OR
10/11/72

WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS 1972

ALL QUESTIONS MUST BE ANSWERED

(1) FOR YEAR ENDING _____ OR FROM _____ TO _____ (2) STATE EXACT DATE BUSINESS BEGAN _____ 11 14 41
 (3) FISCAL YEAR IS USED, WHEN DOES YEAR END? Cleveland, Ohio (4) DURING THE PERIOD COVERED BY THIS RETURN DID YOU:
 (A) QUIT BUSINESS? No EXACT DATE _____
 (B) SELL OR OTHERWISE DISPOSE OF YOUR BUSINESS? No EXACT DATE _____
 (5) IF BUSINESS SOLD, GIVE NAME AND ADDRESS OF NEW OWNER N/A

23-4578123
 XY Railroad Co.
 Cleveland
 Ohio 66331

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

FORM OF BUSINESS

Other One	
INDIVIDUAL	
CORPORATION	<input checked="" type="checkbox"/>
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

(6) NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL)

COMPUTATION OF TAX

BUSINESS CLASSIFICATIONS	GROSS INCOME INTRA-STATE	PRO-RATED NET INCOME * COMPLETE PAGE 2	RATE PER \$100	TAXES DUE	CODE
BUSES			2.50 GROSS 6.00 NET		22
BUSES URBAN OR SUBURBAN NOT EXCEEDING 40 MILES ONE WAY			1.55 GROSS 3.00 NET		23
TAXI REFUSE OR GARAGE HAULERS			2.50 GROSS 5.00 NET		24
TRUCKERS AND TRANSFER COMPANIES			2.20 GROSS 6.80 NET		25
OTHER MOTOR VEHICLE, CARRIERS, RAILROAD CAR, EXPRESS CORPORATIONS OR COMPANIES			2.20 GROSS 6.00 NET		26
TELEPHONE CORPORATIONS			3.74 GROSS 3.74 NET		27
TELEGRAPH CORPORATIONS			3.30 GROSS 5.00 NET		28
PIPE LINE CORPORATIONS			3.20 GROSS 6.00 NET		29
PERIODS OR CORPORATIONS OPERATING A STEAMBOAT, STEAMSHIP OR AIRLINE			3.20 GROSS 6.00 NET		30
RAILROAD CORPORATIONS	\$1,000,000 -	\$94,839 -	3.20 GROSS 6.00 NET	\$33,000 - 6,259 37	31
1 TOTAL AMOUNT OF TAX DUE				\$39,259 37	
2 ADD: PENALTY OF 1% FOR FIRST MONTH OR FRACTION THEREOF, AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THEREOF OF DELINQUENCY					
3 BALANCE DUE (PAYABLE BY MARCH 15; BY JUNE 15) -					
4 AMOUNT OF REMITTANCE ENCLOSED -					

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME.

A. Total Net Income (used for federal tax purposes) of taxpayer	\$ 200,000 -
B. Total Gross Income of taxpayer	\$3,100,000 -
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	\$1,000,000 -
D. Remaining Gross Income	\$2,100,000 -
E. Net Income of taxpayer to be further prorated for taxation	\$ 135,484 -
(To ascertain (E) multiply (A) by (D) and divide resulting amount by (B))	
F. Carrier-miles in West Virginia	14,000
G. Total of miles in all states	20,000
H. Net Income earned within West Virginia	\$ 94,839 -
(To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G))	

DEFINITIONS

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

 (Official title, if made on behalf of a corporation; President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____, 19____.

 Seal of Officer Taking Affidavit

My commission expires on the _____ day of _____, 19____.

(Effective January 1, 1974.)

Section 6. Return of the Taxpayer.

6.01. Annual Return. -- Any taxpayer who is liable for either the tax on gross income or the tax on net income, or for both, shall file an annual carrier income tax return with the State Tax Department. The taxpayer shall disclose the following on said return:

(a) The gross income from all transportation business beginning and ending within the State;

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

(c) The net transportation income of the business wherever conducted;

(d) The total amount of business conducted in this State, measured in the units hereinbefore prescribed, (see section 2 of these rules, for different types of carriers employ different units of measure);

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

6.02. In determining units of measure traveled in West Virginia, the Tax Commissioner may designate one month in the tax year as the period for which the amount of business conducted in this State, measured in such units, shall be reported and shall fix the total amount of business conducted in the State for the whole tax year by multiplying the amount determined for the designated month by twelve.

6.03. In cases where it is not possible for the carrier to accurately determine its ton-miles, passenger-miles, etc. within West Virginia, the carrier may rely upon and the Tax Department will accept statistics and records prepared by the Interstate Commerce Commission as to that particular carrier's mileage within this State. Said reports will only be acceptable if a reasonably accurate mileage figure cannot be computed from the taxpayer's books and records.

SECTION 7 RESERVED FOR FUTURE USE.

Section 8. Tax Year.

8.01. All taxpayers shall keep books and file returns on a calendar year basis. A taxpayer may, with the consent of the Tax Commissioner, file returns and pay taxes on a basis other than a calendar year. Requests for such permission must be in writing.

Section 9. Payment.

9.01. The full amount of carrier tax due the State must be paid on or before the fifteenth (15th) day of the third month following the close of the taxable year. The taxpayer may elect to pay the amount of carrier tax in two equal installments in which case the first installment shall be paid on the date herein above prescribed and the second installment shall be paid on the fifteenth (15th) day of the sixth month following the close of the taxable year.

9.02. In other words, for a calendar year taxpayer, the full amount of the tax is due on March 15 following the close of the taxable year. He may elect, of course, to make his payments in two equal installments on March 15 and June 15.

Section 10. Assessment or Deficiency of Tax.

10.01. If the Tax Department believes that carrier tax is insufficiently returned by a taxpayer either because the taxpayer has failed to promptly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, the Tax Department will proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment against him.

10.02. If the Tax Department believes that the collection of the tax will be jeopardized by the delay, it will make an assessment of the tax, noting that fact upon the assessment. Such assessment is known as a jeopardy assessment.

SECTION 11 RESERVED FOR FUTURE USE.

Section 12. Petition for Reassessment.

12.01. If a person against whom an assessment has been made desires to contest the assessment, he is required to file a petition for reassessment. The petition for reassessment must be filed with the Tax Department personally or by certified mail within thirty (30) days after service of the assessment. In the case of a jeopardy assessment the petition must be filed within twenty (20) days. The original and one copy of such petition for reassessment shall be so filed.

12.02. If the taxpayer fails to file such petition for reassessment within the time required by law, the assessment shall be conclusive and the amount thereof shall be due and payable.

12.03. The petition for reassessment shall be in writing and shall be complete in itself so as to fully state the issues. No telegram, telephone call or similar communication will be recognized as a petition.

12.04. The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (d) a

prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

12.05. In the case of jeopardy assessment a bond with corporate surety thereon in penalty double the amount of the assessment, conditioned upon the payment of all taxes, penalties and costs legally due, shall accompany the petition for reassessment.

12.06. The Tax Department is without authority to extend the thirty-day period in which the taxpayer must file a petition for reassessment.

Section 13. Hearings and Appeals.

13.01. Hearings upon petitions for reassessment shall be held at the State Capitol, in Charleston, West Virginia, unless good cause be shown for conducting the hearing elsewhere within this State.

13.02. Hearings will not be delayed by a motion for continuance unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the State deems adequate.

13.03. The unexpected absence of the petitioner or his counsel when a petition is called for hearing will not be the occasion for delay. The hearing shall proceed and the case be regarded as submitted on the part of the absent party or parties.

13.04. The petitioner may represent himself or be represented by some other person or persons of his choosing. A record of the hearing shall be made.

13.05. Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

Section 13.06

13.06. An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha County, within thirty (30) days after he shall have received notice from the Tax Department of its determination.

SECTIONS 14 AND 15 RESERVED FOR FUTURE USE.

Section 16. Penalties

16.01. If any taxpayer fails to file the carrier tax return or files his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of unpaid tax, from the date such tax should have been paid, a penalty in the amount of one percent (1%) per month of delinquency.

16.02. However, the Tax Commissioner may waive penalties upon a showing of reasonable cause by the taxpayer for his delinquency. Reasonable cause must be affirmatively pleaded, in writing, by the taxpayer and he must set forth in detail the reasons for his delinquency or failure. The Tax Commissioner's waiver will be in writing.

16.03. Financial hardship such as a lack of funds at the time the return was due does not qualify as reasonable cause. Also, the past filing history of a taxpayer is not relevant when considering the issue of reasonable cause for a present delinquency. The fact that the taxpayer, in the past, filed all returns and paid all taxes timely is immaterial to the issue at hand.

16.04. Reasonable cause does exist for late filing where the taxpayer, because of circumstances beyond his control, is prevented from filing timely. This results when natural disasters such as floods and fires occur.

Section 17. Extension of Time.

17.01. The Tax Commissioner is without statutory authority to grant extensions of time in regard [to the] carrier tax. Inasmuch as this is a tax which is due and payable after the taxable year in which liability accrued, it is not deemed necessary to have extensions of time, except in the situation set forth in the next paragraph of this subsection.

17.02. If a taxpayer determines that it will not be possible to file a return or pay the tax timely, he should notify the Tax Department of such situation prior to the due date. Such notification may then be used by the Tax Department in consideration of penalty waiver.

17.03. If a taxpayer has received an extension of time from the Internal Revenue Service in which to file its federal income tax return, said taxpayer shall be entitled to a corresponding extension of time in which to file his carrier tax return. Upon receipt of a federal extension, the taxpayer must notify the Tax Department of such extension and make application for a West Virginia extension. The notification and application must be in writing.

State Tax Department
Leg. Reg. 11-10
Series XII-A



**State Tax Department
of West Virginia**
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR


HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

I, Herschel H. Rose III, Commissioner of the West Virginia State Tax Department do hereby resubmit to the Office of the Secretary of State two copies of existing rules and regulations to be refiled pursuant to W. Va. Code § 29A-2-5. This refiling pertains to the Annual Tax on Incomes of Certain Carriers, Chapter 11, Article 10, Series XII-A.


Herschel H. Rose III
State Tax Commissioner

Date Submitted: December 29, 1982

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XII-A
(1974)

Subject: Annual Tax on Incomes of Certain Carriers

Refiled: December 29, 1982



INTRODUCTION

The West Virginia annual tax on incomes of certain carriers is imposed against carriers who do business within West Virginia. Carriers are motor vehicles, railroads, telephone companies, airlines, et cetera.

The tax applies only to income received from transportation activities of a carrier. Income received from activities other than transportation may be subject to this State's business and occupation tax.

The tax is separated into two distinct levies: (a) an annual tax measured by the gross income of the carrier from transportation business which begins and ends entirely within the State, (b) and an annual tax measured by the net income of the carrier from transportation activities conducted everywhere. Net income is computed by a two-factor formula composed of gross income and mileage. The starting point for such computation is federal net income which, in effect, gives the carrier tax act some semblance of being a conformity statute.

A taxpayer may be liable for tax under only one of the levies or both.

Carrier tax returns are filed on a calendar year basis and are filed following the close of the taxable year. Returns for the year 1972 are due on March 15, 1973, and the taxpayer may elect to pay the 1972 liability in two equal installments. Said installments are due on March 15 and June 15.

No quarterly or estimated payments are required of the taxpayer during the taxable year.

The carrier tax law does not provide for exemptions from tax. Therefore, any person who is required to have a permit or certificate of convenience or convenience and necessity from any state or the federal government is subject to carrier tax.

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State Tax Department
Leg. Reg. 11-10
Series XII-A

TABLE OF PARALLEL REFERENCES

This table shows where the subject matter of various sections of these regulations is treated in the West Virginia Code of 1931, as amended.

<u>Regulations</u>	<u>Code Section</u>
Section 1.	11-10-5
Section 2.	11-12A-1
Section 3.	11-12A-2
Section 4.	11-12A-3
Section 5.	
Section 6.	11-12A-6
Section 7. (Reserved)	
Section 8.	11-12A-8
Section 9.	11-12A-9
Section 10.	11-10-7
Section 11. (Reserved)	
Section 12.	11-10-8
Section 13.	11-10-9 and 11-10-10
Section 14. (Reserved)	
Section 15. (Reserved)	
Section 16.	11-10-17, 18 and 19
Section 17.	

State Tax Department
Leg. Reg. 11-10
Series XII-A

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XII-A
(1974)

Subject: Annual Tax on Incomes of Certain Carriers

Section 1. General

1.01. Type of Regulations

These regulations are "legislative rules" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.02. Scope

These regulations are an explanation and clarification of the West Virginia annual tax on incomes of certain carriers, W. Va. Code § 11-12A-1 et. seq.

1.03. Authority

These regulations are issued under the authority of W. Va. Code § 11-10-5a.

1.04. Filing Date

These regulations were promulgated on August 1, 1973 and filed with the Office of the Secretary of State on August 1, 1973. In compliance with W. Va. Code § 29A-2-5 (1982), these regulations were refiled with the Secretary of State on December 29, 1982.

1.05. Effective Date

These regulations became effective on January 1, 1974.

1.06. Citation

These regulations may be cited as W. Va. Leg. Reg. (ATC)
11-10, Series XII-A § _____, page _____ (1974).

Section 2. Definitions.

2.01. For purposes of these rules and regulations, the following terms are hereby defined.

(a) The terms "person", "company", or "carrier", herein used interchangeably, shall include any individual, firm, partnership, 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.

(b) The term "tax" shall mean the annual tax on incomes of certain carriers. Said tax is imposed by Article 12A, Chapter 11 of the Code of West Virginia and is referred to as either tax or carrier tax within these rules.

(c) The term "taxpayer", as used in these rules and regulations, shall mean any person liable for annual tax on incomes of certain carriers, and said term is herein used interchangeably with person, company and carrier.

(d) The term "urban or suburban bus line" in this State shall mean bus lines the majority of whose passengers use the buses for traveling a distance of less than forty (40) miles measured one way on the same day between their places of abode and their places of work, shopping areas or school. In other words, to qualify as an urban or suburban bus line, the bus company's passengers must use the bus as a commuter type service between home and work, school or shopping. Travel of more than forty (40) miles one way or travel other than commuter type by a

majority of the passenger will cause the carrier to be taxable as a motor vehicle carrier for the purposes of the annual tax on incomes of certain carriers rather than as an urban or suburban bus line.

(e) The term "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.

- (1) The required permit or certificate is subject to the jurisdiction of the Public Service Commission of West Virginia or a similar agency of any state or of the federal government. Any motor vehicle carrier operating in violation of the rules and regulations of the Public Service Commission without the required permit or certificate also is liable for the annual tax on incomes of certain carriers. Such person does not avoid taxation by operating in violation of law.
- (2) It is to be noted that the term "motor vehicle carrier" includes taxi companies, cab companies, urban or suburban bus lines and any companies which haul waste, refuse or garbage. These companies or persons are motor vehicle carriers for purposes of the annual tax on incomes of certain

carriers with the exception of rates of tax. These particular carriers are not subject to rates of tax as motor vehicle carriers. Specific rates of tax are provided for these particular carriers.

(f) The term "ton-mile" shall be a unit of transportation meaning transportation of one net ton in weight a distance of one mile.

(g) The term "passenger-mile" means the transportation of one passenger a distance of one mile.

(h) The term "car-mile" means the operation of a railroad car over a distance of one mile.

(i) 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.

(j) 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.

(k) The term "wire-mile" means the equivalent of a single metallic telephone or telegraph conductor one mile in length.

(l) The phrase "motor vehicle mile" means the operation of a motor vehicle carrier over a distance of one mile.

(m) The term "pass-through business" shall mean, when used herein, that business, mileage or activity of a carrier which originates outside this State but passes through this State to other states.

(n) The term "one-point business" shall mean that business, mileage or activity of a carrier which originates within this State and is destined for another state, and that business, mileage or activity of a carrier that originates outside this State and is destined to a point within this State.

(o) The term "two-point business" shall mean that business, mileage or activity of a carrier which originates within this State and is destined to a point within this State. Two-point business when used herein, shall mean business beginning and ending within West Virginia.

Section 3. Imposition of Annual Tax on Gross Income of Certain Carriers

3.01. Persons Subject to Tax.

(a) Persons subject to the annual carrier tax on gross income from doing business in this State are:

- (1) Motor vehicle carriers operating on the public highways of this State;
- (2) railroad car carriers;
- (3) railroad carriers;
- (4) express companies;
- (5) pipeline companies;
- (6) telephone companies;
- (7) telegraph companies;
- (8) airline companies, and
- (9) any person operating a steamboat or other watercraft.

(b) All such persons or taxpayers, as enumerated above, shall pay to the State an annual tax on the gross income derived from doing business in this State. Gross income from doing business in this State shall constitute that gross income derived from all business beginning and ending within West Virginia.

3.02. Tax Rates. -- The rates of tax to be applied against gross income from business done in West Virginia are set forth below for each type of carrier.

<u>Carrier</u>	<u>Rate of Tax</u>
Motor vehicle carriers	Three and three-tenths percent
Railroad car carriers	Three and three-tenths percent
Railroad carriers	Three and three-tenths percent
Express companies	Three and three-tenths percent
Pipeline companies	Three and three-tenths percent
Airline companies	Three and three-tenths percent
Steamboat or other watercraft	Three and three-tenths percent
Telegraph companies	Three and three-tenths percent
Telephone companies	Three and seventy-four one hundredths percent
Urban or suburban bus line	One and sixty-five one hundredths percent
Taxi or cab companies	Two and five-tenths percent
Haulers of waste, refuse or garbage	Two and five-tenths percent

3.03. Exclusions from Gross Income.

(a) Nontransportation income.

(1) Since the gross income from all business done within the State is that business which begins and ends entirely within West Virginia, the measure of the tax shall include only gross income derived from transportation business. In arriving at the amount of tax on gross income, the taxpayer should exclude, from the measure of the tax, that income derived from activities within this State which is nonoperating income. Items of income which are

not attributable to transportation business should not be included in the computation of tax.

- (2) Certain items of nonoperating income or income not in furtherance of the carrier's transportation business, even though not subject to carrier tax, are subject to West Virginia's business and occupation tax. To illustrate: A trucking company receives income from the rental of an office building within this State. Such income is not subject to carrier tax but must be reported under the rental classification on the business and occupation tax return. See West Virginia Code ch. 11, art. 13.
- (3) Items of nonoperating income which are not subject to carrier tax on gross income include:
 - (A) income from rental of builings, real estate, etc.;
 - (B) income from the production of natural resources;
 - (C) royalties;
 - (D) interest, dividends and capital gains;
 - (E) income from dining rooms, restaurants and hotels.
- (4) Any inquiries as to whether a particular income item is subject to carrier tax or business and

occupation tax should be forwarded to the Tax Department.

(b) Income from interstate activities.

- (1) The gross income of carriers subject to tax is only that gross income derived from intrastate activities. The tax is applied against that gross income derived from transportation activities within this State, such activities being business beginning and ending within West Virginia. Therefore, income derived from interstate activities is not subject to the tax on gross income. Business or mileage which originates without West Virginia and passes through this State to other jurisdictions, or that which originates within this State and is carried to other states and that which originates outside this State and has a destination point herein is not subject to the tax on gross income. "Pass-through" business and "one-point" business do not begin and end within West Virginia; therefore, gross income derived from said activities is interstate income and is not subject to the annual tax on gross income.
- (2) All gross income, from transportation activities, derived from "two-point" (beginning and ending within West Virginia) business is subject to the annual tax on carriers.

Section 4. Imposition of Annual Tax on Net Income.

4.01. Persons Subject to Tax.

(a) In addition to the annual tax imposed on gross income (see §3 of these rules and regulations), every carrier doing business in this State shall pay an annual tax on its net income earned within this State.

(b) The annual tax on net income shall apply to carriers who have income from transportation activities beginning and ending (two-point business) within this State, and who also have one-point or pass-through business in this State. The annual tax on net income also applies to persons who have no two-point business in West Virginia but have one-point business or pass-through business in West Virginia and who also have minimal connection within this State. For example: A trucking company with its home offices in Covington, Virginia, transports goods from Virginia to Elkins, West Virginia. On its return trips from Elkins to Virginia, said carrier transports goods that were taken aboard in Elkins. In Elkins, the carrier owns a terminal, maintains a small office and employs several persons. The activities mentioned in the preceding sentence are sufficient to subject the trucking company to the tax on net income, even though the trucker has no transportation activities which begin and end in the State and is not subject to the tax on gross income. Therefore, the trucker must compute his motor vehicle miles within West Virginia (from the border to Elkins and return) and compute

his tax liability on net income by the formula method set forth in section 3.03(a) of this rule.

(c) Types of carriers subject to the tax on net income are the same as those carriers listed in section 3.01 of these rules and regulations and also in section 4.02.

4.02. Tax Rates. -- The rates of tax to be applied against net income earned within West Virginia are set forth below for each type of carrier.

<u>Carrier</u>	<u>Rate of Tax</u>
Motor vehicle carriers	Six and six-tenths percent
Railroad car carriers	Six and six-tenths percent
Railroad carriers	Six and six-tenths percent
Express companies	Six and six-tenths percent
Pipeline companies	Six and six-tenths percent
Airline companies	Six and six-tenths percent
Steamboat or other watercraft	Six and six-tenths percent
Telegraph companies	Six and six-tenths percent
Telephone companies	Three and seventy-four one hundredths percent
Urban or suburban bus line	Five percent
Taxi or cab companies	Five percent
Haulers of waste, refuse or garbage	Five percent

4.03. Determination of Net Income. The net income earned within this State against which the tax rate is to be applied shall be determined as follows:

(a) Motor vehicles.

- (1) Net income of motor vehicles shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in motor vehicle miles bears to all business done everywhere in motor vehicle miles.
- (3) To illustrate: A trucking company has total net income of \$1,000. Said company has total gross income for the taxable year of \$25,000 and has West Virginia gross income (beginning and ending) of \$10,000. Therefore, West Virginia gross income is forty percent (40%) of total gross income. This forty percent (West Virginia gross as compared to total gross) is applied against the carrier's total net income of \$1,000 and reduces said income to \$600, which is to be further apportioned and reduced by the mileage factor.

(4) The trucker, in this illustration, had total mileage, in all states, of 5,000 miles. His mileage in West Virginia, both intrastate and interstate, was 1,000 miles. Therefore, his West Virginia mileage factor is twenty percent (20%) of his total mileage (1,000 miles \div 5,000 miles = 20%). This West Virginia mileage factor of 20% is applied against the reduced net income of \$600 and results in West Virginia taxable income of \$120.

(b) Railroad carriers.

- (1) Net income of railroad carriers shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in ton-miles bears to all business done everywhere in ton-miles.
- (3) In computing the annual tax on the net income of a railroad carrier, passenger-miles within or without West Virginia are not to be considered.

(c) Railroad car carriers and express companies.

- (1) Net income of railroad car carriers and express companies shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the carrier that its business done in this State in car-miles bears to all business done everywhere in car-miles.

(d) Pipeline companies.

- (1) Net income of pipeline companies shall be determined by reducing the total net income of the company by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its total gross income from all business done everywhere.
- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the company that its business done in this State 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) Airline companies and steamboat or other watercraft.

(1) Net income of airlines, steamboats or other watercraft shall be determined by reducing the total net income of the carrier by an amount bearing the proportion to such total net income that its West Virginia gross income bears to its gross income from all business done everywhere.

(2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income 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.

(3) Airline companies, in computing the mileage factor, are to use only passenger-miles.

(f) Telephone and telegraph companies.

(1) Net income of telephone and telegraph companies shall be determined by reducing the total net income of the company by a amount bearing the proportion to such total net income that its West

Virginia gross income bears to its total gross income from all business done everywhere.

- (2) This reduced amount of net income is then reduced further to an amount bearing the proportion to such reduced net income of the company that its business done in this State in wire-miles bears to all business done everywhere in wire-miles.

4.04. Exclusions from Income.

(a) For the purpose of computing the amount of annual tax on net income, the taxpayer must exclude all nontransportation income. Therefore, the amounts employed in the formula which are designated total gross income and West Virginia gross income must contain only items of income from transportation activities. See section 3.03(a) of these rules and regulations as to nontransportation income.

(b) Total net income as used in the preceding paragraph shall mean net transportation income of the business. Net transportation income may be determined by employing those rules that are used to compute net income tax due the federal government. However, in determining total net income, the taxpayer may exclude all items of nontransportation income (see section 3.03(a) of these rules) and must exclude any expenses incurred in relation to the nontransportation income. In other words, net transportation income is that income computed by federal guidelines without items of nontransportation income or expenses reflected therein.

4.05. Persons Not Subject to Tax on Net Income. -- Any person who engages in business within West Virginia only (has only two-point business in West Virginia) is not subject to the annual tax on net income. Such person is, of course, subject to the annual tax on gross income and must report the entire amount of his gross income from transportation activities thereunder.

Section 5. Problems, Examples and Solutions Relating to
Carriers.

5.01. Set forth below are several examples of problems which arise in regard to the carrier tax. These are presented for further clarification of the effect and substance of the annual tax on incomes of certain carriers and of these rules and regulations. The principles to which these examples relate are contained within subsection 2 and 3 of these rules and regulations.

(a) Example 1. Mountain Transit Company operates a bus line wholly within this State. The company has two operations: (1) a run from Parkersburg to Vienna and return, and (2) a run from Parkersburg to Clarksburg and return.

For the taxable year 1972, the bus company had the following items and amounts of income:

(1) Parkersburg-Vienna run	\$102,000
(2) Parkersburg-Clarksburg run	258,000
(3) Restaurants in terminals	49,000
(4) Rent from office building	11,000
(5) Dividends	1,000
(6) Rental of buses to other carriers	<u>9,000</u>
TOTAL INCOME	<u>\$430,000</u>

For the purpose of the annual tax on gross income, the bus company will report on its 1972 carrier tax return those items enumerated above as (1) and (2). Item (1) qualifies as an "urban

or suburban bus line" (see section 1 of these rules) inasmuch as the Parkersburg - Vienna operation is less than forty miles measured one way and the majority of such passengers are using this bus service as a commuter type service. Therefore, the gross income received from this operation qualifies for the reduced tax rate and is to be reported under the urban or suburban classification.

The income received from item (2) above does not qualify as urban or suburban and must be taxed as income to any other motor vehicle would be taxed. Inasmuch as such activity began and ended within this State, the entire amount must be reported under the gross income column of the carrier tax return.

Item (3) above is income from restaurant operations and is classified as nontransportation income. Therefore, said income is not subject to carrier tax but must be reported for business and occupation tax purposes.

Items (4) and (6) above qualify for the same treatment as item (3).

Inasmuch as dividends are not considered transportation income, item (5) is not subject to carrier tax; nor are dividends, except as to banking and financial businesses, subject to business and occupation tax.

A prepared 1972 carrier income tax return for Mountain Transit Company is presented at the next page. It is to be noted that Mountain Transit is not, under this example, required to

compute the annual tax on net income; for the carrier has only beginning and ending business within this State.

WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS 1972

QUESTIONS MUST BE ANSWERED

1. FISCAL YEAR ENDED _____ OR FROM _____ TO _____ STATE EXACT DATE BUSINESS BEGAN March 4 1937
 2. IF FISCAL YEAR IS USED, WHEN DOES YEAR END? _____ IN DURING THE PERIOD COVERED BY THIS RETURN DID YOU:
 3. OPERATE IN ANY OTHER STATE? Parkersburg, W. Va. WAS OUT BUSINESS? No EXACT DATE _____
 4. PAID UP ALL PLATS OF BUSINESS IN WEST VA. Same WOULD YOU OR ANY OTHER PERSON OPERATE YOUR BUSINESS? No
 5. IF BUSINESS SOLD, GIVE NAME AND ADDRESS OF NEW OWNER N/A EXACT DATE _____

55-1357924
 Mountain Transit Co.
 83 Main St.
 Parkersburg, W. Va. 12100

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

Check One

INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

6. NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL)

COMPUTATION OF TAX

BUSINESS CLASSIFICATIONS	GROSS INCOME INTRA-STATE	PRO-RATED NET INCOME * COMPLETE PAGE 2	RATE PER \$100	TAXES DUE	CODE
BUSES	258,000 -	- 0 -	3.30 GROSS 6.80 NET	8,514 -	22
BUSES URBAN OR SUBURBAN NOT EXCEEDING 40 SEATS ONE WAY	102,000 -	- 0 -	1.85 GROSS 5.80 NET	1,683 -	23
TAXI CABS OR GARAGE HAULERS			2.50 GROSS 5.80 NET		24
TRUCKS AND TRACTOR COMPANIES			3.30 GROSS 6.80 NET		25
OTHR MOTOR VEHICLE, CARRIER, RAIL ROAD CAR, EXPRESS CORPORATIONS OR COMPANIES			3.30 GROSS 6.80 NET		26
TELEPHONE CORPORATIONS			3.74 GROSS 3.34 NET		27
TELEGRAPH CORPORATIONS			3.30 GROSS 6.80 NET		28
PIPE LINE CORPORATIONS			3.30 GROSS 6.80 NET		29
PACKING OR CORPORATIONS OPERATING A STEAMBOAT, STEAMSHIP OR AIRLINE			3.30 GROSS 6.80 NET		30
RAILROAD CORPORATIONS			3.30 GROSS 6.80 NET		31
1 TOTAL AMOUNT OF TAX DUE				10,197 -	
2 ADD PENALTY OF 1% FOR FIRST MONTH OR FRACTION THEREOF, AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THEREOF OF DELINQUENCY					
3 BALANCE DUE (PAYABLE 17 MARCH 1972; 17 JUNE 1972)					
4 AMOUNT OF REMITTANCE ENCLOSED					

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE.

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME.

A. Total Net Income (used for federal tax purposes) of taxpayer	_____
B. Total Gross Income of taxpayer	_____
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	_____
D. Remaining Gross Income	_____
E. Net Income of taxpayer to be further prorated for taxation	_____
(To ascertain (E) multiply (A) by (D) and divide resulting amount by (B)	
F. Carrier-miles in West Virginia	_____
G. Total of miles in all states	_____
H. Net Income earned within West Virginia	_____
(To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G)	

DEFINITIONS

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

(Official title, if made on behalf of a corporation: President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____, 19____.

Seal of Officer Taking Affidavit _____

My commission expires on the _____ day of _____, 19____.

(b) Example 2. BC, a barge line company, moves coal barges on the Monongahela River from Morgantown, West Virginia, to Pittsburgh, Pennsylvania. It has no other transportation activities within this State but does own docking facilities and maintains several employees within this State. Therefore, BC is subject to the tax on net income but is not subject to the tax on gross income inasmuch as it has no transportation business which begins and ends within West Virginia.

For purposes of this illustration, it is assumed that the barge trip from Morgantown to Pittsburgh is 75 miles, 15 of which are within this State. It is also assumed that for the entire year that BC had activities from everywhere that totaled 7,500 ton-miles and West Virginia ton-miles of 1,500.

BC's total gross income for the year was \$50,000. Its total net income was \$2,000 and was computed by employing federal rules. In arriving at total net income, to be used as the starting point to determine tax on net income, BC eliminated all nontransportation income and expenses pertaining thereto. Non-transportation income was also eliminated to arrive at total gross income.

A prepared 1972 carrier income tax return for BC is presented at the next page.

WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS 1972

ALL QUESTIONS MUST BE ANSWERED -

(1) FISCAL YEAR ENDED _____ OR FROM _____ TO _____ (2) STATE EXACT DATE BUSINESS BEGAN September 11 1963
 (3) IF FISCAL YEAR IS USED, WHEN DOES YEAR END? _____ (3) DURING THE PERIOD COVERED BY THIS RETURN DID YOU:
 (4) OWN OR HAVE YOUR RECORDS KEPT (POST OFFICE) Pittsburgh, Pa. (4) SELL OR OTHERWISE DISPOSE OF YOUR BUSINESS? No EXACT DATE: _____
 (5) PRINCIPAL PLACE OF BUSINESS IN WEST VA. Morgantown (5) SELL OR OTHERWISE DISPOSE OF YOUR BUSINESS? No EXACT DATE: _____
 (6) IF BUSINESS SOLD, GIVE NAME AND ADDRESS OF NEW OWNER N/A EXACT DATE: _____

77-7531642
 BC Barge Co., Inc.
 22 5th Avenue
 Pittsburgh, Pennsylvania 77001

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

FORM OF BUSINESS

Check One	
INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

(6) NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL)

COMPUTATION OF TAX

BUSINESS CLASSIFICATIONS	GROSS INCOME INTRA-STATE	PRE-RATED NET INCOME * COMPLETE PAGE 7	RATE PER \$100.	TAXES DUE	CODE
BUSES			3.30 GROSS 6.00 NET		22
BUSES URBAN OR SUBURBAN NOT EXCEEDING 40 MILES ONE WAY			1.65 GROSS 5.00 NET		23
TAXIS REFUSE OR GARBAGE HAULERS			2.50 GROSS 5.00 NET		24
TRUCKERS AND TRANSIT COMPANIES			3.30 GROSS 6.00 NET		25
OTHER MOTOR VEHICLE, CARRIAGE, RAILROAD CAR, EXPRESS CORPORATIONS OR COMPANIES			2.30 GROSS 6.00 NET		26
TELEPHONE CORPORATIONS			3.74 GROSS 3.74 NET		27
TELEGRAM CORPORATIONS			2.30 GROSS 6.00 NET		28
PIPE LINE CORPORATIONS			3.30 GROSS 6.00 NET		29
FERRIES OR COMPANIES OPERATING A STEAMBOAT, STEAMSHIP OR AIRLINE	- 0 -	400 -	3.30 GROSS 6.00 NET	26 40	30
RAILROAD CORPORATIONS			3.30 GROSS 6.00 NET		31
1 TOTAL AMOUNT OF TAX DUE				26 40	
2 ADD PENALTY OF 1% FOR FIRST MONTH OR FRACTION THEREOF, AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THEREOF OF DELINQUENCY					
3 BALANCE DUE PAYABLE 1/2 MARCH 15, 1/2 JUNE 15 -					
4 AMOUNT BY REMITTANCE ENCLOSED -					

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE.

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME:

A. Total Net Income (used for federal tax purposes) of taxpayer	\$ 2,000.00
B. Total Gross Income of taxpayer	\$50,000.00
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	-0-
D. Remaining Gross Income	\$50,000.00
E. Net Income of taxpayer to be further prorated for taxation	\$ 2,000.00
(To ascertain (E) multiply (A) by (D) and divide resulting amount by (B)	
F. Carrier-miles in West Virginia	1,500
G. Total of miles in all states	7,500
H. Net Income earned within West Virginia	400
(To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G)	

DEFINITIONS

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

 (Official title, if made on behalf of a corporation: President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____, 19____.

Seal of Officer Taking Affidavit _____

My commission expires on the _____ day of _____, 19____.

(c) Example 3. XY Railroad Co., a railroad carrier, has the following operations in connection with West Virginia:

- (1) Daily operation of a passenger train from Cincinnati, Ohio, to Washington, D.C., and return. This run, for the year 1972, totaled 4,000 passenger-miles of which 1,800 were pass-through miles within West Virginia. Total income from this run was \$500,000.
- (2) Daily operation of a freight train between the same two localities. This run totaled 7,000 ton-miles of which 3,000 were pass-through miles within West Virginia. Total income was \$1,000,000.
- (3) Operation of a freight train from Charleston, West Virginia, to Richmond, Virginia, and return. This run totaled 5,000 ton-miles of which 3,000 were within this State. Total income was \$580,000.
- (4) Operation of a freight train from Charleston, West Virginia, to Logan, West Virginia, and return. This run totaled 8,000 ton-miles of which all were within this State. Income from this run, for the taxable year, was \$990,000.
- (5) Income from demurrage in the amount of \$9,000 was received and \$1,000 was attributable to this State.

(6) Income from switching in the amount of \$21,000 was received and \$9,000 thereof was attributable to this State in that such portion began and ended here.

(d) Solution to Example 3.

(1) Computation of annual tax on gross income. -- In order to determine the tax on gross income, the taxpayer must compute income arising from transportation activities which began and ended within the State.

(A) Item (1) above is not subject to the tax on gross income since such traffic did not begin and end within this State.

(B) Item (2) above also does not meet the essential requirements of two-point business; therefore, such item is not reported for the tax on gross income.

(C) Item (3) above is not taxable on gross income. Same reason as Items (1) and (2) applies.

(D) Item (4) above is subject to the tax on gross income inasmuch as such income arose from two-point activities.

(E) Item (5) above contains some income (\$1,000) which is taxable on the gross income column

of the carrier tax return. Demurrage is considered a transportation activity.

(F) Item (6) above contains some income (\$9,000) which is taxable on the gross income column of the carrier tax return. Switching is a transportation activity.

Therefore, under the gross income column of the carrier tax return, XY Railroad Co. will report taxable income of \$1,000,000. Said amount is the sum of Item (4) in whole, Item (5) in part and Item (6) in part.

(2) Computation of annual tax on net income. -- In order to determine its tax liability on net income, XY Railroad Co. must prepare the formula on the reverse side of the carrier tax return. The explanation which follows of such computation is numbered and set forth as the apportionment formula is on the return.

(A) Total Net Income. -- It is assumed for this illustration that XY's net income, computed by the federal method, was \$200,000. Items of income, loss, gain and deduction which pertain to nontransportation activities have been excluded from net income.

- (B) Total Gross Income. -- This is the gross amount of all transportation income from wherever derived. The total of Items (a) through (f) is \$3,100,000. Any nontransportation income received by a carrier is not to be reflected within this amount.
- (C) West Virginia Gross Income. -- West Virginia gross income is that income which inures to XY as a result of two-point transportation activities within the State. In other words, this amount should equal that reported under the gross income column (\$1,000,000) on the carrier return.
- (D) Remaining Gross Income. -- This figure is arrived at by subtracting C. from B. Therefore, \$3,100,000 less \$1,000,000 equals \$2,100,000.
- (E) Net Income to be Prorated. -- This amount of net income is found by multiplying (A) by (D) and dividing the result by (B). The result in this situation is \$135,484.
- (F) Carrier-miles in West Virginia. -- At this point, XY must total all ton-miles traveled in this State. Said amount is derived from all ton-miles traveled in West Virginia, both

intrastate and interstate movements. In other words, ton-miles in West Virginia are those ton-miles moved in one-point, two-point and pass-through business.

(i) In computing mileage for this line of the formula, XY will exclude that mileage in Item (a) above. Passenger-miles are not included in the computation of this mileage factor, except for airline companies and motor vehicle carriers. A railroad carrier would, however, report gross income and pay tax thereon from a passenger operation which begins and ends in the State. But passenger-miles, for railroad carriers, are excluded from the formula.

(ii) Total ton-miles in West Virginia are 14,000, composed of 3,000 ton-miles from Item (b), 3,000 ton-miles from Item (c) and 8,000 ton-miles from Item (d).

(G) Miles in all States. -- For railroad carriers ton-miles in all states must be computed. Passenger-miles are again excluded. Therefore, in computing this line item of the formula, XY will ignore Item (A) above.

Total ton-miles in all states will be computed from Items (B), (C), and (D). These three total 20,000 ton-miles.

(H) West Virginia Net Income. -- This reduced amount of West Virginia taxable income is determined by multiplying (E) by (F) and dividing the result by (G). This computation results in a figure of \$94,839 which is XY's West Virginia taxable net income to be reported under the net income column of the carrier income tax return.

(2) A prepared 1972 carrier income tax return, for this example, follows at the next page.

WEST VIRGINIA ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS

1972

ALL QUESTIONS MUST BE ANSWERED

11) FOM YEAR ENDED: _____ OR FROM _____ TO _____ 12) STATE EXACT DATE BUSINESS BEGAN: 11 14 41
 13) IF FISCAL YEAR IS USED, WHEN DOES YEAR END? _____ 14) DURING THE PERIOD COVERED BY THIS RETURN DID YOU:
 15) WHERE ARE YOUR RECORDS KEPT? (POST OFFICE): Cleveland, Ohio 16) QUIT BUSINESS? No EXACT DATE _____
 17) PRINCIPAL PLACE OF BUSINESS IN WEST VA: Charleston 18) SELL OR OTHERWISE DISPOSE OF YOUR BUSINESS? No EXACT DATE _____
 19) IF BUSINESS SOLD, GIVE NAME AND ADDRESS OF NEW OWNER: N/A EXACT DATE _____

23-4578123
 XY Railroad Co.
 Cleveland
 Ohio 66331

The first line of this section is your ACCOUNT IDENTIFICATION NUMBER. Please reference account number on correspondence.

Check One

INDIVIDUAL	
CORPORATION	X
PARTNERSHIP	
ASSOCIATION	
TRUST	
JOINT ADVENTURE	

18) NATURE OF BUSINESS CONDUCTED (DESCRIBE IN DETAIL)

COMPUTATION OF TAX

BUSINESS CLASSIFICATIONS	GROSS INCOME INTRA-STATE	PRO-RATED NET INCOME * COMPLETE PAGE 2	RATE PER \$100.	TAXES DUE	CODE
BUSES			3.30 GROSS 6.60 NET		22
BUSIS URBAN OR SUBURBAN NOT EXCEEDING 40 MILES ONE WAY			1.65 GROSS 3.30 NET		23
TAXIS REFUSE OR GARBAGE HAULERS			2.98 GROSS 5.96 NET		24
TRUCKERS AND TRANSFER COMPANIES			3.30 GROSS 6.60 NET		25
OTHER MOTOR VEHICLE, CARRIERS, RAILROAD CAR, EXPRESS CORPORATIONS OR COMPANIES			3.30 GROSS 6.60 NET		26
TELEPHONE CORPORATIONS			3.74 GROSS 7.48 NET		27
TELEGRAPH CORPORATIONS			3.30 GROSS 6.60 NET		28
PIPE LINE CORPORATIONS			3.30 GROSS 6.60 NET		29
PIEDMONT OR CORPORATION OPERATING A STEAM-BOAT, STEAMSHIP OR AIRLINE			3.30 GROSS 6.60 NET		30
RAILROAD CORPORATIONS	\$1,000,000 -	\$94,839 -	3.30 GROSS 6.60 NET	\$33,000 - 6,259 37	31
1 TOTAL AMOUNT OF TAX DUE				\$39,259 37	
7 ADD PENALTY (IF 1% FOR FIRST MONTH OR FRACTION THEREOF, AND 1% FOR EACH SUCCEEDING MONTH OR FRACTION THEREOF OF DELINQUENCY)					
3 BALANCE DUE (PAYABLE 1/2 MARCH 15; 1/2 JUNE 15) -					
4 AMOUNT OF REMITTANCE ENCLOSED -					

THIS RETURN MUST BE RECEIVED BY THE STATE TAX COMMISSIONER, CHARLESTON, W. VA., ON OR BEFORE THE 15TH DAY OF MARCH, FOLLOWING THE CLOSE OF THE YEAR COVERED BY THE RETURN.

DO NOT USE THIS SPACE.

PERSONS REQUIRED TO FILE RETURNS

Every (1) motor vehicle carrier; (2) railroad car corporation and express corporation or company; (3) telephone and telegraph corporation; (4) pipe line corporation; (5) airline corporation, steamboat or other watercraft; (6) railroad corporation, doing business in West Virginia shall report the "gross income" from all business beginning and ending entirely within West Virginia and, unless engaged in business exclusively within West Virginia, shall also report the "net income" earned within West Virginia.

COMPUTATION OF NET INCOME

The net income earned within West Virginia shall be determined by ascertaining a sum bearing the proportion to the total net income of the taxpayer that its business done in West Virginia measured in (1) motor vehicle-miles of motor vehicle carrier operation; (2) ton-miles of railroad carriers and steamboat or other watercraft operation; (3) car-miles of railroad car carriers and express companies; (4) barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the case of gas, of pipe line companies; (5) passenger-miles of airline companies; (6) wire-miles of telephone and telegraph companies, bears to all business done measured in like fashion.

The net income of a taxpayer who shall have been taxed on gross income shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer bears to its total gross income from its business done wherever conducted.

THE FOLLOWING SCHEDULE MUST BE COMPLETED IN COMPUTING NET INCOME.

A. Total Net Income (used for federal tax purposes) of taxpayer	\$ 200,000 -
B. Total Gross Income of taxpayer	\$3,100,000 -
C. Deduct Gross Income from all business beginning and ending entirely in West Virginia	\$1,000,000 -
D. Remaining Gross Income	\$2,100,000 -
E. Net Income of taxpayer to be further prorated for taxation (To ascertain (E) multiply (A) by (D) and divide resulting amount by (B))	\$ 135,484 -
F. Carrier-miles in West Virginia	14,000
G. Total of miles in all states	20,000
H. Net Income earned within West Virginia	\$ 94,839 -
(To ascertain (H) multiply (E) by (F) and divide the resulting amount by (G))	

DEFINITIONS

"Taxable Gross Income" means the entire income from all business beginning and ending entirely in West Virginia without any deductions whatsoever for the cost of doing business.

The term "company" shall include any partnership, joint adventure, joint stock company or association.

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 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 a distance of one mile.

The phrase "motor vehicle-mile" means the operation of a motor vehicle carrier over a distance of one mile.

OATH

I, _____, do solemnly swear that the statements and items (both as to designations and amounts) entered in the foregoing return and in any additional list attached to this return are, to the best of my knowledge and belief, true and correct in each and every particular.

 Name of Taxpayer

 (Official title, if made on behalf of a corporation: President, Vice-President, Secretary or Treasurer, as the case may be.)

Sworn to and subscribed before me this _____ day of _____, 19____.

Seal of Officer Taking Affidavit _____

My commission expires on the _____ day of _____, 19____.

(Effective January 1, 1974.)

Section 6. Return of the Taxpayer.

6.01. Annual Return. -- Any taxpayer who is liable for either the tax on gross income or the tax on net income, or for both, shall file an annual carrier income tax return with the State Tax Department. The taxpayer shall disclose the following on said return:

(a) The gross income from all transportation business beginning and ending within the State;

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

(c) The net transportation income of the business wherever conducted;

(d) The total amount of business conducted in this State, measured in the units hereinbefore prescribed, (see section 2 of these rules, for different types of carriers employ different units of measure);

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

6.02. In determining units of measure traveled in West Virginia, the Tax Commissioner may designate one month in the tax year as the period for which the amount of business conducted in this State, measured in such units, shall be reported and shall fix the total amount of business conducted in the State for the whole tax year by multiplying the amount determined for the designated month by twelve.

6.03. In cases where it is not possible for the carrier to accurately determine its ton-miles, passenger-miles, etc. within West Virginia, the carrier may rely upon and the Tax Department will accept statistics and records prepared by the Interstate Commerce Commission as to that particular carrier's mileage within this State. Said reports will only be acceptable if a reasonably accurate mileage figure cannot be computed from the taxpayer's books and records.

Section 8. Tax Year.

8.01. All taxpayers shall keep books and file returns on a calendar year basis. A taxpayer may, with the consent of the Tax Commissioner, file returns and pay taxes on a basis other than a calendar year. Requests for such permission must be in writing.

Section 9. Payment.

9.01. The full amount of carrier tax due the State must be paid on or before the fifteenth (15th) day of the third month following the close of the taxable year. The taxpayer may elect to pay the amount of carrier tax in two equal installments in which case the first installment shall be paid on the date herein above prescribed and the second installment shall be paid on the fifteenth (15th) day of the sixth month following the close of the taxable year.

9.02. In other words, for a calendar year taxpayer, the full amount of the tax is due on March 15 following the close of the taxable year. He may elect, of course, to make his payments in two equal installments on March 15 and June 15.

Section 10. Assessment or Deficiency of Tax.

10.01. If the Tax Department believes that carrier tax is insufficiently returned by a taxpayer either because the taxpayer has failed to promptly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, the Tax Department will proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment against him.

10.02. If the Tax Department believes that the collection of the tax will be jeopardized by the delay, it will make an assessment of the tax, noting that fact upon the assessment. Such assessment is known as a jeopardy assessment.

Section 12. Petition for Reassessment.

12.01. If a person against whom an assessment has been made desires to contest the assessment, he is required to file a petition for reassessment. The petition for reassessment must be filed with the Tax Department personally or by certified mail within thrity (30) days after service of the assessment. In the case of a jeopardy assessment the petition must be filed within twenty (20) days. The original and one copy of such petition for reassessment shall be so filed.

12.02. If the taxpayer fails to file such petition for reassessment within the time required by law, the assessment shall be conclusive and the amount thereof shall be due and payable.

12.03. The petition for reassessment shall be in writing and shall be complete in itself so as to fully state the issues. No telegram, telephone call or similar communication will be recognized as a petition.

12.04. The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (d) a

prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

12.05. In the case of jeopardy assessment a bond with corporate surety thereon in penalty double the amount of the assessment, conditioned upon the payment of all taxes, penalties and costs legally due, shall accompany the petition for reassessment.

12.06. The Tax Department is without authority to extend the thirty-day period in which the taxpayer must file a petition for reassessment.

Section 13. Hearings and Appeals.

13.01. Hearings upon petitions for reassessment shall be held at the State Capitol, in Charleston, West Virginia, unless good cause be shown for conducting the hearing elsewhere within this State.

13.02. Hearings will not be delayed by a motion for continuance unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the State deems adequate.

13.03. The unexpected absence of the petitioner or his counsel when a petition is called for hearing will not be the occasion for delay. The hearing shall proceed and the case be regarded as submitted on the part of the absent party or parties.

13.04. The petitioner may represent himself or be represented by some other person or persons of his choosing. A record of the hearing shall be made.

13.05. Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

13.06. An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha County, within thirty (30) days after he shall have received notice from the Tax Department of its determination.

Section 16. Penalties

16.01. If any taxpayer fails to file the carrier tax return or files his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of unpaid tax, from the date such tax should have been paid, a penalty in the amount of one percent (1%) per month of delinquency.

16.02. However, the Tax Commissioner may waive penalties upon a showing of reasonable cause by the taxpayer for his delinquency. Reasonable cause must be affirmatively pleaded, in writing, by the taxpayer and he must set forth in detail the reasons for his delinquency or failure. The Tax Commissioner's waiver will be in writing.

16.03. Financial hardship such as a lack of funds at the time the return was due does not qualify as reasonable cause. Also, the past filing history of a taxpayer is not relevant when considering the issue of reasonable cause for a present delinquency. The fact that the taxpayer, in the past, filed all returns and paid all taxes timely is immaterial to the issue at hand.

16.04. Reasonable cause does exist for late filing where the taxpayer, because of circumstances beyond his control, is prevented from filing timely. This results when natural disasters such as floods and fires occur.

Section 17. Extension of Time.

17.01. The Tax Commissioner is without statutory authority to grant extensions of time in regard [to the] carrier tax. Inasmuch as this is a tax which is due and payable after the taxable year in which liability accrued, it is not deemed necessary to have extensions of time, except in the situation set forth in the next paragraph of this subsection.

17.02. If a taxpayer determines that it will not be possible to file a return or pay the tax timely, he should notify the Tax Department of such situation prior to the due date. Such notification may then be used by the Tax Department in consideration of penalty waiver.

17.03. If a taxpayer has received an extension of time from the Internal Revenue Service in which to file its federal income tax return, said taxpayer shall be entitled to a corresponding extension of time in which to file his carrier tax return. Upon receipt of a federal extension, the taxpayer must notify the Tax Department of such extension and make application for a West Virginia extension. The notification and application must be in writing.

State Tax Department
Leg. Reg. 11-10
Series XII-A

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XII-A
(1974)

Subject: Annual Tax on Income of Certain Carriers

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