ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2913

(By Delegate(s) White and Marcum)

Passed April 12, 2013

In effect ninety days from passage.
AN ACT to amend Code of West Virginia, 1931, as amended by adding thereto a new section, designated §11-10-26, relating to correction of certain erroneous distributions, transfers, allocations, overpayments or underpayments; specifying immunity of agencies, subdivisions and instrumentalities of this state from any fine, penalty, assessment or imposition as a result of, or attributable to the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys; and specifying when discovery and distribution have occurred; specifying that provisions shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement in operation on the effective date.

Be it enacted by the Legislature of West Virginia:

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-26, to read as follows:
ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-26. Adjustments for correction or 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 provision 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, information 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 provision 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 instrumentality of the state or a political subdivision of this state.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 30th day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm