

---

## CARRIERS TAXING ACT OF 1937

---

JUNE 15 (calendar day, JUNE 28), 1937.—Ordered to be printed

---

Mr. CLARK, from the Committee on Finance, submitted the following

### REPORT

[To accompany H. R. 7589]

The Committee on Finance, to whom was referred the bill (H. R. 7589) to levy an excise tax upon carriers and certain other employers and an income tax upon their employees, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The provisions of the bill are fully explained in House Report No. 1071, which is incorporated herein and made a part of this report.

---

[H. Rept. No. 1071, 75th Cong., 1st sess.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 7589) to levy an excise tax upon carriers and certain other employers and an income tax upon their employees, and for other purposes, report it back to the House without amendment and recommend that the bill do pass.

#### CONTENTS OF THE BILL

The bill provides for a system of excise taxes to be levied on carriers and certain other employers, and an income tax on the employees of those employers, as well as an income tax on certain persons who are the representatives of certain of the employees who are affected by this act. The bill is divided into 13 sections, as follows:

1. Definitions.
2. Income Tax on Employees.
3. Excise Tax on Employers.
4. Refunds and Deficiencies.
5. Income Tax on Employee Representatives.
6. Deductibility from Income Tax.
7. Collection and Payment of Taxes.
8. Court Jurisdiction.
9. Social Security Act.
10. Separability.
11. Repeal of prior Tax Act.
12. Rules and Regulations.
13. Short Title.

## HISTORY OF LEGISLATION

There is now in effect an act having a similar purpose, which became law on August 29, 1935. The taxes under the act signed on that day expired on February 28, 1937; early in this session of Congress a bill was passed extending the limiting date on the taxes to June 30, 1938.

In January 1936, substantially all major railroads of the country filed a bill of complaint in what is now the United States District Court of the District of Columbia praying for an injunction against the Collector of Internal Revenue to prevent his collecting or taking any steps to collect the taxes under the act. On June 30, 1936, the petition of the railroads was granted and the Collector of Internal Revenue was enjoined against making any tax collections from those who were plaintiffs in the litigation. While some relatively small payments of taxes have been made, most of the employers who were subject to tax, in addition to those who were plaintiffs, have not made any payments of taxes and thus far the Bureau of Internal Revenue has made no effort to enforce collection against anyone. While most employers have made deductions of taxes under the act from the compensation of their employees, these amounts have not been paid into the Treasury, but have been paid into special accounts, subject to the order of the district court.

The pending bill has received the endorsement of both the labor organizations and the carriers, expressed in hearings before the committee. Before proceeding to a detailed discussion of the legislation we wish to commend both the carriers and the employees upon the great ability they have shown to adjust matters of this sort through normal process of collective bargaining. The agreement as to this measure constitutes a landmark in the history of industrial relations in this country.

## MAJOR CHANGES WHICH THE BILL WOULD EFFECT IN EXISTING LEGISLATION

The pending measure would bring about three major changes, as compared with the present Carrier's Tax Act. First of all, there is set up a permanent schedule of taxation. This has been possible because of the availability of studies of the railroad industry, which were not in a form of use when the legislation was originally enacted. Second, the rates for the early years have been lowered, as compared to the existing rate. The total tax rate, one-half of which is an excise tax on employers, the other an income tax on employees, has been fixed in present legislation at 7 percent. In the pending bill the rate is fixed at 5½ percent for the 3-year period beginning January 1, 1937, and rising by one-half of 1 percent steps at three intervals, remaining at a level of 7½ percent on and after January 1, 1949. In terms of yields, however, the rate of yield "in perpetuity" of the pending bill is equivalent of a flat 7.11-percent pay roll, as compared with the 7-percent rate in effect under existing legislation. There is precedent for the adoption of the graduated tax rate to be found in the tax sections of the Social Security Act, particularly title 8, where steps of one-half of 1 percent at intervals of 3 years are to be found just as in the pending bill. Third, the effective date of the measure has been changed from March 1, 1936, to January 1, 1937. Because of this change in date, the tax yield of the two will be substantially identical "in perpetuity."

Finally the scope of the existing tax legislation has been changed in such way as to bring into the coverage substantially all those who are intimately associated with the operation of United States railroads. This has been done first by extending coverage to all employees of United States railroads, irrespective of the location of their employment, whether in this or in other countries. Second, the standard railroad organizations are now to be included as employers and all the employees of these organizations will, of course, be brought within the scope of the statute. While it seems clear that it is the intent of the present act to embrace within its scope the various railroad associations, the matter is now to be made clear beyond question by a specific inclusion of such organizations.

## REVENUE FROM TAXES IMPOSED

The yield of revenue under this bill will vary with the rising tax rates and with the amount of the pay roll not exceeding \$300 a month to any individual paid by the employers subject to the act. As already stated, the taxes begin on January 1, 1937, at an aggregate rate of 5½ percent of taxable pay roll and rise by one-half percent at 3-year intervals to a level of 7½ percent for 1949 and thereafter. Counting 15 as the ultimate level of taxes, the relative yield, other things being equal, will be 11 for the years 1937, 1938, and 1939, 12 for the years 1940, 1941, and

1942, 13 for the years 1943, 1944, and 1945, 14 for the years 1946, 1947, and 1948, and 15 for the years 1949 and thereafter.

The amount of pay rolls for more than 90 percent of the employers covered by the act (measuring the proportion in terms of employees affected) have long been reported to the Interstate Commerce Commission. In recent years the total pay rolls of the steam railroads, sleeping-car, and express companies have been as follows:

1927.....	\$3, 126, 668, 000	1933.....	\$1, 554, 203, 000
1928.....	3, 122, 648, 000	1934.....	1, 682, 290, 000
1929.....	3, 191, 918, 000	1935.....	1, 823, 684, 000
1930.....	2, 820, 894, 000	1936 (partially esti-	
1931.....	2, 322, 061, 000	mated).....	2, 050, 000, 000
1932.....	1, 678, 796, 000		

In addition to the pay rolls included in this tabulation, the scope of the act embraces railroad labor organizations, railroad traffic and similar associations, the employees of American lines in Canada, electric lines, private-car companies, and certain ferries, grain elevators, transfer companies, and other companies owned or controlled by carriers and performing certain services in the transportation of passengers or property by railroad. Except for electric lines, which report approximately \$25,000,000 a year pay roll to the Interstate Commerce Commission, the data on employment of these other employers are rather fragmentary. It seems probable, however, that these other employers constitute, in terms of employment, from 7½ to 10 percent of the industry.

The total pay rolls of employers under the scope of the act have been rising since 1933. For the first quarter of 1937, the pay rolls of railroad, sleeping-car, and express companies were about \$535,000,000, which would indicate a total taxable pay roll for the calendar year of about \$2,240,000,000 and a total taxable pay roll for all employers subject to the act of more than \$2,350,000,000.

The compensation, for a single individual, in excess of \$300 a month is not taxable. A study of employers not covered by this act, having pay rolls of approximately \$1,700,000,000 in the 12 months ending June 30, 1935, showed that compensation of \$300 per individual per month or less constituted 98.27 percent of the total pay roll. It would seem clear, therefore, that the taxable pay roll during the present year will run close to \$2,300,000,000.

The present period is one of rising wages. Negotiations are currently in progress between the railroad labor organizations and managements concerning a request by the former for a substantial increase in compensation. During the next few years certainly there is every indication that pay rolls will be substantially larger than at the present time. Taking into account a period of years and considering the possibilities of ups and downs, it is a reasonable estimate that the pay roll subject to tax under this bill will average \$2,200,000,000. On the basis of that estimate, the taxes will be as follows:

Calendar year—		Calendar year—	
1937.....	\$121, 000, 000	1944.....	\$143, 000, 000
1938.....	121, 000, 000	1945.....	143, 000, 000
1939.....	121, 000, 000	1946.....	154, 000, 000
1940.....	132, 000, 000	1947.....	154, 000, 000
1941.....	132, 000, 000	1948.....	154, 000, 000
1942.....	132, 000, 000	1949 and thereafter..	165, 000, 000
1943.....	143, 000, 000		

It is assumed that the taxes will be collected quarterly and that they will be paid into the Treasury during the month following the end of the quarter. Since the quarters are calendar quarters, there would be, under this assumption, only one tax payment in the fiscal year 1937. In the fiscal years 1940, 1943, 1946, and 1949 there would be three payments at old rates and one at the new rate in effect on January 1 of each of those years. Estimated taxes on a fiscal year basis would, therefore, be:

Fiscal year—		Fiscal year—	
1937.....	\$30, 250, 000	1944.....	\$143, 000, 000
1938.....	121, 000, 000	1945.....	143, 000, 000
1939.....	121, 000, 000	1946.....	145, 750, 000
1940.....	123, 750, 000	1947.....	154, 000, 000
1941.....	132, 000, 000	1948.....	154, 000, 000
1942.....	132, 000, 000	1949.....	156, 750, 000
1943.....	134, 750, 000	1950 and thereafter..	165, 000, 000

These estimates, of course, assume a uniform pay roll. The possibilities are that at least during the next few years the pay roll will be larger than estimated and tax collections, of course, would be correspondingly higher. The estimates make allowance for the possibility that the initial average may be brought down by fluctuations in the future.

#### PART II. EXPLANATION OF THE BILL

The following explanation is in large part a comparison of the provisions of this bill with the corresponding provisions of the present Carriers Taxing Act which will be repealed upon the enactment of this bill.

Section 1 (a), as amended, will substitute for the definition of "carrier" a definition of "employer." The term "employer" will include companies which are embraced in the term "carrier" in the present act and in addition "railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations."

The present act embraces within its scope "any company which may be directly or indirectly owned (by a carrier) or controlled thereby or under common control therewith, and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee or other individual or body, judicial or otherwise, when in the possession of and operating the business of any such 'carrier.'" Under this language coverage extends to a company which is owned or controlled in common by several companies. Exclusions have been extended to casual service and the casual operation of equipment or facilities. In addition to trucking service, it is intended to exclude employees of a contractor who may, for example, be occasionally employed by a "carrier" to repair a depot or a bridge. Contractors, other than those which perform casual service, would not be excluded, irrespective of whether control be legal or de facto. De facto control may be exercised not only by direct ownership of stock, but by means of agreements, licenses, and other devices which insure that the operation of the company is conducted in the interests of the carrier.

By these changes there are brought within the scope of the act substantially all those organizations which are intimately related to the transportation of passengers or property by railroad in the United States.

Section 1 (b) of the bill defines the term "employee" so as to make it clear that any person in the service of an employer as defined in section 1 (a) is to be considered an employee regardless of where he performs his services. It is also made clear that employees of local lodges or divisions of national labor organizations are not to be included as employees, unless they were in the service of or in the employment relation to such carrier on or after August 29, 1935.

Section 1 (c) defines the term "employee representative." In the present act, the subsection defining the term "employee" defines also the term "employee representative." This inclusion of "representative" and "employee" is artificial and causes confusion. This unnecessary repetition of the term "employee" is dispensed with by the provision of a separate definition of "employee representative."

Section 1 (d) defines the term "service", placing the emphasis on the rendition of service, for compensation rather than upon the actual receipt of compensation. A person is in service and is an employee irrespective of where the service is rendered, except that in the case of an employer not conducting the principal part of its business in the United States a person is in service only when he is rendering service to such an employer within the United States.

Section 1 (e) defines the term "compensation." The changes from the definition in the act of 1935 accomplishes the following purposes:

1. The phraseology makes it clear that what is significant is that compensation has been earned by the employee, not that it has been actually received by him.
2. It is made clear that compensation received by an employee in respect of months during which he was ill or on vacation is to be included in the compensation of the employee's tax liability.
3. The provision specifically excludes tips or the amount of taxes on the employees' remuneration paid by the employer without deduction from the employees' pay.

Section 1 (f) defines the term "United States."

Section 1 (g) defines the term "company."

Section 1 (h) makes it clear that the term "employee" includes an officer of an employer.

Section 1 (i) defines the term "carrier."

Section 1 (j) defines the term "person."

The proposed tax bill would omit definitions of "effective date" and "enactment date" such as are contained in the present Tax Act, as they are not needed.

Section 2 (a) specifies the income tax on employees. These taxes are to be levied at the following rates on compensation not in excess of \$300 in any calendar month earned by the employee after December 31, 1936. The rates are as follows with respect to the compensation earned during the indicated calendar years:

*Tax rates as percent of taxable compensation*

1937, 1938, and 1939.....	2%
1940, 1941, and 1942.....	3
1943, 1944, and 1945.....	3½
1946, 1947, and 1948.....	3½
1949 and subsequently.....	3%

Section 2 (b) requires that the employer of the taxpayer shall deduct the amount of the tax from the compensation as and when paid. The act contemplates that the tax shall apply only to \$300 in any one month, even though the individual taxpayer may be in the service of more than one employer. The Commissioner of Internal Revenue is to make regulations which will accomplish this intent.

Section 2 (c) provides for the adjustment of tax payments made or failed to be made in error.

Section 3 provides for an excise tax on employers.

Section 3 (a) sets tax rates on the total taxable pay roll at the same rate as the taxes on the compensation of individuals.

Section 3 (b) provides for the adjustment of erroneous tax payments.

Section 4 provides for the refund of taxes if more than the correct amount has been paid, or the collection of underpayments, in the manner prescribed by regulation made by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

Section 5 provides for an income tax on employee representatives. This tax is exactly twice the rate of the income tax on employees. It is provided that the compensation of an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1 (a).

Section 6 has no corresponding provision in the present tax act. In section 803 of the Social Security Act, the policy is laid down that the income taxes on employees therein shall not be allowed as a deduction to the taxpayer in computing his net income for the purposes of the income tax imposed by title I of the Revenue Act of 1934 or by any act of Congress in substitution therefor. The policy contained in the Social Security Act is adopted for purposes of this act, since the taxes herein are in place of the taxes under title VIII of the Social Security Act.

Section 7 sets up the procedure for the collection and payment of taxes, giving the Commissioner of Internal Revenue all powers necessary to enforce collections and making applicable other provisions of law contained in other statutes which may be useful in connection with the administration of this tax measure. By reason of the expansion in the coverage of this bill as compared with the present act, some taxpayers have begun to pay taxes under title VIII of the Social Security Act who will now find those taxes not to have been due.

Section 7 (e) provides for the adjustment of such payments made under title VIII of the Social Security Act and the taxes due under this measure, and will cover both the existing situation and any which may arise in the future.

Section 8 provides that the several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction in connection with the enforcement of obligations under this measure.

Section 9 (a) prescribes that the term "employment" as defined in section 811 (b) of the Social Security Act is not to include service performed by an individual as an employee or as an employee representative. It is possible to interpret the present act in such a way that employee representatives be included, both under that act and title VIII of the Social Security Act. While this interpretation has not been given the language, it is now made clear that employee representatives can be covered only by the Carriers Taxing Act.

Section 9 (b) prescribes that the Secretary of the Treasury shall, at intervals not longer than 3 years, estimate the reduction in the amount of taxes collected under title VIII of the Social Security Act by reason of the fact that persons and employees paying taxes under this act do not pay taxes under the said title VIII.

Section 10 contains the usual separability provision.

Section 11 provides for the repeal of the act of August 29, 1935, as amended entitled "An act to levy an excise tax upon carriers and an income tax upon their employees, and for other purposes." It is made clear, however, that while this act is repealed, the present bill, when it becomes an act, will be a substitution therefor and that there will, therefore, be no invalid retroactive application of any taxing provision.

Since the effective date of the new act will be January 1, 1937, rather than March 1, 1936, and since the tax rates for the period since January 1 are lower than under the existing statute, there will be certain refunds due of amounts heretofore collected as taxes. It is further provided that proceedings pending for the recovery of moneys paid as taxes shall be terminated. Moreover, specific provision is made also for the payment into the Treasury and to employees in the proper proportion, of all moneys held by employers as taxes but never paid into the Treasury.

Section 12 directs the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to make and publish such rules and regulations as may be required to enforce the act.

Section 13 provides that the act may be cited as the "Carriers Taxing Act of 1937."

