

**WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013**



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 146

(SENATORS UNGER AND BEACH, *ORIGINAL SPONSORS*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB/46

SECRETARY OF STATE

2013 MAY -1 PM 4:00

FILED

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COMMITTEE SUBSTITUTE

OFFICE OF THE CLERK
OF THE HOUSE OF DELEGATES
OF THE STATE OF WEST VIRGINIA

FOR

Senate Bill No. 146

(SENATORS UNGER AND BEACH, *original sponsors*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-3-2c, relating to requiring the Tax Commissioner to withhold unpaid costs, fines, fees, forfeitures, restitution, penalties and other fees imposed on a defendant in a criminal action in magistrate court, or imposed in circuit court in a criminal action on appeal from magistrate court, from the income tax refund of the defendant upon notification from the clerk of the appropriate court; requiring clerk to give notification to Tax Commissioner if amounts are unpaid within one year of judgment; providing a process for deducting, distributing and allocating those unpaid amounts; creating the Magistrate Fines and Fees Collection Fund; permitting the Tax Commissioner to charge an administrative fee; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §50-3-2c, to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2c. Withholding from personal income tax refunds for unpaid fines and costs in magistrate criminal actions, in magistrate criminal appeals to circuit court and for failure to appear in court.

1 (a) If costs, fines, fees, forfeitures, restitution or penalties
2 imposed by the magistrate court upon conviction of a person
3 for a criminal offense as defined by this code, imposed by the
4 circuit court upon judgment on an appeal to circuit court of
5 that conviction, or imposed by either court for failure to
6 appear are not paid in full within one year of the judgment,
7 the magistrate court clerk or, upon a judgment rendered on
8 appeal, the circuit clerk shall notify the Tax Commissioner
9 that the defendant has failed to pay the costs, fines, forfeitures
10 or penalties assessed by the court. The notice provided by
11 the magistrate clerk or the circuit clerk to the Tax
12 Commissioner must include the defendant's Social Security
13 number. The Tax Commissioner, or his or her designee, shall
14 withhold from any personal income tax refund due and owing
15 to a defendant the costs, fines, fees, forfeitures, restitution or
16 penalties due, the Tax Commissioner's administration fee for
17 the withholding and any and all fees or other amounts that the
18 magistrate court and the circuit court would have collected
19 had the defendant appeared: *Provided*, That no withholding
20 shall be made under this section if there is an unsatisfied
21 withholding request made pursuant to section two-b, article
22 ten, chapter eight of this code. The Tax Commissioner's
23 administration fee shall not exceed \$25, unless this maximum
24 amount is increased by legislative rule promulgated in
25 accordance with article three, chapter twenty-nine-a of this
26 code. The administrative fees deducted shall be deposited in
27 the special revolving fund hereby created in the State
28 Treasury, which shall be designated as the Magistrate Fines
29 and Fees Collection Fund, and the Tax Commissioner shall
30 make such expenditures from the fund as he or she deems
31 appropriate for the administration of this subsection.

32 (b)(1) After deduction of the Tax Commissioner's
33 administration fee, the Tax Commissioner shall remit all
34 remaining amounts withheld pursuant to this section to the
35 clerk of the court that notified the Tax Commissioner of the
36 failure to pay under subsection (a) of this section.

37 (2) From the amounts received from the Tax
38 Commissioner, the circuit clerk shall distribute the portion
39 thereof that is attributable to costs, fines, fees, forfeitures,
40 restitution or penalties owed to magistrate court to the
41 magistrate clerk and distribute the remainder that is
42 attributable to costs, fines, fees, forfeitures, restitution or
43 penalties owed to circuit court to the appropriate fund or
44 payee, as applicable and listed in section twenty-eight-a,
45 article one, chapter fifty-nine of this code and as otherwise
46 required by law.

47 (3) From the amounts received from the Tax
48 Commissioner, or from the circuit clerk under subdivision (2)
49 of this subsection, the magistrate clerk shall distribute
50 applicable costs, fines, fees, forfeitures, restitution or
51 penalties owed to the appropriate fund or payee, as applicable
52 and listed in subsection (g), section two-a of this article and
53 as otherwise required by law.

54 (4) After the costs, fines, fees, forfeitures, restitution or
55 penalties are withheld, the Tax Commissioner shall refund
56 any remaining balance due the defendant.

57 (5) If the refund is not sufficient to cover all the costs,
58 fines, fees, forfeitures, restitution or penalties to be withheld
59 pursuant to this section, the Tax Commissioner's
60 administration fee shall be retained by the Tax Commissioner
61 and the remaining money withheld shall be remitted by the
62 Tax Commissioner to the appropriate clerk. The clerk shall
63 then allocate the money so remitted on a pro rata basis as

64 provided in the applicable provisions of subdivisions (2) or
65 (3) of this subsection.

66 (c) In the event the costs, fines, fees, forfeitures,
67 restitution or penalties exceed the defendant's income tax
68 refund, the Tax Commissioner shall withhold the remaining
69 balance in subsequent years until such time as the costs, fines,
70 fees, forfeitures, restitution or penalties owed are paid in full.
71 The Tax Commissioner shall remit the moneys that he or she
72 collects to the appropriate clerk no later than July 1 of each
73 year. If the circuit court or the magistrate court subsequently
74 determines that any costs, fines, fees, forfeitures, restitution
75 or penalties were erroneously imposed, the clerk of the court
76 shall promptly notify the Tax Commissioner. If the amounts
77 due are paid in full to the court from a source other than the
78 Tax Commissioner after the clerk of the court has provided
79 notice of the failure to pay to the tax commissioner, the clerk
80 of the court shall promptly notify the Tax Commissioner of
81 the payment. If the refunds have not been withheld and
82 remitted, the Tax Commissioner may not withhold and remit
83 payment to the appropriate court and shall so inform the clerk
84 of the court. If the refunds have already been withheld and
85 remitted to the court, the Tax Commissioner shall so inform
86 the clerk of the court. In either event, all refunds for
87 erroneously imposed costs, fines, forfeitures or penalties shall
88 be made by the appropriate court and not by the Tax
89 Commissioner.

90 (d) *Rules.* – The Tax Commissioner may propose for
91 legislative approval such rules as may be useful or necessary
92 to carry out the purpose of this section and to implement the
93 intent of the Legislature. Rules shall be promulgated in
94 accordance with article three, chapter twenty-nine-a of this
95 code.

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

member *Ruby Ferguson*
.....
Chairman Senate Committee

Tommy Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Suzanne B. Smith
.....
Clerk of the House of Delegates

Jeffrey K. Rosen
.....
President of the Senate

Robert L. Williams
.....
Speaker of the House of Delegates

The within *is approved* this the *1st*
Day of *May*, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 11:00 am