WEST VIRGINIA CODE: §33-43-14

§33-43-14. Retroactive monetary relief for unconstitutional taxes.

(a) The remedies provided by this article are exclusive and shall be in lieu of any and all remedies provided by common law or by other provisions of this code.

(b) Retroactive monetary relief for an unconstitutional tax shall be granted only at the express order of a court of competent jurisdiction which appears in a final decision of that court. Notwithstanding any other provision of this code, a final decision ordering retroactive monetary relief may not be considered to override any statute of limitations contained within this article, or to require relief for any claim which is res judicata.

(c) Retroactive monetary relief shall comprise only a refund of the unconstitutional tax, or of the portion thereof that the court has ordered refunded, which actually has been paid by the taxpayer, together with any penalties or interest which are based upon the taxpayer's failure to pay the unconstitutional tax and which actually have been paid by the taxpayer.

(1) Except as otherwise provided in this section, retroactive monetary relief shall be paid to the taxpayer in a lump sum within one hundred eighty days of the final decision which orders the relief.

(2) If the amount of retroactive monetary relief due to any individual taxpayer exceeds $1,000 or the aggregate amount of the relief due to all taxpayers exceeds $100,000, the commissioner at his or her discretion may pay all refunds issued pursuant to the final decision in equal, annual installments over not more than three years. For purposes of this subsection, a year shall be a period of twelve calendar months measured from the date upon which the final decision which orders the relief is entered.

(3) With the approval of the taxpayer, the commissioner may issue a credit against future taxes in lieu of a refund payment due pursuant to this section, whether lump sum or installment.

(d) The payment of refunds or issuance of credits to a taxpayer pursuant to this section shall constitute a complete and final settlement of all of the taxpayer's claims which are based upon the unconstitutional tax for which the refunds are paid or the credits issued. No cause of action or liability, whether for damages, attorney's fees, costs or of any other nature, shall arise against the commissioner or against his or her agents for administering or litigating the Constitutionality of a tax subsequently determined to be unconstitutional.

WV Legislature