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History of Kentucky Commercial Motor Vehicle Transportation Tax Legislation

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HISTORY OF KENTUCKY COMMERCIAL MOTOR VEHICLE TRANSPORTATION TAX LEGISLATION

By RAY H. GARRISON* and JAMES W. MARTIN**

I

Legislation¹ for the registration of motor vehicles in the United States developed slowly. In 1901 New York became the first state to provide for motor vehicle registration. After 1902 state legislatures everywhere began to enact registration laws. First laws were passed in 1903 in seven states. In 1904 four others were added. Other states rapidly fell in line: 12 in 1905, the banner year for original motor license legislation; 2 in 1906; 3 and the District of Columbia in 1907; 1 in 1909; and 2 in 1910.² It is significant that of the New England, Middle Atlantic, North Central, and Pacific Coast states the only ones which had not passed motor registration statutes before 1911 were New Hampshire and North Dakota.

* Mr. Garrison, Supervisor of Escheats, Kentucky Department of Revenue, and formerly research assistant, Bureau of Business Research, University of Kentucky, did the detailed research incident to preparation of a report on which most of the material presented here was based.

** Mr. Martin, Director of the University of Kentucky Bureau of Business Research, supervised Mr. Garrison's work on the larger research project and prepared the text of this paper largely on the basis of the earlier study. The authors are grateful for criticism of this manuscript by Messrs. Guy A. Huguélet, President, Southeastern Greyhound Lines; J. H. McChord, Louisville and Nashville Railroad Co.; and representatives of the Kentucky Motor Truck Club.

¹Unless otherwise noted, this historical sketch is based on the session laws of the various states and the annual digest of state motor laws by the National Highway Users Conference, formerly the Motor Vehicle Conference Committee.

²James W. Martin, *The Motor Vehicle Registration License* (1927) 12 BULL. NAT. TAX ASS'N 193, 196.

EARLY LEGISLATION PROVIDING MOTOR REGISTRATION

Passage of these laws did not signify the use of the motor license as a tax measure. The small flat-rate fee for a permanent license indicated it was for police purposes. After 1910, however, some of the original laws, as they were passed in those states which had previously failed to enact such legislation, began clearly to show that state legislatures were becoming aware of the possibility that motor registration could be made a lucrative source of revenue. The increase in flat fees and the change to annual registration evidenced the trend toward emphasis on revenue.

Three states enacted their first laws in 1911 levying flat-rate, permanent registration fees; and Florida provided for graduation from \$5.00 to \$10 on the basis of horsepower. In 1912 Arizona and Mississippi provided graduation in rates on the basis of horsepower. Five western states enacted their original registration laws in 1913 with graduation of rates based on horsepower. Wyoming was the only state to enact a flat annual fee in 1913. Louisiana, the only remaining state to enact motor registration, in 1914 provided for a fee of \$0.25 per horsepower with \$5.00 as the minimum charge.³ By 1914 all states and the District of Columbia had enacted motor registration rates⁴ predicated on different bases, but only 11 states⁵ made any special provision for motor trucks. The remainder applied to motor trucks the same schedule of rates paid for passenger cars. Most of the states charged either flat rates or rates based on horsepower.⁶

The states which placed motor trucks in a separate class and exacted fees different from those assessed against passenger cars did so in accordance with two directly conflicting theories. Some states deliberately put motor trucks into a separate class and charged flat fees, which in several instances were less than the regular rates applicable to passenger cars of similar horsepower. This marked deviation in favor of the motor truck owners can be explained: (a) The motor truck was held to be useful and, therefore, should be relieved of any inordinate

³ *Id.* at 195.

⁴ *Motor Vehicle Taxes* (May, 1938) 1 TAX ADMINISTRATORS NEWS 4.

⁵ Conn., Ind., Me., Md., Mass., N. H., N. J., N. Y., Ore., Pa., R. I.

⁶ See Table I.

burden; and (b) the effect of the motor truck upon the service life of the highways was not considered as a factor in heavier taxation of trucks, as their use was still rather limited. The

TABLE I. METHODS OF LICENSING PRIVATE MOTOR TRUCKS BY THE VARIOUS STATES

Basis of license tax	Number of states									
	1908	1912	1914	1921	1923	1924	1927	1931	1942	
I. One measure:										
Flat rate per vehicle	27	22	25	2	—	1	1	1	—	—
Horsepower	3	14	17	2	2	—	—	—	—	1
Capacity	—	—	2	25	25	25	23	19	13	—
Gross weight	—	—	1	7	12	10	11	8	14	—
Net weight	—	—	—	2	—	2	4	5	10	—
Chassis weight	—	—	—	1	1	—	1	3	—	—
Value	—	—	—	1	—	—	—	1	—	—
Tire width	—	—	—	1	1	1	1	—	—	—
Live load capacity	—	—	—	—	—	—	—	—	—	1
II. Two measures:										
Horsepower, flat fee	—	—	1	—	—	—	—	—	—	—
Horsepower, gross weight	—	—	—	2	2	2	2	—	—	—
Horsepower, net weight	—	—	—	2	2	1	—	—	—	—
Horsepower, capacity	—	—	—	1	2	2	3	3	—	—
Net weight, capacity	—	—	—	1	—	—	—	—	—	—
Value, gross weight	—	—	—	—	2	—	—	—	—	—
Value, capacity	—	—	—	—	—	1	2	1	—	—
Net weight, flat fee	—	—	—	—	—	1	—	2	—	—
Flat fee, capacity	—	—	—	—	—	1	—	—	—	1
Gross weight, capacity	—	—	—	—	—	—	1	—	—	—
Gross weight, wheels	—	—	—	—	—	—	—	2	—	—
Horsepower, wheels	—	—	—	—	—	—	—	1	—	—
Chassis weight, capacity	—	—	—	—	—	—	—	1	—	—
Gross weight, flat fee	—	—	—	—	—	—	—	—	2	—
Gross weight, age	—	—	—	—	—	—	—	—	2	—
Chassis weight, age	—	—	—	—	—	—	—	—	1	—
Chassis weight, axles	—	—	—	—	—	—	—	—	1	—
Net weight, age	—	—	—	—	—	—	—	—	1	—
III. Three measures:										
Net weight, value, horsepower	—	—	—	—	—	1	—	—	—	—
Net weight, horsepower, capacity	—	—	—	—	—	1	—	—	—	—
Net weight, capacity, flat fee	—	—	—	—	—	—	—	1	—	—
Net weight, axles, flat fee	—	—	—	—	—	—	—	—	2	—
IV. Four measures:										
Net weight, horsepower, value, capacity	—	—	—	1	—	—	1	1	—	—
Total states	30	36	46	48	49	49	49	49	49	49

Source: Compiled from the annual digests of state motor tax laws of the National Highway Users Conference; R. K. Tomlin, *The Trend of Motor Vehicle Legislation* (1921) 87 ENGINEERING NEWS RECORD

354; Henry R. Trumbower, *Motor Vehicle Fees and Gasoline Taxes* (1924) 5 PUBLIC ROADS 1-9; Thomas H. MacDonald, *The Taxation of Motor Vehicles in 1932* (1934) PROCEEDINGS, HIGHWAY RESEARCH BOARD 27-29; THE TAX RESEARCH FOUNDATION, *TAX SYSTEMS* (1942) 236-244.

theory that motor trucks were largely engaged in intracity operations and, as a consequence, did no harm to the rural highways may have been considered.⁷ Other states charged a higher fee for trucks on the ground that they were more destructive to the roads.

The constitutionality of many of these early statutes was challenged in the state courts, but the laws were generally upheld as legitimate exercise of the states' police powers.⁸ The courts usually considered the motor vehicle, because it frightened horses, as dangerous to the ordinary travelers on the highway. The Massachusetts Court stated that it was "the duty of the Legislature, in the exercise of the police power, to consider the risks that arise from the use of new inventions applying the forces of nature in previously unknown ways."⁹ The license and registration features of the laws were regarded as aids in the administration of the regulatory acts and in the identification of vehicles. The registration and numbering was usually considered by the state courts as necessary for the detection of law violations incident to motor vehicle use.

Thus, by 1910, after several states had changed to graduated annual fees, Kentucky enacted her first registration act.¹⁰ This original Kentucky legislation sought primarily the adequate regulation of traffic and made the collection of revenue a secondary purpose. It required brakes, bell or horn, proper speed, and diligence toward animals on the highways.¹¹ It authorized the Secretary of State to receive the sworn applications of the vehicle owner, who was required to file within ten days after acquisition of a vehicle, setting forth his name and

⁷ Henry R. Trumbower, *Motor Vehicle Fees and Gasoline Taxes* (1924) 5 PUB. ROADS 1, 4.

⁸ *Bozeman v. State*, 7 Ala. App. 151, 61 So. 604 (1913); *Ayres et al. v. City of Chicago*, 239 Ill. 237, 87 N.E. 1073 (1909); *State v. Mayo*, 106 Me. 62, 75 Atl. 295 (1909); *Ruggles v. State*, 120 Md. 553, 87 Atl. 1080 (1913); *Commonwealth v. Kingsbury*, 199 Mass. 542, 85 N.E. 848 (1908); *Unwen v. New Jersey*, 73 N.J.L. (Sup. Ct.) 529, 64 Atl. 163 (1906), *aff'd*, 75 N.J.L. 500, 68 Atl. 110 (1907); *Brazier et al. v. Philadelphia et al.*, 215 Pa. 297, 64 Atl. 508 (1906).

⁹ *Commonwealth v. Kingsbury*, 199 Mass. 542, 85 N.E. 848 (1908).

¹⁰ *Martin, loc. cit. supra.*

¹¹ Acts 1910, chap. 81, secs. 7-11, pp. 246-248.

address with a brief description of his vehicle. Each application was accompanied by the prescribed fee.¹² All revenue collected by the Secretary of State was for the State Road Fund. Each owner who registered was issued an aluminum seal, circular in form and not exceeding 2 inches in diameter, with "Registered Motor Vehicle No. —, Ky." stamped on it.¹³

Kentucky modified her registration law in 1914 by creating the office of commissioner of motor vehicles as a branch of the Department of State. Rates were increased slightly, for it was anticipated that the expenditures of the Department of Public Roads, which had been created in 1912 with an appropriation from the license tax, would almost double.¹⁴ Again, as in the act of 1910, trucks and passenger cars were classified alike; and the rates¹⁵ were based solely on horsepower, rather than on the character of the vehicle. This practice was the rule in the majority of states.¹⁶

Although the first motor registration tax in Kentucky became effective in 1910, its constitutionality was not challenged immediately. The constitutional basis for such a measure had been upheld earlier in connection with horse-drawn vehicles.¹⁷ The Court of Appeals in upholding the earlier act¹⁸ permitting municipalities to levy a tax on the use of drays running in the streets laid the basis for the motor vehicle registration fee in 1910. The court in *Bowser and Co. v. Thompson, Judge*¹⁹ held

¹² Acts 1910, chap. 81, sec. 2, p. 242. See Table II for major provisions of each registration law.

¹³ Acts 1910, chap. 81, sec. 3, p. 244.

¹⁴ *Message of Gov. James B. McCreary to the General Assembly of Kentucky* (Jan. 6, 1912) 1 KY. SEN. J. 47.

¹⁵ Acts 1914, chap. 69, sec. 2, p. 180.

¹⁶ In Connecticut the basis was horsepower and the character of the vehicle (i.e., whether truck or passenger vehicle), but in Massachusetts the graduation was only on the basis of the character of the vehicle. Delaware, New Hampshire, and Wisconsin provided for a difference in rates on the basis of the character of the vehicle. New Jersey graduated rates on the basis of horsepower plus a flat rate for vehicles weighing over 4,000 lbs.

¹⁷ *Bowser and Co. v. Thompson, Judge*, 103 Ky. 331, 45 S.W. 73 (1898).

¹⁸ Acts 1893, chap. 244, sec. 225, p. 1330.

¹⁹ 103 Ky. 331, 333, 45 S.W. 73 (1898). As to horse-drawn vehicles not for hire, see *Livingston and Co. v. City of Paducah*, 80 Ky. 656 (1883); *City of Covington v. Woods and Co.*, 98 Ky. 344, 33 S.W. 84 (1895). However, provisions for the payment of a fee by those using motor vehicles on the highways are now generally held not to be a property tax, but in the nature of a license fee, so that

that "the use of the streets and public ways . . . is a use common to all, . . . but this use must not be exercised by any to the injury of others; . . . and when in the nature of things, it will likely be so exercised, regulations may be imposed under the police power." Thus, the constitutional right of Kentucky to license vehicles on the public highways was established in 1898 even prior to the enactment of the first law licensing motor vehicles.

After the registration tax had been in effect in Kentucky for seven years, a motorist challenged the validity of the 1914 act on the ground that the amount exacted under the police power exceeded the cost of registration and supervision; that it was contrary to the articles of the Kentucky Constitution pertaining to uniform taxation; and that it disregarded the due process clause of the Fourteenth Amendment.²⁰ Furthermore, the plaintiff insisted that the statute as a whole violated the Kentucky Constitution because it related to two subjects,²¹ while only one was expressed in the title. He presented evidence to show that the cost of registering a motor vehicle, including the numbered tags and the maintenance of the commissioner's office, was less than \$1.00 per vehicle; that the cost of registration of a vehicle of 20 horsepower was no more than the cost for a vehicle of 50 horsepower; but that the registration rates varied from \$6.00 to \$20.

These charges were made even though the United States Supreme Court in 1915 had upheld a Maryland statute which prescribed a comprehensive licensing scheme graduated according to horsepower.²² The Supreme Court had also upheld a New Jersey statute in 1916 with fees based on horsepower.²³ In

constitutional provisions governing ad valorem property taxes no longer affect the imposition of such fees. See *Kane v. State of New Jersey*, 242 U. S. 160, 37 Sup. Ct. 30 (1916).

²⁰ *Smith v. Commonwealth for use, et al.*, 175 Ky. 286, 194 S.W. 367 (1917).

²¹ Section 51 of the Constitution states, "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title. . . ."

²² *Hendrick v. State of Maryland*, 235 U. S. 610, 35 Sup. Ct. 140 (1915).

²³ *Kane v. State of New Jersey*, 242 U. S. 160, 37 Sup. Ct. 30 (1916); see also *Hendrick v. State of Maryland*, 235 U. S. 610, 35 Sup. Ct. 140 (1915); *Bozeman v. State*, 7 Ala. App. 151, 61 So. 604 (1913); *Jackson, Sheriff v. Neff*, 64 Fla. 326, 60 So. 350 (1912); *State v. Ingalls*, 18 N. Mex. 285, 135 Pac. 1177 (1913).

TABLE II. RATE PROVISIONS IN COMMERCIAL MOTOR TAX LAWS IN KENTUCKY, 1910-1938

Date	Truck	Bus
1910	Base: horsepower	Same as for trucks
	1-24 \$ 5	
	25-49 10	
	50 and up 20	
1914	Base: horsepower	Same as for trucks
	1-24 \$ 6	
	25-49 11	
	50 and up 20	
1918	Base: capacity	Same as passenger cars
	1000 or less lbs. \$ 11	or
	1001-2000 lbs. 15	Base: horsepower
	2001-3000 lbs. 20	1-24 \$ 6
	3001-4000 lbs. 25	25-49 11
	4001-5000 lbs. 30	50 and up 20
	5001-6000 lbs. 35	
	6001-7000 lbs. 45	
	7001-8000 lbs. 55	
	8001-9000 lbs. 65	
	9001-10000 lbs. 75	
	Each ton additional 50	
1920	Base: capacity	Same as truck rates
	1000 or less lbs. \$ 20	
	1001-2000 lbs. 30	
	2001-3000 lbs. 40	
	3001-4000 lbs. 50	
	4001-5000 lbs. 60	
	5001-6000 lbs. 70	
	6001-7000 lbs. 90	
	7001-8000 lbs. 110	
	8001-9000 lbs. 130	
	9001-10000 lbs. 150	
	Each ton additional 50	
1924	Base: capacity	1922 truck registration rates plus
	1000 or less lbs. \$ 20	the following special charge per
	1001-2000 lbs. 30	seat if vehicle is on a regular route:
	2001-3000 lbs. 55	5 seats or less \$ 2.50 per seat
	3001-4000 lbs. 70	6-8 seats 5.00 per seat
	4001-5000 lbs. 85	8-20 seats 10.00 per seat
	5001-6000 lbs. 95	20 seats and up 15.00 per seat
	6001-7000 lbs. 125	
	7001-8000 lbs. 150	
	8001-9000 lbs. 185	
	9001-10000 lbs. 215	
	Each additional ton 20	
1926	Base: capacity	Not on regular route:
	Up to 9000 lbs. same as	Base vehicle weight \$0.40 per 100
	1924.	lbs. of vehicle weight plus \$0.19 per
	9001-10000 lbs. \$250	horsepower, plus \$1.50 per seat.
	Over 10000 lbs. 300	
	Each additional ton 30	

TABLE II. (Continued)

Date	Truck	Bus																						
		<p>On regular route:</p> <p>Base vehicle weight and tag-seat tax \$1 per 100 lbs. of vehicle weight plus \$5 per seat for 5 seats or less and \$10 for tag; \$10 per seat for 6 to 20 seats and \$25 for tag; \$15 per seat for 21 to 30 seats and \$50 for tag.</p>																						
1930	Same as 1926	Rates same as 1926, except rate per 100 lbs. of vehicle weight was reduced to \$0.50.																						
1932	<p>Registration rates same as for 1930.</p> <p>Special carrier tax: Excise tax rate per mile traveled based on vehicle weight: 5500-6000 lbs., \$0.005; above 6000 lbs., another \$0.005 per mile added for each additional ton.</p>	<p>On regular route:</p> <p>\$0.50 per 100 lbs. vehicle weight, plus: (1) 1-7 seats, \$10 tag; (2) 8-16 seats, \$10 tag; (3) 17-25 seats, \$25 tag; (4) 26 seats and up, \$50 tag. In addition, a seat-mileage tax as follows: (1) 1-7 seats, \$3 per seat plus \$0.0025 per mile traveled; (2) 8-16 seats, \$7.50 per seat plus \$0.0075 per mile traveled; (3) 17-25 seats, \$10 per seat plus \$0.0075 per mile traveled; (4) 26-29 seats, \$12.50 per seat plus \$0.01 per mile traveled; (5) 30 seats and up, \$15 per seat plus \$0.03 per mile traveled.</p> <p>Not on regular route: Same as 1926</p> <p>\$0.50 per 100 lbs. vehicle weight and in addition:</p> <p>Plate tax:</p> <table> <tr> <td>1-7 passengers</td> <td>\$10.00 per bus</td> </tr> <tr> <td>8-17 passengers</td> <td>10.00 per bus</td> </tr> <tr> <td>18-25 passengers</td> <td>17.50 per bus</td> </tr> <tr> <td>26-29 passengers</td> <td>32.50 per bus</td> </tr> <tr> <td>30 or more passengers</td> <td>50.00 per bus</td> </tr> </table> <p>Seat-mileage carrier tax:</p> <p>1-7 passengers, \$2.00 per seat plus \$0.0025 per mi.; 8-17 passengers, \$5.00 per seat plus \$0.005 per mi.; 18-25 passengers, \$7.00 per seat plus \$0.0075 per mi.; 26-29 pas-</p>	1-7 passengers	\$10.00 per bus	8-17 passengers	10.00 per bus	18-25 passengers	17.50 per bus	26-29 passengers	32.50 per bus	30 or more passengers	50.00 per bus												
1-7 passengers	\$10.00 per bus																							
8-17 passengers	10.00 per bus																							
18-25 passengers	17.50 per bus																							
26-29 passengers	32.50 per bus																							
30 or more passengers	50.00 per bus																							
1934	<p>Base: capacity</p> <table> <tr> <td>1000 or less lbs.</td> <td>\$ 10</td> </tr> <tr> <td>1001-2000 lbs.</td> <td>22</td> </tr> <tr> <td>2001-3000 lbs.</td> <td>40</td> </tr> <tr> <td>3001-4000 lbs.</td> <td>52</td> </tr> <tr> <td>4001-5000 lbs.</td> <td>63</td> </tr> <tr> <td>5001-6000 lbs.</td> <td>71</td> </tr> <tr> <td>6001-7000 lbs.</td> <td>93</td> </tr> <tr> <td>7001-8000 lbs.</td> <td>112</td> </tr> <tr> <td>8001-9000 lbs.</td> <td>133</td> </tr> <tr> <td>9001-10000 lbs.</td> <td>187</td> </tr> <tr> <td>Over 10000 lbs.</td> <td>230</td> </tr> </table> <p>Each additional ton above 10000 lbs. 25</p>	1000 or less lbs.	\$ 10	1001-2000 lbs.	22	2001-3000 lbs.	40	3001-4000 lbs.	52	4001-5000 lbs.	63	5001-6000 lbs.	71	6001-7000 lbs.	93	7001-8000 lbs.	112	8001-9000 lbs.	133	9001-10000 lbs.	187	Over 10000 lbs.	230	
1000 or less lbs.	\$ 10																							
1001-2000 lbs.	22																							
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9001-10000 lbs.	187																							
Over 10000 lbs.	230																							

TABLE II. (Continued)

Date	Truck	Bus
	Special carrier tax: Excise tax rate per mile traveled based on vehicle weight: less than 5000 lbs., \$0.0025; 5000-6000 lbs., \$0.005; above 6000 lbs., another \$0.005 per mile added for each additional ton.	sengers, \$8.50 per seat plus \$0.01 per mi.; 30 or more passengers, \$10 per seat plus \$0.03 per mi.
1938	Registration fees same as 1934.	
	Special carrier fees:	Intercity busses: Tag tax, \$8.00 per seat for first 16; \$15 per seat for next 8; and \$25 for each remaining seat. In addition, a special mileage fee, 1/36th of a cent per regular seat multiplied by total miles traveled.
	Weight (excise) tax, \$1 per 100 lbs. net weight.	City busses: \$1.50 per regular seat.

Source: Compiled from *Acts 1910-1938*.

the *Hendrick* and *Kane* cases the Supreme Court upheld the registration taxes there imposed not only on the theory that they reimbursed the state for special administrative expenses, but also on the theory that they compensated the state for the use of the highways. Justice McReynolds said in the *Hendrick* opinion:

“In view of the many decisions of this court there can be no serious doubt that where a state at its own expense furnished special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor.”

Following the precedents established by other courts, the Kentucky Court of Appeals upheld the power of the General Assembly to levy a graduated motor vehicle license fee applying to both residents and nonresidents on the compensatory use principle.

The plenary right of the states, except to the extent that they have transferred such power to municipalities, to regulate and control their streets under the police power involved no

new or unusual principles, but simply the application of doctrines that had long been uniformly recognized and thoroughly crystallized by the United States Supreme Court.²⁴ Kentucky motorists generally accepted this long-recognized right inherent in the sovereignty of the state as cited in the decision of 1898²⁵ in regard to horse-drawn vehicles and applied it to motor vehicles.

The General Assembly may by general law delegate to the governing body of municipalities the power to impose a license tax in addition to the license fee charged by the state,²⁶ and has done so.²⁷ Such authority may be delegated under either the police power or the taxing power.²⁸ However, in the absence of any constitutional provision governing the subject, the power of a municipality to regulate the use of its streets by licensing exists only as delegated to it by the General Assembly; and the authority may be withdrawn at any time.²⁹

²⁴ *Phillips v. City of Mobile*, 208 U. S. 472, 28 Sup. Ct. 370 (1908); *Jones v. Brim*, 165 U. S. 180, 17 Sup. Ct. 282 (1897); *Robbins v. Shelby Co. Taxing District*, 120 U. S. 489, 7 Sup. Ct. 592 (1887); *Barbier v. Connolly*, 113 U. S. 27, 5 Sup. Ct. 357 (1885).

²⁵ *Bowser and Co. v. Thompson, Judge*, 103 Ky. 331, 45 S.W. 73 (1898).

²⁶ Ky. Const., sec. 181.

²⁷ Acts 1893, chap. 244, sec. 225, p. 1330; Acts 1906, chap. 57, sec. 5, p. 310.

²⁸ *Panke v. City of Louisville et al.*, 229 Ky. 186, 16 S.W. (2d) 1034 (1929); *City of Mayfield v. Carter Hardware Co.*, 192 Ky. 381, 233 S.W. 789 (1921); *City of Mayfield v. Carter Hardware Co.*, 191 Ky. 364, 230 S.W. 298 (1921); *City of Henderson v. Lockett et al.*, 157 Ky. 366, 163 S.W. 199 (1914); *Bowser and Co. v. Thompson, Judge*, 103 Ky. 331, 45 S.W. 73 (1898).

²⁹ *City of Newport v. Merkel Bros. Co.*, 156 Ky. 580, 161 S.W. 549 (1913). Motor transportation license laws are generally valid as a proper exercise of the police power of the state or municipality. If a license or registration tax is imposed upon motor vehicles as a regulation for a specific and burdensome use of the public highways, it is a valid exercise of the police power. Thus, although the amount of the fee exceeds the expense of administering the act and the supervising of vehicle operation, the regulation is not invalid as an attempt to raise revenue under the guise of a police regulation. The fact that a statute is both a regulatory and to some extent a revenue measure, as raising funds for road construction and maintenance, does not affect its validity. An ordinary motor vehicle license, however, is not a license to do business as a common carrier transportation company. The former is a license or tax on the privilege of operating the vehicle on the highways; the latter is not only a tax on the privilege of using the highways, but also on the business of the person or company operating the motor vehicles. [Cf. *State ex rel. Transportation Ass'n of Wisconsin v. Zimmerman, Secretary of State*, 181 Wis. 552, 196 N.W. 848 (1914).]

REGISTRATION AS A REVENUE SOURCE

During World War I and the postwar era, a greater demand for revenue was felt in many states.³⁰ New bases of graduation developed in the various states including net weight,³¹ carrying capacity,³² net weight and the number of registrations,³³ and gross weight.³⁴ These new bases indicated that an effort was being made to find a more accurate measure of the benefit to the highway users.

As the use of motor vehicles grew in Kentucky, the demand for improved highways and for the payment of the bill by motor vehicle owners increased.³⁵ The General Assembly boosted the rates in 1918 and also for the first time provided a separate rate schedule for commercial truck licenses based on carrying capacity, but it fixed no standard for determining load capacity.³⁶ In the absence of any legislatively prescribed standard, officials charged with the administration of the registration tax adopted manufacturers' ratings as a standard. The new classification plan adopted by Kentucky in 1918 not only increased the amount of revenue,³⁷ but also provided a more equitable base for taxation.³⁸ Although engineering details were not available for accurate cost distribution, the legislature realized that graduation should be in proportion to wear and tear on the roads.

The new rate on a 4-ton truck was more than double the tax on a 2-ton truck, and the tax on a 5-ton truck was made triple the tax on a 2-ton truck. This was probably equitable inasmuch as the rates should increase more rapidly than the increase in carrying capacity if the distribution of the total tax load on the motorists is to approximate comparative destruc-

³⁰ Martin, *op. cit. supra* 199.

³¹ Georgia for trucks.

³² Conn., Fla., Mass., Miss., Mont., N. Y., Ore., and Wash. for trucks.

³³ Idaho for trucks.

³⁴ N. J., Pa., and Del. for trucks.

³⁵ See *Courier-Journal*, Jan. 9, 1918, p. 2, c. 4. Support of this movement was given by Gov. A. O. Stanley, the Department of Public Roads, and the county road engineers of Kentucky.

³⁶ Acts 1918, chap. 27, sec. 1, p. 83.

³⁷ Cf. 1 EFFICIENCY COMMISSION OF KENTUCKY, *THE GOVERNMENT OF KENTUCKY* (1924) 298.

³⁸ Cf. the criticism of horsepower as a base in Harry A. Barth, *State Taxation of Passenger Automobiles* (1924) 13 NATIONAL MUNICIPAL REVIEW 641, 643.

tiveness of their vehicles on the highways,³⁹ because the gasoline tax in general increases less rapidly, as the size of the vehicle becomes greater, than does relative wear and tear on the highways. The minimum rate for a truck was \$11 as compared with a minimum of \$6.00 on a passenger vehicle of equal weight. The State Tax Commission interpreted "passenger cars" to include busses.

In 1920 the General Assembly passed legislation which applied to busses the same schedule of rates as prescribed for trucks. In addition the 1918 rates were approximately doubled for each class of commercial vehicles.⁴⁰ Rates varied from \$22 on vehicles with a capacity of 1,000 pounds or less to \$150, plus \$50 for each additional ton for vehicles the capacity of which exceeded 10,000 pounds. The rates were slightly progressive, so that the total license tax on a 2.5-ton truck was \$70 and that on a 5-ton truck was \$150. Yet with these new rates in effect sufficient revenue for execution of the new road law was lacking.⁴¹ Kentucky needed much added revenue because she had largely broken away from her previous haphazard methods of local financing, placed road building on a business basis, and fixed responsibility on one organization⁴² staffed with trained engineers.

Capacity, as provided in Kentucky by this act, was the prevailing measure of the tax in other states. Twenty-four states in addition to Kentucky employed capacity as a measure, and the remaining states employed 12 different methods of charging license fees for trucks.⁴³ By 1924 many modifications were made in these methods, all of which were intended to give the states revenue in proportion to the trucks' use of the highways.

In 1924 the registration rates on trucks and busses with a capacity greater than 2,000 pounds were raised substantially.⁴⁴ For example, the rate for a 5-ton truck was increased from \$150

³⁹ James W. Martin, *License Fee Properly Supplements Gasoline Tax* (1927) ENGINEERING NEWS-RECORD 722. Cf. EFFICIENCY COMMISSION OF KENTUCKY, *loc. cit. supra*.

⁴⁰ Acts 1920, chap. 90, sec. 2, p. 418.

⁴¹ JOE S. BOGGS, PLANS AND POLICIES OF THE STATE HIGHWAY COMMISSION (1920) 6.

⁴² Acts 1920, chap. 17, pp. 76 ff.

⁴³ See Table I.

⁴⁴ Acts 1924, chap. 79, sec. 1, p. 201.

to \$215. This increase resulted from a policy of requiring trucks to pay taxes more nearly proportional to road destructiveness.

In 1926 the registration rates for trucks were again raised in the upper brackets, so that rates varied from \$20 to \$300.⁴⁵ The registration rate for motor busses operating on regular routes was made \$1.00 per 100 pounds gross vehicle weight.⁴⁶ In addition a tag tax graduated on the basis of seating capacity was provided. Passenger carriers for hire but not operating over a regular route were taxed at \$0.40 per 100 pounds gross vehicle weight.

In order more nearly to equalize the tax on passenger carriers for hire operating on regular routes with that on contract carriers, the legislature in 1930 lowered the rate on the former from \$1.00 to \$0.50 per 100 pounds.⁴⁷ Interstate passenger carriers operating between fixed termini and between two or more municipalities over a route extending 10 miles or less within Kentucky were required to pay a fee of one-third that paid by intrastate vehicles.⁴⁸

The annual registration tax for trucks remained the same from 1926 until 1934, except for the December, 1928, State Tax Commission order to the county clerks requiring all trucks to be re-rated for license purposes. By this order each truck from 1.5-ton to 8-ton capacity, except trucks manufactured prior to 1922, which were treated as obsolete, were given an "actual carrying capacity" in excess of the manufacturer's rated carrying capacity. The increase in capacity, according to the Court of Appeals,⁴⁹ averaged almost 50 per cent. The Commission placed the new construction on the statutes in the belief that overloaded trucks had a carrying capacity in excess of the manufacturers' ratings. The language of the motor vehicle acts beginning in 1918 was clearly ambiguous as to the standard; and so the Court of Appeals, following the doctrine of contemporaneous construction, declared that the State Tax Commission was without any right to require a license tax on actual carrying capacity without legislative change.⁵⁰

⁴⁵ Acts 1926, chap. 111, sec. 1, p. 357.

⁴⁶ Acts 1926, chap. 112, sec. 27, p. 373.

⁴⁷ Acts 1930, chap. 75, sec. 1, p. 231.

⁴⁸ Acts 1930, chap. 75, sec. 1, p. 232.

⁴⁹ State Tax Commission et al. v. Safety Transfer and Storage Co. et al., 230 Ky. 225, 18 S.W. (2d) 991 (1929).

⁵⁰ State Tax Commission et al. v. Safety Transfer and Storage Co. et al., 230 Ky. 225, 18 S.W. (2d) 991 (1929).

Truck owners alleged that they were unable to procure license plates for their vehicles during the depression of the early 1930's on or before January 1 of each year; as a result they had no right to operate their vehicles; if they did operate them, they subjected themselves to the payment of penalties for operating them without their license plates.⁵¹ Financial stringency, resulting from both the general economic depression and the fact that the registration date immediately followed Christmas shopping, may have accounted for some decline in the number of registrations.

To relieve this situation, the successive governors⁵² issued proclamations extending the time in which they might register or procure license plates. The last of such proclamations was that of Governor Laffoon, which extended a grace period to February 28, 1934, for securing a license. Thousands of truck owners still did not license their trucks. The average registration rates were above the average rates imposed by other states.⁵³ The automobile clubs of Kentucky demanded a reduction in the tax on trucks so as to be in line with similar fees exacted in the states bordering Kentucky. Governor Laffoon asserted that more uniformity in rates was greatly needed.⁵⁴

The annual registration tax for trucks was sharply reduced by the legislature in 1934 and the new rates made effective immediately.⁵⁵ The rates for busses based on vehicle weight were continued at \$0.50 a 100 pounds, but there were drastic reductions in the upper brackets for the bus tag tax.⁵⁶ Two years later legislation was enacted to provide a period of grace.

PRESENT REGISTRATION TAX IN KENTUCKY

All owners or operators of motor vehicles, except those engaged in the transportation of passengers for hire operating

⁵¹ Martin, Com'r of Revenue v. Louisville Motors, 276 Ky. 696, 125 S.W. 241 (1939). At certain times the statutes have imposed no penalty for delinquency. 11 REP. KY. STATE TAX COMMISSION (1928) 5.

⁵² Martin, Com'r of Revenue v. Louisville Motors, 276 Ky. 696, 125 S.W. 241 (1939).

⁵³ JAMES W. MARTIN, AN IMMEDIATE TAX PROGRAM FOR THE STATE OF KENTUCKY (1934) 6 (Bulletin of the Bureau of Business Research, University of Kentucky).

⁵⁴ Message of Governor Ruby Laffoon to the General Assembly (Jan. 8, 1934) 1 KY. SEN. J. 101.

⁵⁵ Acts 1934, chap. 102, sec. 1, p. 488.

⁵⁶ Acts 1934, chap. 102, sec. 1, p. 488.

under a certificate of public convenience and necessity, must register the vehicle with the county clerk of the county in which the owner resides or in which the vehicle is to be operated. The owner presents his bill of sale with the application for registration in the case of a new vehicle; otherwise, by March 1 of each year he presents his registration receipt for the preceding year with the new application.⁵⁷ The application for registration must be accompanied by the appropriate fee based upon rated carrying capacity. Since 1934 the legislature has made changes in neither the rates nor the base for truck registrations.⁵⁸

Farm trucks, school busses, church busses, and trucks on which well drills have been mounted to the frame are required to pay only the flat registration fee of \$4.50, the same as is required of passenger cars.⁵⁹ If a farmer desires the regular commercial license for a truck that he previously licensed as a farm truck, the farm truck plates are taken up and the regular commercial license issued upon payment of the annual commercial fee less the amount paid for the farm truck license. For example, if a 1.5-ton truck, previously licensed as a farm truck, is changed into a commercial truck, the correct state fee is \$35.50, regardless of the time of year the farmer changes from the farm to commercial use. However, if a farmer sells a farm truck, the plates are taken up and the vehicle transferred to the purchaser. The regular commercial license may then be issued upon collection of the commercial fee for the remainder of the year.⁶⁰

In Kentucky there is no statutory authority for requiring a registration tax on trailers or semi-trailers.⁶¹ The Court of Appeals has suggested that the capacity of a truck is actually reduced by the trailer, because the load is moved a greater distance from the power plant; and, if a truck and semi-trailer

⁵⁷ KENTUCKY REVISED STATUTES (hereinafter referred to as KRS), 186.020.

⁵⁸ The present schedule of rates is shown in Table II.

⁵⁹ KRS 186.050.

⁶⁰ Ky. Dept. of Revenue, Regulation RG-3, Aug. 29, 1942.

⁶¹ *Commonwealth v. Wilborn*, 250 Ky. 148, 61 S.W. (2d) 1051 (1933). This case refers to semi-trailers, but the statute is also silent regarding state trailer registration. Other states disagree with this view. Only North Dakota and Tennessee provide kindred examples. In each of these cases, the trailers and semi-trailers become a part of the truck combination and are included in the gross weight used to measure truck licenses.

are considered as a unit, the capacity of the truck is not increased by the attachment of a semi-trailer.⁶²

Although there exists no statutory authority for the Commonwealth of Kentucky to require semi-trailers and trailers to obtain registration plates, cities may, by ordinance, impose license taxes on semi-trailers and trailers and require that registration plates issued as evidence of the licensing be affixed to the vehicle in some conspicuous place,⁶³ except that no city may impose a license fee or tax on any motor vehicle operating under a certificate of public convenience and necessity or a contract carrier's permit.⁶⁴

Motor vehicles owned exclusively by county, city, state, or federal government are registered without charge upon receipt of a certified statement of ownership from the governmental unit that owns the vehicle.⁶⁵ However, in cases in which the title to a publicly used vehicle is in an individual's name a license should be purchased from the county clerk and a fee paid according to the class of the vehicle.⁶⁶ Such exemption, however, does not affect the duty of a county, municipality, or the federal government to comply with regulations relating to the operation of motor vehicles.⁶⁷

The evolution of the dealers' license, a minor source of revenue, has been long and intricate. At present, all states treat demonstrators differently from vehicles otherwise owned and operated. Kentucky and 45 other states⁶⁸ impose a substantial flat rate for a specified number of plates, ranging from one to six sets, and an additional charge, which is ordinarily less than the charge for the first set, for each added set of plates. In some states the tax payable is computed according to the type

⁶² Commonwealth v. Wilborn, 250 Ky. 148, 61 S.W. (2d) 1051 (1933).

⁶³ KRS 186.270. This section was declared valid in Ashland Transfer Co. et al. v. State Tax Commission et al., 247 Ky. 144, 56 S.W. (2d) 691 (1932).

⁶⁴ KRS 281.570. In *City of Pineville v. Meeks*, 254 Ky. 167, 71 S.W. (2d) 33 (1934) it was charged that the Acts 1932, chap. 104, art. 4, sec. 11, p. 529 (KRS 281.570) and Acts 1932, chap. 106, sec. 13 (b), p. 542 (KRS 186.270) were in "irreconcilable conflict"; but, the Court ruled that, if considered together, as in the test, no such conflict exists.

⁶⁵ KRS 186.060.

⁶⁶ Ky. Dept. of Revenue, Regulation RG-17, May 26, 1942.

⁶⁷ Cf. *State v. Preston*, 103 Ore. 631, 206 Pac. 304 (1922).

⁶⁸ Only Delaware, Florida, and New Jersey do not conform with this practice.

of the vehicle; for example, Colorado exacts a higher fee from a dealer in trucks than a dealer in passenger cars. Each manufacturer of, or dealer in, motor vehicles in Kentucky is required to register with the county clerk of the county in which his principal place of business, or any branch, sub-agent, or agency is located. The annual registration fee is \$25 for the first dealer's plate, \$1.00 each for 5 additional plates, \$3.00 each for the next 5 additional plates, and \$5.00 per plate for those in excess of the first 11.⁶⁹ No person may use any dealers' plates for any purpose other than demonstration for sale.

If a licensed dealer desires to transport motor vehicles not registered as demonstrators, he secures "in transit" plates upon depositing \$1.00 per plate with the county clerk and paying a fee of \$0.10 per plate. If the "in transit" plates are returned to the county clerk within 15 days, the deposit is refunded. If the plates are not returned within 15 days, the deposit is forfeited and becomes a part of the State Road Fund.⁷⁰

If any licensed motor vehicle is destroyed by fire or accident, the owner, on presentation of the required evidence, is entitled to a refund of a part of the license fee proportionate to the unexpired fraction of the calendar year.⁷¹ Before the Department of Revenue requisitions such refunds, the Department of Highways must approve.⁷²

States employ at least five general methods of treating late registrants other than delinquents: (1) no reduction in rate, (2) one reduction at some time during the registration period, (3) two reductions during the year, (4) quarterly reductions, and (5) monthly reductions. The first named methods make for administrative simplicity. The last named three are attempts to approximate taxation justice. The trend in recent years has been toward elimination of nongraduated reductions. In 1924, 26 states permitted only one nongraduated percentage reduction for registration covering less than a full year; in 1927 the number had declined to 20 states; and by 1931 only 15 states allowed one flat reduction.⁷³ Kentucky and Missis-

⁶⁹ KRS 186.070.

⁷⁰ KRS 186.080.

⁷¹ KRS 186.120.

⁷² Ky. Dept. of Revenue, Regulation RG-15, April 28, 1942.

⁷³ NATIONAL INDUSTRIAL CONFERENCE BOARD, TAXATION OF MOTOR VEHICLE TRANSPORTATION (1932) 60.

issippi were the only states which in 1924 provided for proportional monthly reductions. Only five states⁷⁴ other than Kentucky now provide for them.⁷⁵

Kentucky in 1914 made the registration year coterminous with the calendar year.⁷⁶ Since 1914 no change has been made. In 26 states⁷⁷ the registration period is coterminous with the calendar year; in 10 states⁷⁸ and the District of Columbia the year closes March 31; in 3 states⁷⁹ it closes February 28; in the remainder it ends at varying times.⁸⁰ There has been a recent tendency to change the period from the calendar year to a period beginning on April 1.⁸¹ The latter date is deemed more favorable to motorists because it does not immediately follow Christmas holidays.

Only 19 states, all of which except New York and California are largely rural, extend days of grace. Only three states extend days of grace after March 1.⁸² Kentucky allows the calendar days to March 1 as days of grace.⁸³ Idaho and South Dakota allow the calendar days prior to March 31; New Mexico extends the days of grace to March 2. Among the alleged reasons for allowing days of grace are the following: (a) difficulty of travel due to weather conditions on poor roads resulting in failure to register until early spring, (b) reduced buying power following Christmas holidays, and (c) the rush of late licensing near the end of the calendar year.

⁷⁴ Iowa, La., Miss., Tex., Wis.

⁷⁵ NATIONAL HIGHWAY USERS CONFERENCE, REGISTRATION FEES AND SPECIAL TAXES (1942) 8, 9.

⁷⁶ Acts 1914, chap. 69, p. 180.

⁷⁷ Ariz., Calif., Colo., Fla., Idaho, Ill., Iowa, Kan., Ky., La., Me., Mass., Mo., Mont., Neb., Nev., N. M., N. Y., N. C., N. D., Okla., Ore., S. D., Utah, Wash., Wyo.

⁷⁸ Md., N. H., N. J., Ohio, Pa., R. I., Tenn., Tex., Vt., Va.

⁷⁹ Conn., Ind., Mich.

⁸⁰ NATIONAL HIGHWAY USERS CONFERENCE, *loc. cit. supra*.

⁸¹ This is shown by the fact that the District of Columbia and 10 states now provide for a registration year beginning April 1, but no state in 1931 provided for a registration year beginning April 1.

⁸² NATIONAL HIGHWAY USERS CONFERENCE, *loc. cit. supra*.

⁸³ Acts 1936, chap. 67, p. 197; *Martin, Com'r of Revenue v. Louisville Motors*, 276 Ky. 696, 125 S. W. (2d) 241 (1937).

II

As the use of motor vehicles developed there was increased public demand to "get Kentucky out of the mud." Also, the use of motor vehicles for the transportation of persons and property constituted a new business in direct competition with the steam railroads of the state. As a consequence, there was a growing demand for increased taxation to provide road maintenance and to place motor carriers in the same competitive position as the railroads.⁸⁴

EARLY CARRIER TAX LEGISLATION

The carrier legislation of 1924⁸⁵ was the first in Kentucky imposing a tax for the privilege of using the highways for commercial bus transportation. Its two-fold object was (a) to provide regulation for protection of the public and (b) to secure additional revenue from the carriers as support for increased maintenance of roads made necessary by wear resulting from the operation of common carrier vehicles. The act required each motor transportation company to secure from the State Highway Commission a certificate of public convenience and necessity conditioned upon conformity with certain requirements and regulations designed to protect passengers. It also subjected each carrier, in addition to the graduated registration tax, to a special carrier excise ranging from \$2.50 a passenger seat for vehicles carrying 5 passengers or less to \$15 a seat for vehicles carrying more than 30 passengers.

The 1924 act furnished a new source of litigation for Kentucky motorists. According to the prevailing view, the state in

⁸⁴ The State Efficiency Commission on February 11, 1924, laid before Governor Fields a plan to raise an additional \$2,000,000 annually for the road fund by enacting a temporary tax on motor vehicle use of the highways (Courier-Journal, Feb. 11, 1924, p. 1, c. 6). A minimum registration tax of \$25 for trucks of 1-ton capacity and \$50 for each additional ton capacity was also recommended in lieu of the prevailing rates in order to make these vehicles contribute their share toward road maintenance. At the same time many enthusiastic highway users proposed a \$75,000,000 bond issue to be used principally for roads (*Id.*, Jan. 25, 1924, p. 1; 2 EFFICIENCY COMMISSION OF KENTUCKY, *op. cit.* 594, 595). The Efficiency Commission supported the pay-as-you-go plan along with changes in the motor carrier fees and gasoline taxes.

⁸⁵ Acts 1924, chap. 81, p. 204.

the exercise of its police powers could not only condition and regulate the use of the highways, but could exclude common carriers.⁸⁶ This rule rests in part on the circumstance that the public carrier for hire uses the highways as the chief place of a private business. Such use is an extraordinary and privileged use,⁸⁷ and there exists no inherent right to operate motor vehicles as common carriers for hire on city streets or other highways of the state.⁸⁸

"If the state determines that the use of the streets for private purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire there is nothing in the Fourteenth Amendment to prevent. The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for purposes of gain is special and extraordinary, and, generally at least, may be prohibited or conditioned as the legislature deems proper."⁸⁹

The provision of the 1924 statute requiring auto transportation companies to obtain a certificate of public convenience and necessity was assailed in the courts as being class legislation in that it denied to certain people the use of the highways unless they secured a certificate, and that it tended to create a monopoly.⁹⁰ The Kentucky Court of Appeals, in keeping with the established principle, sustained the act regulating and taxing auto transportation companies as a proper exercise of right of

⁸⁶ This rule had been elaborated in the cases of *Shoenfield v. Seattle*, 265 Fed. 726 (1920); *Giglio v. Barrett et al.*, City Com'rs, 207 Ala. 278, 92 So. 668 (1922); *Dresser et al. v. City of Wichita et al.*, 96 Kan. 320, 153 Pac. 1194; *Fritz et al. v. Bresbrey et al.*, 44 R. I. 207, 116 Atl. 419 (1922); *J. E. Sheets Taxicab Co. v. Commonwealth*, 140 Va. 325, 125 S. E. 431 (1924); *Gruber v. Commonwealth*, 140 Va. 312, 125 S.E. 427 (1924); *Hadfield et al. v. Ludin*, Pros. Atty., 98 Wash. 657, 168 Pac. 516 (1917); *Ex parte Dickey*, 76 W. Va. 576, 85 S.E. 781 (1915).

⁸⁷ John C. Worsham, *The Motor Bus and the Law* (1927) Proc. KY. BAR ASS'N 79, 83.

⁸⁸ *Reo Bus Line Co. v. Southern Bus Line*, 209 Ky. 40, 272 S.W. 18 (1925); *Slusher v. Safety Coach Transit Co.*, 229 Ky. 731, 17 S.W. (2d) 1012 (1929); *Consolidated Coach Corporation v. Kentucky River Coach Co. et al.*, 249 Ky. 65, 60 S.W. (2d) 127 (1933); *Packard v. Banton et al.*, 264 U. S. 140, 44 Sup. Ct. 257 (1924); *Stephen et al. v. Binford et al.*, 287 U. S. 251, 53 Sup. Ct. 181 (1932); *Hester et al. v. Arkansas Railroad Commission*, 172 Ark. 90, 287 S.W. 763 (1926); *State ex rel. Pennington v. Quigg*, Chief of Police of Miami, 94 Fla. 1056, 114 So. 859 (1927).

⁸⁹ *Packard v. Banton* as District Attorney in and for the County of New York et al., 264 U. S. 140, 144, 44 Sup. Ct. 257 (1924).

⁹⁰ *Reo Bus Line Co. v. Southern Bus Line*, 209 Ky. 40, 272 S.W. 18 (1925).

control and not unconstitutional as tending to create a monopoly.⁹¹

Carriers operating passenger vehicles for hire paid the taxes provided in the 1924 legislation in addition to the registration rates prescribed only for trucks until 1926. In the latter year, carriers operating passenger vehicles for hire between fixed termini were classified separately from all others, and the latter taxed at \$1.50 a passenger seat. Passenger transporters operating vehicles over regular routes were taxed at a flat rate based on vehicle weight and two variable rates based on the number of seats.⁹² For the purpose of correcting administrative weaknesses, the legislation of 1926 created the independent office of the Commissioner of Motor Transportation⁹³ to administer the motor carrier taxes and regulations.

The 1930 session of the General Assembly enacted only minor revisions influencing the course of motor transportation tax history. However, a provision was incorporated which relieved the common carrier of two-thirds of the seat tax if the vehicles operated intercity in interstate commerce and the route extended ten miles or less within the state.⁹⁴

Prior to 1932 there were certain developments in the law, which may well have influenced the legislation of that year. Therefore, before continuing with the story of the Kentucky developments as such, it may be well to consider the constitutional limitations under which legislation was enacted. Undoubtedly the interstate commerce clause of the federal Constitution occasioned more controversy than any other constitutional provision. The issue was raised because the owner of a vehicle operating in interstate commerce may be called on to pay registration license or, in the case of carriers for hire, both license and transportation tax in each state in which it operates. At an early date the issue was disposed of so far as the registration tax was concerned,⁹⁵ and the fundamentals of

⁹¹ *Reo Bus Line Co. v. Southern Bus Line*, 209 Ky. 40, 272 S.W. 18 (1925); see also 6 R.C.L. 224-228.

⁹² Acts 1926, chap. 112, sec. 27, p. 372.

⁹³ Acts 1926, chap. 112, sec. 36, p. 377.

⁹⁴ Acts 1930, chap. 75, sec. 1, p. 229, 231.

⁹⁵ *Hendrick v. State of Maryland*, 235 U. S. 610, 622, 35 Sup. Ct. 140 (1914).

the Supreme Court's finding in that original case have been repeated often.⁹⁶

It was not, however, until 1927 that the United States Supreme Court decided a case expressly involving a special carrier tax. In *Clark et al. v. Poor et al.*,⁹⁷ which was decided after motor transportation had begun its period of rapid growth,⁹⁸ the Supreme Court sustained the Ohio Motor Transportation Act⁹⁹ imposing a tax additional to the registration license applied to interstate common carrier trucks on the basis of manufacturer's rated carrying capacity. Although the taxpayer operated in interstate commerce, the Court held that he was subject to police regulation and to the obligation to pay a reasonable tax in compensation for use of the state's roads. Reiterating the same doctrine, the Court also held in another case¹⁰⁰ that the state, in the absence of actual discrimination, may tax interstate carriers by a method different from that applied to intrastate carriers.

Before the Kentucky General Assembly of 1932 convened, the Supreme Court held that two measures were unconstitutional; one on the ground that there was no connection between the municipal ordinance seeking to impose the tax and either a plan of regulation or the carrier's use of the highway,¹⁰¹ and the other on the ground that the State of Tennessee in providing a tax on interstate carriers had given no positive indication that it was an excise for the use of the roads.¹⁰²

Thus, when the 1932 General Assembly of Kentucky convened, the lawmakers were apprised of the constitutional

⁹⁶ *Northern Kentucky Transportation Co. v. City of Bellevue*, 215 Ky. 514, 285 S.W. 241 (1926); *Kane v. State of New Jersey*, 242 U. S. 160, 37 Sup. Ct. 30 (1916); *Michigan Public Utilities Commission et al. v. Duke, doing business as Duke Cartage Co.*, 266 U. S. 570, 45 Sup. Ct. 191 (1925); *Liberty Highway Co. et al. v. Michigan Public Utilities Commission et al.*, 294 Fed. 703 (1923); *Red Ball Transit Co. v. Marshall et al., Public Utilities Commission of Ohio*, 8 Fed. (2d) 635 (1925); *Cannon Ball Transportation Co. v. Public Utilities Commission*, 113 Ohio 565, 149 N.E. 713 (1925).

⁹⁷ 274 U. S. 354, 47 Sup. Ct. 702 (1927); see also Roswell Magill, *Taxation of Property and Business as Affected by the Commerce Clause* (1932) PROC. NAT. TAX ASS'N 242.

⁹⁸ U. S. DEPT. OF COM., STATISTICAL ABSTRACT OF THE UNITED STATES (1930) 385.

⁹⁹ 1 OHIO GENERAL CODE (Page's Anno., 1926), sec. 614-696.

¹⁰⁰ *Interstate Busses Corporation v. Blodgett et al.*, 276 U. S. 245, 48 Sup. Ct. 230 (1928).

¹⁰¹ *Sprout v. South Bend*, 277 U. S. 163, 48 Sup. Ct. 502 (1928).

¹⁰² *Interstate Transit, Inc. v. Lindsey, County Court Clerk*, 283 U. S. 183, 51 Sup. Ct. 380 (1931).

possibilities of motor carrier taxation so far as the commerce clause of the Constitution was concerned. In brief, the state was at liberty to impose on motor transportation for hire a reasonable tax additional to the registration license as compensation for the cost of regulation and for the use of the roads, provided the purposes were clearly and positively set out in the legislation by the nature of the tax itself, by the use of the proceeds, or otherwise.¹⁰³ It was not at liberty to tax interstate carriers under a general excise unless one or both of these purposes were clearly apparent.

DEPRESSION LEGISLATION

Governor Ruby Laffoon, predicating his arguments on the destruction of the roads and the increased maintenance and policing problems as well as the unfairness of motor truck competition with other carriers,¹⁰⁴ made bus and carrier truck regulation and taxation a major policy of his administration. In 1932 a bill¹⁰⁵ providing for a mileage excise was proposed in the legislature despite the opposition of farmers,¹⁰⁶ the public carriers,¹⁰⁷ and the Motor Truck Club of Kentucky.¹⁰⁸ The measure was apparently not offered primarily as a revenue device but as a protection to the railroads against unfair bus and truck competition.¹⁰⁹ This bill not only provided for certificates for common carriers of both passengers and property and permits for all contract carriers, but it also prescribed high-rate fees and taxes to be paid by every road carrier for hire.

While the bill was pending before the General Assembly of 1932, it was questioned on the ground that it might be incon-

¹⁰³ *Id.* at 185.

¹⁰⁴ *Message of Governor Ruby Laffoon to the General Assembly* (Jan. 12, 1932) 1 KY. SEN. J. 34.

¹⁰⁵ The bill was reportedly introduced at the instance of railroad interests. *Courier-Journal*, Jan. 24, 1932, sec. 1, p. 4, c. 1. Cf. R. W. Keenon, *Bus and Automobile Law* (1932) PROC. KY. BAR ASS'N 181. One eminent railroad attorney expresses the opinion that the bill was not introduced "at the demand of large railroad interests." Letter from J. H. McChord, L. & N. R. R. Co., Aug. 19, 1944.

¹⁰⁶ *Courier-Journal*, Feb. 14, 1932, sec. 1, p. 8, c. 3; *id.* Jan. 29, 1932, sec. 1, p. 1, c. 5.

¹⁰⁷ *Id.* Jan. 29, 1932, sec. 1, p. 8, c. 5.

¹⁰⁸ *Id.* Oct. 12, 1932, sec. 1, p. 1, c. 2.

¹⁰⁹ *Id.* March 15, 1932, p. 1; *Message of Governor Ruby Laffoon to the General Assembly*, *loc. cit. supra.* Mr. J. H. McChord, General Solicitor of the L. & N., believes the purpose was not protection of the railroads' competitive position. Letter, Aug. 19, 1944.

sistent with the Federal Aid Road Law in that it placed a toll on the use of the highways.¹¹⁰ However, the same question had previously been decided in the case of *Johnson Transfer and Freight Lines et al. v. Perry et al.*¹¹¹ in which the court held that such provisions did not invalidate similar statutory requirements.

In the legislation as enacted in 1932 after a famous political controversy, passenger carriers were required to pay, in addition to the registration tax and a seating-capacity fee ranging from \$10 a vehicle for small busses to \$25 a vehicle for large ones, an excise for the use of the highways ranging from \$0.0025 a vehicle mile in the case of vehicles with a seating capacity of 7 persons or less to \$0.03 a vehicle mile for busses seating 30 persons or more. Similarly, property carriers for hire were required to pay, in addition to special fees and regular registration taxes, excises for the use of the highway ranging upward from \$0.005 a vehicle mile for trucks weighing unladen 5,500 to 6,000 pounds. Larger trucks than those of 6,000 pounds unladen weight were subject to an additional \$0.005 a vehicle mile for each ton or fraction of a ton. The maximum tax rate of \$0.035 a vehicle mile was fixed by the comparatively severe top weight restriction to 9 tons. In case of either passenger or freight vehicles, the act provided that the rates should be doubled if the carrier did not pay the registration tax because he was engaged in interstate commerce. It was also provided that a differential rate should apply if the vehicle were not equipped throughout with pneumatic rubber tires.¹¹²

¹¹⁰ Courier-Journal, March 12, 1932, p. 1.

¹¹¹ 47 Fed. (2d) 900 (1931).

¹¹² Acts 1932, chap. 104, sec. 10, p. 528. One question incident to the validity of taxation and regulation of common and contract carriers in the same legislation had been previously considered, and it had been held [*Michigan Public Utilities Commission et al. v. Duke, doing business as Duke Cartage Co.*, 266 U. S. 570, 45 Sup. Ct. 191 (1925); *Frost and Frost Trucking Co. v. Railroad Commission of California*, 271 U. S. 583, 46 Sup. Ct. 605 (1926); *Smith v. Cahoon*, 283 U. S. 553, 51 Sup. Ct. 583 (1931)] that the legislature could not by fiat constitute private carriers hauling under contract common carriers. Very shortly after the Kentucky law was enacted, however, the Supreme Court upheld legislation to impose special taxes on contract carriers and to provide regulation appropriate to their status [*Stephenson et al. v. Binford et al.*, 287 U. S. 251, 53 Sup. Ct. 181 (1932); *Sproles et al. v. Binford*, 286 U. S. 374, 52 Sup. Ct. 581 (1932); *Continental Baking Company v. Woodring, Governor et al.*, 286 U. S. 352, 52 Sup. Ct. 595 (1932)]. When the Kentucky act was

In the 1932 act, due largely to Farm Bureau pressure, the General Assembly provided for exemption of trucks weighing 5,500 pounds or less.¹¹³ This exemption was enacted despite the opposition of truck lines whose representatives contended that the tax-free vehicles would unfairly compete with heavy, highly taxed, and severely regulated vehicles. The General Assembly of 1934 sought to repeal the exemption¹¹⁴ and to enact a provision which would exempt only vehicles hauling farm products. However, the Court of Appeals found the new enactment so arbitrary as to be unconstitutional,¹¹⁵ and, in accordance with the statute, reinstated the 1932 provision.

The motor transportation tax plan of 1932 remained intact until 1938 and partly so for a period of 10 years. Meantime, certain constitutional law problems were clarified. Several cases re-emphasized the right of the states to impose excises for the enforcement of regulations and for the use of the roads, whether on the basis of gross ton-mileage¹¹⁶ or a flat charge per vehicle.¹¹⁷ It was also found¹¹⁸ that the fact that a particular user of the highways got less value from that use than did his competitors was irrelevant to the question of constitutionality. At page 289 of the United States Reporter, the Court stated that "One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may." Although the fact is only incidentally significant for understanding of Kentucky legislation, the Supreme Court also sustained reasonable taxes on the use of the roads for the transportation for hire of motor vehicles in caravans.¹¹⁹

questioned, therefore, the District Court could only follow the previous ruling [*Baker v. Glenn et al.*, State Tax Commission, 2 Fed. Supp. 880 (1933)].

¹¹³ This exemption was upheld in *Baker v. Glenn et al.*, State Tax Commission, 2 Fed. Supp. 880 (1933).

¹¹⁴ Acts 1934, chap. 103, sec. 3, p. 493.

¹¹⁵ *Priest et al. v. State Tax Commission et al.*, 258 Ky. 391, 80 S.W. (2d) 43 (1935).

¹¹⁶ *Continental Baking Co. et al. v. Woodring, Governor et al.*, 286 U. S. 352, 52 Sup. Ct. 595 (1932).

¹¹⁷ *Aero Mayflower Transit Co. et al. v. Georgia Public Service Commission et al.*, 295 U. S. 285, 55 Sup. Ct. 709 (1935).

¹¹⁸ *Id.*

¹¹⁹ *Morf v. Bingaman, Commissioner of Revenue for New Mexico*, 298 U. S. 407, 56 Sup. Ct. 756 (1936); *Clark, Director of the Department of Motor Vehicles et al. v. Paul Gray, Inc. et al.*, 306 U. S. 583, 59 Sup. Ct. 744 (1939). Cf. also *Geo. B. Wallace, Inc. et al. v. Pfost, State Commissioner of Law Enforcement*, 57 Idaho 279, 65 P. (2d) 725 (1937).

Due partly to the unusually high rates, partly to the severe regulations, and partly to other factors, administration of the mileage tax on trucks for hire proved to be exceedingly difficult. Although the commonwealth's agents succeeded in apprehending many delinquents, it was common knowledge that the measure was inadequately enforced. Moreover, under existing conditions, it appeared impracticable to secure reasonably complete administration without exorbitant cost.¹²⁰ So the General Assembly of 1938 repealed the 1932 mileage tax on trucks for hire and substituted¹²¹ an excise of \$1.00 a hundred pounds net weight. A penalty of 50 per cent for use of equipment with other than pneumatic tires throughout was provided, even though the need for such a provision had been largely eliminated by considerations of transportation efficiency.

The same General Assembly enacted a measure providing for a tax on busses¹²² of one-thirty-sixth cent a seat-mile plus an annual tax of \$8.00 a seat up to 16 seats, \$15 a seat for the next 8 seats, and \$25 a seat for each seat over 24.¹²³ Busses operating primarily within municipalities were to pay in lieu of both these excises a flat rate of \$1.50 a seat. The same rate was also made applicable to taxicabs and U-drive-its.¹²⁴

PRESENT KENTUCKY MOTOR TRANSPORTATION TAXES AS APPLIED TO TRUCKS

The Kentucky legislature in 1942 enacted a new motor transportation statute,¹²⁵ which provides a weight tax on trucks operated by common carriers and contract carriers, a tax on casual or occasional trips, a mileage and a tag-seat tax on passenger vehicles operated by common carriers and contract carriers, and a seat tax on U-drive-its.

The 1938 annual tax of \$1.00 a hundred pounds of the net weight of property carriers for hire, in addition to the regular registration fee based on capacity, was continued. Payment of

¹²⁰ These were the observations of the Commissioner of Revenue, James W. Martin. It is interesting that the tax yield under the new plan continued to increase after a period of administrative readjustment.

¹²¹ Acts 1938, chap. 171, sec. 1, p. 775.

¹²² Acts 1938, chap. 48, sec. 2, p. 293.

¹²³ A "seat" for this purpose did not include collapsible aisle seats. *Id.* sec. 1, subsec. (d).

¹²⁴ *Id.* sec. 3, p. 294.

¹²⁵ Acts 1942, chap. 185, p. 827; KRS 281.480-281.570.

the tax is due by January 1, and the proceeds are credited to the State Road Fund.¹²⁶ With the exception of Nevada no other state employs a similar rate schedule of special fees for property carriers for hire based on net weight.¹²⁷

Common carriers of property operating under a certificate of public convenience and necessity not entering the state a distance of over 15 miles are not subject to the weight tax.¹²⁸ Annual registration with the division of motor transportation, however, is required in order that officials may enforce regulatory statutes. This provision seeks to relieve the multiplicity of taxes on interstate commerce.¹²⁹ The tax on transient truck operations would not discriminate against out-of-state carriers, but would add to the load on those which barely entered the state. It has been suggested¹³⁰ that further extensions of the same policy would promote trade mobility—and hence trade volume. Continuation of the provision for a 50 per cent higher rate for vehicles not equipped entirely with pneumatic tires is largely a dead letter for non-taxation reasons.¹³¹ The 1942 act makes special provision for those operators that make only casual or occasional trips into Kentucky incident to transportation for hire. Each operator of vehicles engaged in transportation of property for hire making occasional trips into Kentucky pays an excise tax of \$2.50 for each trip into the state.¹³²

¹²⁶ KRS 47.010.

¹²⁷ Cf. NATIONAL HIGHWAY USERS CONFERENCE, *op. cit. supra* 13 ff.

¹²⁸ KRS 281.480.

¹²⁹ This legislation came largely as a result of the complaints to federal agencies during 1940-41 regarding Kentucky obstructions to interstate commerce.

¹³⁰ A. H. Martin, *Highway Barriers and National Defense*, 5 INTERSTATE TRADE BARRIERS (1942) 49-65 (U. S. Dept. of Commerce, Marketing Laws Survey).

¹³¹ U. S. Bureau of Public Roads, *Motor Truck Impact as Affected by Tires, Other Truck Factors, and Road Roughness* (1926) 7 PUBLIC ROADS 69 and *Motor Truck Impact as Affected by Rubber Tread Thickness of Tires* (1930) 11 PUBLIC ROADS 133; G. M. Sprowles, *Fifteen to Fifty Per Cent Saving on Tires* (1932) PROCEEDINGS, AMERICAN ROAD BUILDERS ASS'N 50.

¹³² KRS 281.510. Only a few states permit a limited number of trips by out-of-state trucks without payment of the regular fees or of a fraction thereof. Frequently, however, such permission is extended to only a limited type of truck operator. For example, the Arizona law extends the privilege of special 30-, 60-, or 90-day permits only to private truckers transporting their own property upon payment of 0.1, 0.2, or 0.3 of the annual registration fees. Alabama will issue special trip permits only to carriers transporting their own property or to those transporting property for others to a destination within the state and not operating over regular routes.

The 1942 act continued earlier exemption of property carriers and added others. Exemptions now include: (a) trucks used only by a non-profit cooperative association or its members if the vehicle is owned or leased exclusively by the association; (b) vehicles used exclusively for the transportation of agricultural and dairy products from the farm, market, gin, warehouse, dairy, or mill, regardless of the ownership of the vehicle, if the title to the goods transported invariably remains in the producer;¹³³ (c) trucks engaged exclusively in hauling material and supplies used in the construction of highways; (d) motor vehicles used for the transportation of property for hire, if operating exclusively within the limits of a city or within its suburban area.¹³⁴

PRESENT MOTOR TRANSPORTATION TAXES APPLIED TO PASSENGER CARRIERS

The rates of the mileage and tag-seat taxes on contract and common carriers of passengers were continued without alteration except as applied to casual operators and exempted vehicles. The law requires each passenger carrier to pay a mileage excise tax equal to one-thirty-sixth cent for each regular

¹³³ "Producer" as used in this act includes the landlord.

¹³⁴ KRS 281.020. The exemption of trucks engaged exclusively in hauling materials and supplies for highway construction is a new exemption for Kentucky, but exists in similar form in various states. Five states (Ark., Mo., Nev., Ohio, and S. D.), in addition to Kentucky, provide specifically that contractors engaged in public road work need not comply with special carrier taxes. Pennsylvania exempts dump trucks transporting road construction material and all trucks transporting ashes or excavated rubbish. Mississippi exempts from carrier taxes those vehicles used exclusively to deliver gravel or unmanufactured road material. The other three exemptions have prevailed in Kentucky for several years and are usual in other states. The agricultural producers usually are required to be transporting their own livestock or farm products from the point of production to market or transporting supplies on the return trip before the states allow the exemption. Maryland exempts only vehicles transporting milk to cooling stations or freight platforms. Georgia exempts vehicles exclusively transporting farm products between points not having railroad facilities in case the load transported does not exceed 1.5 tons. Furthermore, Georgia exempts vehicles that transport agricultural, dairy, or forest products exclusively between the farm, market, gin, warehouse, or mill if the load does not exceed 18,550 pounds, provided the title remains with the producer at the time the commodities are hauled. Minnesota and Washington extend the exemption further to farmers occasionally and infrequently transporting for hire. Tennessee exempts vehicles used solely to transport milk products from the producer to the purchaser, or infrequent transportation of livestock and perishable farm products to the market by the owner.

seat¹³⁵ multiplied by the total number of miles traveled plus a tag tax of \$8.00 on each seat for the first 16 seats, \$15 for each of the next 8 seats, and \$25 for each remaining seat.¹³⁶ The tag-seat tax is paid annually in advance on or before January 1; whereas the mileage tax is payable on or before the fifteenth day of each month.¹³⁷ The proceeds are given to the State Road Fund for road expenditures.¹³⁸ On surrender of the license tag and proof that the vehicle will not be used on the highways due to destruction by fire, sale, or transfer, the division of motor transportation will give credit for the unearned portion of the license fees for another vehicle which is to be put into service in that year. In no event are cash refunds made. In order to ascertain correctly the mileage traveled by motor vehicles, the division is given authority to prescribe the records and character of appliances necessary to establish the correct mileage of each operator.¹³⁹ The law provides penalties for violations.¹⁴⁰

The use of vehicles operating under a certificate of convenience and necessity, on account of which owners pay the mileage and the tag-seat taxes, is exempt from registration and usage taxes.¹⁴¹ Such carriers operating under either certificates or permits are also exempt from any city license fee. If a passenger carrier for hire begins operation after January 1 in any year, he is then required to pay only a proportionate part of the annual tag-seat tax for the remainder of the year. Other exemptions from the mileage and tag-seat tax which apply to passenger carriers are provided as follows: (a) motor vehicles used as school busses, (b) church busses operated under

¹³⁵ "Regular seat" means a seat ordinarily used by one passenger, but does not include folding or collapsible emergency aisle seats, provided the number of such emergency seats shall not be greater than 25 per cent of the regular seats. KRS 281.520.

¹³⁶ KRS 281.520.

¹³⁷ KRS 281.540. The percentage penalties provided in 1938 for failure to pay the tax when due are omitted in KRS 281.550, but appear in Acts 1942, chap. 185, p. 863. There seems to be no authority for this omission.

¹³⁸ KRS 47.010.

¹³⁹ KRS 281.550.

¹⁴⁰ KRS 281.990.

¹⁴¹ KRS 186.020 and KRS 138.470. Previous to 1942 this exemption included all passenger vehicles for hire, rather than merely those operating under certificates. *Reeves, Com'r of Revenue et al. v. Kentucky Utilities Co.*, 291 Ky. 226, 163 S.W. (2d) 482 (1942); *Reeves, Com'r of Revenue, etc. v. Louisville Railway Co.*, 291 Ky. 200, 163 S.W. (2d) 485 (1942).

the direction of church authorities, (c) vehicles used for the exclusive transportation of members of the armed forces on educational or recreational trips under the direction of military authorities. The last exclusion is limited, however, to the duration of the present national emergency.¹⁴²

Taxicabs, city busses, U-drive-its,¹⁴³ and vehicles operating under certificates in interstate commerce, but not entering the state more than 10 miles from the point of entry, are exempt from the mileage and tag taxes, but pay a tax of \$1.50 a regular seat instead.¹⁴⁴ Also effective on October 1, 1942, was legislation requiring casual or occasional operators of passenger vehicles for hire to pay the flat \$5.00 registration fee to the division and the mileage tax required of regular carriers. However, if such vehicles are leased to, or operated by, any carrier holding a certificate authorizing him to operate routes in this state, double mileage tax is required to be paid.¹⁴⁵

¹⁴² KRS 281.020.

¹⁴³ As used in this section, a "U-drive-it" means a motor vehicle for hire for the transportation of persons, for which no driver is furnished.

¹⁴⁴ KRS 281.520.

¹⁴⁵ KRS 281.510.