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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



# ENROLLED

HOUSE BILL No. HS57

(By Delegates Rutledge and Kiss)



Passed March 7 1992

In Effect Ninety Days From Passage

**ENROLLED**  
**H. B. 4557**

(By DELEGATES RUTLEDGE AND KISS)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the West Virginia Tax Procedure and Administration Act; providing for retroactive monetary relief for overpayments of unconstitutional state taxes when retroactive relief is ordered by a final decision of a state or federal court; legislative findings and purpose; legislative intent and rules of construction; criteria for retroactive monetary relief; type and manner of providing relief; finality of relief.

*Be it enacted by the Legislature of West Virginia:*

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen-b, to read as follows:

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

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

- 1 (a) *Legislative findings and purpose.* — Taxpayers who
- 2 successfully challenge the constitutionality of state taxes
- 3 may be entitled to retroactive monetary relief for the
- 4 amount of their overpayments. Because there may be
- 5 many of such taxpayers and the period of retroactivity
- 6 may be extensive, the amount of monetary relief owed

7 to such taxpayers may represent a considerable and  
8 unpredictable risk to the fiscal integrity and stability of  
9 this state. This section provides the tax commissioner  
10 with greater flexibility and discretion in the manner in  
11 which such relief may be provided.

12 (b) *Legislative intent and rules of construction.*

13 (1) *Legislative intent.* — It is the intent of the  
14 Legislature that this section shall be construed to  
15 preserve the fiscal integrity and stability of the state of  
16 West Virginia and to provide appropriate relief to the  
17 extent required by this section and the state and federal  
18 constitutions. The provisions of section fourteen of this  
19 article shall remain in full force and effect with regard  
20 to overpayments of tax resulting from any reason  
21 including unconstitutionality.

22 (2) *Rules of construction.*

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

27 (B) Because all legislative enactments are presump-  
28 tively constitutional and because the tax commissioner  
29 is without authority to determine the constitutionality of  
30 tax laws, other than through the courts, no cause of  
31 action shall exist against said tax commissioner, in his  
32 individual capacity, for damages, attorneys fees or court  
33 costs incurred in litigating the constitutionality of any  
34 tax law administered under this article which is  
35 subsequently determined to be unconstitutional.

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

39 (c) *Criteria for retroactive monetary relief.* — No  
40 person may be granted relief based on a claim of  
41 unconstitutionality, unless the decision that the tax or  
42 its application is unconstitutional also mandates retro-  
43 active monetary relief and is a final decision of a court  
44 of competent jurisdiction of this state or a federal court  
45 having appropriate jurisdiction. A final decision is one

46 for which the availability of an appeal has been  
47 exhausted, and the time for filing a petition has elapsed  
48 or the petition has been finally denied.

49 (d) *Amount of relief; interest.* — The amount of  
50 monetary relief shall be comprised solely of the amount  
51 of overpayment, together with interest, and shall not  
52 include damages of any kind, court costs, or attorney's  
53 fees except when ordered by a court of competent  
54 jurisdiction. Interest shall be paid as provided by section  
55 seventeen of this article.

56 (e) *Type and manner of providing relief.* — In addition  
57 to the powers already provided in this article, the tax  
58 commissioner may, in his discretion and in accordance  
59 with guidelines published by him in the State Register,  
60 provide retroactive monetary relief by any one or  
61 combination of the following remedies:

62 (1) *Refunds.* — The total amount of any refund to be  
63 paid to a taxpayer may be paid either in one lump sum  
64 or in periodic installments. Installment payments shall  
65 be paid in full not later than three years from the date  
66 of the final decision of entitlement to retroactive  
67 monetary relief: *Provided*, That the periodic installment  
68 method for payment may only be used when the total  
69 amount of any refund to an individual taxpayer exceeds  
70 one thousand dollars or the aggregate amount of all  
71 refunds resulting from a final decision of unconstitution-  
72 ality of a particular tax is estimated to be more than  
73 five million dollars.

74 (2) *Credits.* — With the taxpayer's consent, the tax  
75 commissioner may issue an overpayment credit for tax.

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

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

*Tomer Leck*

Chairman Senate Committee

*Ernest C Moore*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harrell Edmonds*

Clerk of the Senate

*Donald G. Koep*

Clerk of the House of Delegates

*Kurt Friedette*

President of the Senate

*Robert Cole*

Speaker of the House of Delegates

The within *is approved* this the *27<sup>th</sup>*  
day of *March*, 1992.

*Yaston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 12:04 pm