WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

HOUSE BILL No. 352

(By Mr. Watson)

PASSED March 8th, 1961
In Effect July 1st, 1961

Filed in Office of the Secretary of State of West Virginia
MAR 16 1961
JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a; and to amend and reenact section twenty-one, article fourteen of said chapter; and to amend and reenact section four, article fourteen-a of said chapter, all relating to the tax on gasoline and the motor carrier road tax.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-a; and that section twenty-one, article fourteen of said chapter be amended and reenacted; and that section
four, article fourteen-a of said chapter be amended and reenacted, all to read as follows:


Section 20-a. Partial Refund of Tax on Gasoline Used by Buses.—Any person who shall buy in quantities of twenty-five gallons or more, at any one time, gasoline as defined by this article, for use in any vehicle or vehicles regularly operated by such person under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, may, if the gasoline tax imposed by this article shall have previously been paid upon such gasoline, be refunded an amount equal to three cents per gallon for each gallon of gasoline upon which tax has been paid, upon presenting to the tax commissioner an affidavit accompanied by proof of such purchases as required in section twenty and in the manner and subject to the requirements as therein set forth. The right to a refund under this section shall not be assignable, and any assignment so made shall be void.

Notwithstanding any other provision of law, no refund shall be made under authority of this section except on
gasoline and motor fuel used in the operation of urban
or suburban bus lines in this state, which are hereby
defined as bus lines the majority of whose passengers use
the buses for traveling a distance of not exceeding forty
miles, measured one way, on the same day between their
places of abode and their places of work, shopping areas
or schools.

Sec. 21. False or Fraudulent Claim for Refund; Penalty.
—If any person shall make a false or fraudulent claim for
the refunds referred to in sections nineteen, twenty and
twenty-one-a hereof, he shall be guilty of a felony, and,
upon conviction thereof, shall be confined in the peniten-
tiary not less than one nor more than five years.

Article 14-a. Motor Carrier Road Tax.

Sec. 4. Credit for Payment of Gasoline Tax; Refunds;
Hearing Upon Commissioner's Refusal to Make Refund;
Appeals.—Every motor carrier subject to the tax herein
imposed shall be entitled to a credit on such tax equivalent
to the amount of tax per gallon of gasoline assessed by ar-
ticle fourteen of this chapter on all gasoline purchased by
such carrier within this state for use in operations either
within or without this state and upon which gasoline the
tax imposed by the laws of this state has been paid: Pro-
vided, however, That such credit shall not be allowed for
any gasoline taxes for which any person, firm or corpor-
ation has applied, or received, a refund of gasoline taxes
under sections nineteen and twenty of article fourteen of
this chapter. Evidence of the payment of such tax in such
form as may be required by the commissioner shall be
furnished by each motor carrier claiming the credit herein
allowed. When the amount of the credit herein provided
exceeds the amount of the tax for which the carrier is
liable for the same quarter, such excess shall, under regu-
lations of the commissioner, be allowed as a credit on the
tax for which the carrier would be otherwise liable for
any of the four succeeding quarters. The commissioner is,
under regulations to be established by him, hereby au-
thorized to refund from the funds collected under the pro-
visions of this article the amount of the credit, if the motor
carrier by duly filed petition requests the commissioner
to do so and the commissioner is satisfied that said motor
carrier is entitled to said refund and that said motor car-
rier has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, however, That such refund shall not be made until after audit of the applicant's records by the commissioner or upon the posting of a surety company bond by the applicant in an amount fixed by the commissioner conditioned to pay all road taxes due hereunder: Provided further, That said credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a motor carrier below the amount due as tax on gasoline used in this state as provided by article fourteen of this chapter. If the commissioner shall refuse to allow a refund or credit in the amount claimed by the applicant, the applicant may request a hearing on said application. Such hearing shall be held within a reasonable time after such request is made and after notice to the applicant of not less than ten days.

The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered in support of the claim of credit or refund or to prove that such claim 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 the service of this notice, the tax commissioner's decision shall be final.

An appeal may be taken by the taxpayer to 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 this section. The court shall hear the appeal, and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. 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 his decision accordingly and allow the credit or refund as decreed by said court.

An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.
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.

Takes effect July 1st, 1961, passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approximate this the 16th day of March, 1961.

Governor

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JOE F. BURDETT
SECRETARY OF STATE