

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



ENROLLED

HOUSE BILL No. *356*

(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

*A 356*

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**House Bill No. 356**

(By MR. WATSON)

[Passed March 8, 1961; in effect July 1, 1961.]

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 re-enacted, all to read as follows:

**Article 14. Gasoline Tax.**

*Section 20-a. Partial Refund of Tax on Gasoline Used*

2 *by Buses.*—Any person who shall buy in quantities of  
3 twenty-five gallons or more, at any one time, gasoline as  
4 defined by this article, for use in any vehicle or vehicles  
5 regularly operated by such person under a certificate of  
6 public convenience and necessity or under a contract car-  
7 rier permit for transportation of persons, may, if the gaso-  
8 line tax imposed by this article shall have previously been  
9 paid upon such gasoline, be refunded an amount equal to  
10 three cents per gallon for each gallon of gasoline upon  
11 which tax has been paid, upon presenting to the tax com-  
12 missioner an affidavit accompanied by proof of such pur-  
13 chases as required in section twenty and in the manner  
14 and subject to the requirements as therein set forth. The  
15 right to a refund under this section shall not be assignable,  
16 and any assignment so made shall be void.

17 Notwithstanding any other provision of law, no refund  
18 shall be made under authority of this section except on

19 gasoline and motor fuel used in the operation of urban  
20 or suburban bus lines in this state, which are hereby  
21 defined as bus lines the majority of whose passengers use  
22 the buses for traveling a distance of not exceeding forty  
23 miles, measured one way, on the same day between their  
24 places of abode and their places of work, shopping areas  
25 or schools.

*Sec. 21. False or Fraudulent Claim for Refund; Penalty.*

2 —If any person shall make a false or fraudulent claim for  
3 the refunds referred to in sections nineteen, twenty and  
4 twenty-one-a hereof, he shall be guilty of a felony, and,  
5 upon conviction thereof, shall be confined in the peniten-  
6 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;*

2 *Hearing Upon Commissioner's Refusal to Make Refund;*  
3 *Appeals.*—Every motor carrier subject to the tax herein  
4 imposed shall be entitled to a credit on such tax equivalent  
5 to the amount of tax per gallon of gasoline assessed by ar-  
6 ticle fourteen of this chapter on all gasoline purchased by  
7 such carrier within this state for use in operations either

8 within or without this state and upon which gasoline the  
9 tax imposed by the laws of this state has been paid: *Pro-*  
10 *vided, however,* That such credit shall not be allowed for  
11 any gasoline taxes for which any person, firm or corpor-  
12 ation has applied, or received, a refund of gasoline taxes  
13 under sections nineteen and twenty of article fourteen of  
14 this chapter. Evidence of the payment of such tax in such  
15 form as may be required by the commissioner shall be  
16 furnished by each motor carrier claiming the credit herein  
17 allowed. When the amount of the credit herein provided  
18 exceeds the amount of the tax for which the carrier is  
19 liable for the same quarter, such excess shall, under regu-  
20 lations of the commissioner, be allowed as a credit on the  
21 tax for which the carrier would be otherwise liable for  
22 any of the four succeeding quarters. The commissioner is,  
23 under regulations to be established by him, hereby au-  
24 thorized to refund from the funds collected under the pro-  
25 visions of this article the amount of the credit, if the motor  
26 carrier by duly filed petition requests the commissioner  
27 to do so and the commissioner is satisfied that said motor  
28 carrier is entitled to said refund and that said motor car-

29 rier has not applied for a refund of the tax imposed by  
30 article fourteen of this chapter: *Provided, however,* That  
31 such refund shall not be made until after audit of the  
32 applicant's records by the commissioner or upon the post-  
33 ing of a surety company bond by the applicant in an  
34 amount fixed by the commissioner conditioned to pay all  
35 road taxes due hereunder: *Provided further,* That said  
36 credit or refund shall in no case be allowed to reduce the  
37 amount of tax to be paid by a motor carrier below the  
38 amount due as tax on gasoline used in this state as pro-  
39 vided by article fourteen of this chapter. If the commis-  
40 sioner shall refuse to allow a refund or credit in the  
41 amount claimed by the applicant, the applicant may re-  
42 quest a hearing on said application. Such hearing shall  
43 be held within a reasonable time after such request is  
44 made and after notice to the applicant of not less than  
45 ten days.

46 The hearing shall be informal and may be conducted by  
47 an examiner designated by the tax commissioner. At such  
48 hearing evidence may be offered in support of the claim  
49 of credit or refund or to prove that such claim is incorrect.

50 After such hearing the tax commissioner shall, within a  
51 reasonable time, give notice in writing of the decision.  
52 Unless an appeal is taken within thirty days from the  
53 service of this notice, the tax commissioner's decision shall  
54 be final.

55 An appeal may be taken by the taxpayer to the circuit  
56 court of Kanawha county, within thirty days after he  
57 shall have received notice from the tax commissioner of  
58 his determination as provided in this section.

59 The court shall hear the appeal, and determine anew  
60 all questions submitted to it on appeal from the de-  
61 termination of the tax commissioner. The court shall  
62 render its decree thereon and a certified copy of said de-  
63 cree shall be filed by the clerk of said court with the tax  
64 commissioner who shall then correct his decision accord-  
65 ingly and allow the credit or refund as decreed by said  
66 court.

67 An appeal may be taken by the taxpayer or the tax com-  
68 missioner to the supreme court of appeals of this state.

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

*Harold Davis, Jr.*  
Chairman Senate Committee

*Mrs. M. M. Withers*  
Chairman House Committee

Originated in the House.

Takes effect July 1st, 1961 passage.

*Harold Myers*  
Clerk of the Senate

*Ch Blankenship*  
Clerk of the House of Delegates

*Howard Pearson*  
President of the Senate

*Julius W. Singletary Jr.*  
Speaker House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1961.

*Wm Barron*  
Governor

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