

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 401

(By Originating in the Committee on Finance)

PASSED March 10, 1967

In Effect for Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

401

ENROLLED

Senate Bill No. 401

(Originating in the Committee on Finance)

[Passed March 10, 1967; in effect from passage.]

AN ACT to amend and reenact section two-a, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of taxes erroneously collected, to change the period within which claims for refund may be filed from three years from the date of payment to five years from the date of the filing of the return in respect of which the tax was imposed or four years from the date the tax was paid, whichever of such periods expires the later.

Be it enacted by the Legislature of West Virginia:

That section two-a of article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§11-1-2a. Refund of taxes erroneously collected.

(1) On and after the effective date of this act, any taxpayer claiming to be aggrieved through being required to pay and tax into the treasury of this state, may, within five years from the date of the filing of the return in respect of which the tax was imposed or within four years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within four years from the time the tax was paid, and not after, file with the official or department through which the tax was paid, a petition in writing to have refunded to him any such tax, or any part thereof, the payment whereof is claimed by him to have been required unlawfully; and if, on such petition, and the proofs filed in support thereof, the official collecting the same shall be of the opinion that the payment of the tax collected, or any part thereof was improperly required, he shall refund the same to the taxpayer by the issuance of his or its requisition on the treasury upon which the auditor shall issue his warrant as hereinafter provided; if the official collecting the same shall be in doubt as to whether

21 or not such taxes were unlawfully paid, or if he be of
22 the opinion that the payment of the tax collected, or any
23 part thereof, was lawful, and the taxpayer within thirty
24 days after notice of such opinion is not satisfied with the
25 ruling of such official, then such tax official may on his
26 own initiative, and shall, upon written notice so to do
27 from the taxpayer given within said thirty-day period,
28 promptly institute against said taxpayer, in a court of
29 competent jurisdiction, a declaratory judgment proceed-
30 ing to ascertain whether any such tax, or part thereof,
31 has been unlawfully collected; if it be determined in
32 such proceeding that any such tax, or part thereof was
33 unlawfully collected, then such official shall promptly
34 refund the same to the taxpayer by the issuance of his
35 or its requisition on the treasury; and the auditor shall
36 issue his warrant on the treasurer for any refund requi-
37 sitioned under this section payable to the taxpayer en-
38 titled to the refund, and the treasurer shall pay such war-
39 rant out of the fund into which the amount so refunded
40 was originally paid: *Provided*, That no refund shall be
41 made at any time on any claim involving the assessed

42 valuation or appraisalment of the property which was
43 fixed at the time the tax was originally paid: *Provided*
44 *further*, That such official shall be under no duty to in-
45 stitute any such declaratory judgment proceeding unless
46 it shall appear that the taxpayer giving the notice as
47 herein provided is acting in good faith and that there is
48 a substantial question as to the lawfulness of the collec-
49 tion of such tax.

50 (2) With respect to any tax imposed for any period
51 ending prior to the effective date of this act, the time
52 within which any taxpayer claiming to be aggrieved,
53 through being required to pay any tax into the treasury
54 of this state, may file with the official or department
55 through which the tax was paid the petition provided in
56 subsection (1) shall be three years from the date of such
57 payment, and not after.

58 (3) The provisions of this section shall take effect on
59 the first day of July, one thousand nine hundred sixty-
60 seven.

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

William Tompa
 Chairman Senate Committee

Clayton C. Davidson
 Chairman House Committee

Originated in the Senate.

To take effect from passage.

Thomas Nugent
 Clerk of the Senate

C. A. Blankenship
 Clerk of the House of Delegates

Howard W. Carson
 President of the Senate

H. Laban White
 Speaker House of Delegates

The within approved this the 17
 day of March, 1967.

Hullett C. Smith
 Governor



PRESENTED TO THE
GOVERNOR

Date 3/17/67

Time 3:21 P.M.