WEST VIRGINIA CODE: §11-10-14B

§11-10-14b. Monetary remedies for overpayments due to unconstitutionality.

(a) Legislative findings and purpose. -- Taxpayers who successfully challenge the Constitutionality of state taxes may be entitled to retroactive monetary relief for the amount of their overpayments. Because there may be many of such taxpayers and the period of retroactivity may be extensive, the amount of monetary relief owed to such taxpayers may represent a considerable and unpredictable risk to the fiscal integrity and stability of this state. This section provides the Tax Commissioner with greater flexibility and discretion in the manner in which such relief may be provided.

(b) Legislative intent and rules of construction.

(1) Legislative intent. -- It is the intent of the Legislature that this section shall be construed to preserve the fiscal integrity and stability of the State of West Virginia and to provide appropriate relief to the extent required by this section and the state and federal Constitutions. The provisions of section fourteen of this article shall remain in full force and effect with regard to overpayments of tax resulting from any reason including unconstitutionality.

(2) Rules of construction.

(A) The remedies provided by this section and section fourteen of this article are exclusive and shall be in lieu of any and all remedies provided at common law or by other statutes.

(B) Because all legislative enactments are presumptively Constitutional and because the Tax Commissioner is without authority to determine the Constitutionality of tax laws, other than through the courts, no cause of action shall exist against said Tax Commissioner, in his or her individual capacity, for damages, attorney's fees or court costs incurred in litigating the Constitutionality of any tax law administered under this article which is subsequently determined to be unconstitutional.

(C) A holding of retroactivity shall not be deemed to override any statutes of limitation which have run, or to require relief for any cases which are res judicata.

(c) Criteria for retroactive monetary relief. -- No person may be granted relief based on a claim of unconstitutionality, unless the decision that the tax or its application is unconstitutional also mandates retroactive monetary relief and is a final decision of a court of competent jurisdiction of this state or a federal court having appropriate jurisdiction. A final decision is one for which the availability of an appeal has been exhausted, and the time for filing a petition has elapsed or the petition has been finally denied.

(d) Amount of relief; interest. -- The amount of monetary relief shall be comprised solely of

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the amount of overpayment, together with interest, and shall not include damages of any kind, court costs, or attorney's fees except when ordered by a court of competent jurisdiction. Interest shall be paid as provided by section seventeen of this article.

(e) Type and manner of providing relief. -- In addition to the powers already provided in this article, the Tax Commissioner may, in his or her discretion and in accordance with guidelines published by him or her in the state Register, provide retroactive monetary relief by any one or combination of the following remedies:

(1) Refunds. -- The total amount of any refund to be paid to a taxpayer may be paid either in one lump sum or in periodic installments. Installment payments shall be paid in full not later than three years from the date of the final decision of entitlement to retroactive monetary relief: Provided, That the periodic installment method for payment may only be used when the total amount of any refund to an individual taxpayer exceeds $1,000 or the aggregate amount of all refunds resulting from a final decision of unconstitutionality of a particular tax is estimated to be more than $5 million.

(2) Credits. -- With the taxpayer's consent, the Tax Commissioner may issue an overpayment credit for tax.

(f) Finality of relief. -- The issuance of refunds or credits shall constitute complete and final settlement of all entitlements based on the claim or claims for which such refunds or credits were made.

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