WEST VIRGINIA CODE: §11-10-14

§11-10-14. Overpayments; credits; refunds and limitations.

(a) *Refunds or credits of overpayments*. — In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under §11-10-17 of this code.

(b) *Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax*. — Any person who seeks a refund or credit of gasoline and special fuel excise taxes under §11-14-10, §11-14-11, §11-14-12, §11-14A-9, or §11-14A-11 of this code, or of motor fuel excise tax under §11-14C-9 of this code shall file his or her claim for refund or credit in accordance with the provisions of the applicable sections. The 90-day time period for determination of claims for refund or credit provided in subsection (d) of this section does not apply to these claims for refund or credit: *Provided,* That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code are subject to the 90-day time period provided in subsection (d) of this section: *Provided, however,* That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code made by the United States government or unit or agency thereof, any municipal government or any agency thereof, or any county board of education made pursuant to §11-14C-9(c)(1), (2), (3), (4), (5), and (6) of this code will be subject to a 30-day time period.

(c) *Claims for refund or credit*. — No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom an assessment or administrative decision has become final is not entitled to file a claim for refund or credit with the Tax Commissioner as prescribed herein. The Tax Commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his or her determination.

(d) *Petition for refund or credit; hearing.* —

(1) If the taxpayer is not satisfied with the Tax Commissioner's determination of taxpayer's claim for refund or credit, or if the Tax Commissioner has not determined the taxpayer's claim within 90 days after the claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by §11-21-1 *et seq*., §11-21A-1 *et seq*., and §11-24-1 *et seq*. of this code, after the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by certified mail, a petition for refund or credit: *Provided,* That no petition for refund or credit may be filed more than 60 days after the taxpayer is served with notice of denial of taxpayer's claim: *Provided, however,* That after December 31, 2002, the taxpayer shall file the petition with the Office of Tax Appeals in accordance with §11-10A-9 of this

WV Legislature

code.

(2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer, or by taxpayer's duly authorized agent having knowledge of the facts, and set forth with particularity the items of the determination objected to, together with the reasons for the objections.

(3) When a petition for refund or credit is properly filed, the procedures for hearing and for decision applicable when a petition for reassessment is timely filed shall be followed.

(e) *Appeal.* — An appeal from the Office of Tax Appeals' administrative decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that provided for judicial review of an administrative decision on a petition for reassessment, but no bond is required of the taxpayer. An appeal from the administrative decision of the Office of Tax Appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken as provided in §11-10A-19 of this code.

(f) *Decision of the court.* — Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.

(g) *Refund made or credit established.* — The Tax Commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The Auditor shall issue his or her warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid: *Provided,* That refunds of personal income tax may also be paid out of the fund established pursuant to §11-21-93 of this code.

(h) *Forms for claim for refund or a credit; where return constitutes claim.* — The Tax Commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by §11-21-1 *et seq.*, §11-21A-1 *et seq.*, §11-23-1 *et seq.*, or §11-24-1 *et seq.* of this code, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim for refund or credit.

(i) *Remedy exclusive.* — The procedure provided by this section constitutes the sole method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy, including the Uniform Declaratory Judgments Act embodied in §55-13-1 *et seq.* of this code, and §11-1-2a of this code.

(j) *Applicability of this section.* — The provisions of this section apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article

WV Legislature

of this chapter, or of this code, to which this article is applicable.

(k) *Erroneous refund or credit.* — If the Tax Commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment within the period prescribed in §11-10-15 of this code or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within two years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(l) *Limitation on claims for refund or credit. —*

(1) *General rule*. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax (or fee) was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) *Extensions of time for filing claim by agreement*. — The Tax Commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) *Special rule where agreement to extend time for making an assessment*. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is made under §11-10-15 of this code extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement are also extended for the period of the extension agreement plus 90 days.

(4) *Overpayment of federal tax*. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income or estate tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by §11-21-1 *et seq.,* §11-21A-1 *et seq.,* and §11-24-1 *et seq.* of this code may not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

WV Legislature

(5) *Tax paid to the wrong state*. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a transaction which was lawfully taxable by another state and, therefore, not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not expire until 90 days after the tax is lawfully paid to the other state.

(6) *Exception for gasoline and special fuel excise tax, motor fuel excise tax and motor carrier road tax*. — This subsection does not apply to refunds or credits of gasoline and special fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under §11-14-1 *et seq.*, §11-14A-1 *et seq.*, or §11-14C-1 *et seq*. of this code.

WV Legislature