WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

HOUSE BILL No. 1475

(By Mr. [Signature]

PASSED March 14, 1959

In Effect 90 days after Final Passage

Filed in Office of the Secretary of State
of West Virginia MAR 20 1959
JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

House Bill No. 475
(By Mr. Speaker, Mr. Pauley, and Mr. Seibert)

[Passed March 14, 1959; in effect ninety days from passage.]

AN ACT to amend and reenact article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by repealing section eleven of said article, and by adding thereto six new sections, to be designated sections six-a, eight-b, eight-c, eight-d, eight-e and eight-f, relating to the assessment and the method of appeal therefrom, of the privilege tax on certain carrier corporations.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by repealing section eleven of said article, and by adding thereto six new sections, to be designated sections six-a, eight-b, eight-c, eight-d, eight-e and eight-f, all to read as follows:
Section 6-a. *Erroneous Computation.*—If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him, the tax commissioner shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the tax commissioner to the state auditor, who shall issue his warrant on the treasurer, which shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

Sec. 8-b. *Assessment of Tax When Insufficiently Returned.*—If the tax commissioner believes that the tax imposed by this article is insufficiently returned by a
taxpayer, either because the taxpayer has failed to prop-
erly remit the tax or has failed to make a return, or has
made a return which is incomplete, deficient or other-
wise erroneous, he may proceed to investigate and de-
termine or estimate the tax liability of the taxpayer and
make an assessment therefor.

Sec. 8-c. *Jeopardy Assessments.*—If the tax commis-
sioner believes that the collection of any tax which he
is required to administer will be jeopardized by delay,
he shall thereupon make an assessment of the tax, noting
that fact upon the assessment. The amount assessed shall
be immediately due and payable. Unless the taxpayer
against whom a jeopardy assessment is made petitions for
reassessment within twenty days after service of notice
of the jeopardy assessment, such an assessment becomes
final.

A petition for reassessment by a taxpayer against whom
a jeopardy assessment has been made must be accom-
panied by such security as the tax commissioner may
deem necessary to insure compliance with this article.

Sec. 8-d. *Notice of Assessment; Petition for Reassess-
ment; Hearing.—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by registered mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become due and be deemed conclusive and the amount thereof shall be payable at the end of the thirty day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good
cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final.

Sec. 8-e. Appeal.—An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the circuit court of Kanawha county, within thirty days after he shall have received notice from the tax commissioner of his determination as provided in section eight-d.

The appeal shall be taken by written notice to the tax commissioner and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the tax commissioner as defendant. The plaintiff shall
file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, the penalty of such bond being not less than the total amount of tax and penalties appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plain-
tiff shall perform the orders of the court.

The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assess-
ment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state in the same manner that appeals are taken in equity.

Sec. 8-f. Service of Notice.—Any written notice re-
quired by this article shall, unless otherwise specifically
provided, be served upon the taxpayer personally or by
registered mail.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates.

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 20th day of March, 1959.

Governor