WEST VIRGINIA CODE: §11-10-26

§11-10-26. Adjustment for correction of erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.

(a)(1) An erroneous distribution, transfer, allocation, overpayment or underpayment dedicated, distributed or directed by the state or an instrumentality of the state to a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of the state, under the provisions of this code administered under this article, or under the provisions of article twenty-two, twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine of this code, or any other provision of this code, or any combination thereof, caused by clerical error or mistake, or a computational, informational or other mistake or error, may be corrected by an adjustment to a distribution, transfer, allocation or payment to the subdivision, entity, agency, instrumentality or fund and by transfer of moneys from the subdivision, entity, agency, instrumentality or fund until the amount of the erroneous distribution, transfer, allocation, overpayment or underpayment has been corrected: Provided, That no correction or adjustment may be made for an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys that is first discovered by the distributor or the distributee more than three years after the date on which the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys was made, and no action lies for collection, correction or remediation of the late discovered erroneous distribution, transfer, allocation, overpayment or underpayment of the moneys.

(2) A distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been made on the date when the moneys related thereto are under the actual, substantive control of the transferee, and subject to expenditure, disbursement, consumption or disposition by the transferee.

(3) An erroneous distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been discovered on the date when the distributor or the distributee or any employee, officer, agent or representative of the distributor or distributee has actual substantive knowledge of the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(b) An agency, governmental subdivision or instrumentality of this state is not subject to a fine, penalty, assessment or imposition as a result of, or attributable to, an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(c) The provisions of subsection (a) of this section shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement which was in operation on the effective date of this section, to correct or adjust an erroneous distribution, transfer, allocation, overpayment or underpayment, between (1) this state or an instrumentality of this state and (2) a state or local governmental subdivision or a fund, entity, agency or

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instrumentality of the state or a political subdivision of this state.

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