

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959



ENROLLED

HOUSE BILL No. 475

(By Mr. SPEAKER, Mr. PAULEY, AND) Mr SEIBERT



PASSED March 14 1959

In Effect 90 days from Passage



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

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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
2 shall make any clerical error which shall be apparent on
3 the face of the return in computing the tax assessable
4 against him, the tax commissioner shall correct such
5 error or reassess the proper amount of taxes, and notify
6 the taxpayer of his action by mailing to him promptly
7 a copy of the corrected assessment, and any additional
8 tax for which such taxpayer may be liable shall be paid
9 within fifteen days after the receipt of such statement.
10 If the amount already paid exceeds that which should
11 have been paid on the basis of the tax so recomputed,
12 the excess so paid shall be immediately refunded to the
13 taxpayer upon the requisition of the tax commissioner
14 to the state auditor, who shall issue his warrant on the
15 treasurer, which shall be payable out of any funds avail-
16 able for the purpose. The taxpayer may, at his election,
17 apply an overpayment credit to taxes subsequently ac-
18 cruing hereunder.

Sec. 8-b. *Assessment of Tax When Insufficiently Re-*
2 *turned.*—If the tax commissioner believes that the tax
3 imposed by this article is insufficiently returned by a

4 taxpayer, either because the taxpayer has failed to prop-
5 erly remit the tax or has failed to make a return, or has
6 made a return which is incomplete, deficient or other-
7 wise erroneous, he may proceed to investigate and de-
8 termine or estimate the tax liability of the taxpayer and
9 make an assessment therefor.

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

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

Sec. 8-d. *Notice of Assessment; Petition for Reassess-*

2 *ment; Hearing.*—The tax commissioner shall give to the
3 taxpayer written notice of any assessment made pursuant
4 to this article. Unless the taxpayer to whom a notice of
5 assessment is directed shall, within thirty days after
6 service thereof (except in the case of jeopardy assess-
7 ments), either personally or by registered mail, file with
8 the tax commissioner a petition in writing, verified under
9 oath by said taxpayer or his duly authorized agent, hav-
10 ing knowledge of the facts, setting forth with definiteness
11 and particularity the items of the assessment objected to,
12 together with the reason for such objections, said assess-
13 ments shall become due and be deemed conclusive and
14 the amount thereof shall be payable at the end of the
15 thirty day period. In every case where a petition for
16 reassessment as above described is filed, the tax commis-
17 sioner shall assign a time and place for the hearing of
18 same and shall notify the petitioner of such hearing by
19 written notice at least twenty days in advance thereof
20 and such hearing shall be held within sixty days from
21 the filing of the petition for reassessment unless con-
22 tinued by agreement or by the tax commissioner for good

23 cause. The hearing shall be informal and may be con-
24 ducted by an examiner designated by the tax commis-
25 sioner. At such hearing evidence may be offered to sup-
26 port the assessment or to prove that it is incorrect. After
27 such hearing the tax commissioner shall, within a reason-
28 able time, give notice in writing of the decision. Unless
29 an appeal is taken within thirty days from service of this
30 notice, the tax commissioner's decision shall be final.

Sec. 8-e. *Appeal*.—An appeal may be taken by the tax-
2 payer to the circuit court of the county in which the
3 activity taxed was engaged, or in which the taxpayer
4 resides, or in the circuit court of Kanawha county, with-
5 in thirty days after he shall have received notice from the
6 tax commissioner of his determination as provided in sec-
7 tion eight-d.

8 The appeal shall be taken by written notice to the tax
9 commissioner and served as an original notice. When
10 said notice is so served it shall, with the return thereon,
11 be filed in the office of the clerk of the circuit court and
12 docketed as other cases with the taxpayer as plaintiff and
13 the tax commissioner as defendant. The plaintiff shall

14 file with such clerk a bond for the use of the defendant,
15 with sureties approved by such clerk, the penalty of such
16 bond being not less than the total amount of tax
17 and penalties appealed from, and in no case shall the
18 bond be less than fifty dollars, conditioned that the plain-
19 tiff shall perform the orders of the court.

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

Sec. 8-f. *Service of Notice.*—Any written notice re-

2 quired by this article shall, unless otherwise specifically
3 provided, be served upon the taxpayer personally or by
4 registered mail.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Wm Jasper Jr
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the House of Delegates.

Takes effect *90 days from* passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph Bean
President of the Senate

H. R. Pauley
Speaker House of Delegates

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

D. Henderson
Governor

