1 Senate Bill No. 439 2 (By Senators Prezioso, Facemire and Plymale) 3 [Introduced March 5, 2013; referred to the Committee on 4 5 Government Organization; and then to the Committee on Finance.] 6 7 8 9 10 A BILL to amend the Code of West Virginia, 1931, as amended, by 11 adding thereto a new section, designated \$11-10-26, relating 12 to correction of certain erroneous distributions, transfers, 13 allocations, overpayments or underpayments; and specifying 14 immunity of agencies, subdivisions and instrumentalities of 15 this state from any fine, penalty, assessment or imposition as 16 a result of, or attributable to, the erroneous distribution, 17 transfer, allocation, overpayment or underpayment of moneys. 18 Be it enacted by the Legislature of West Virginia: 19 That the Code of West Virginia, 1931, as amended, be amended 20 by adding thereto a new section, designated \$11-10-26, to read as 21 follows: 22 ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT. 23 §11-10-26. Adjustment for correction of erroneous distribution of funds, limitation period, immunity of agencies,

subdivisions, and instrumentalities of this state.

distribution, transfer, allocation, 3 (a) erroneous 4 overpayment or underpayment dedicated, distributed or directed to 5 a state or local governmental subdivision or a fund, entity, agency 6 or instrumentality, under the provisions of this code administered 7 under this article, or under the provisions of article twenty-two, 8 twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter 9 twenty-nine of this code, or any other provision of this code, or 10 any combination thereof, caused by clerical error or mistake, or a 11 computational, informational or other mistake or error, may be 12 corrected by an adjustment to a distribution, transfer, allocation 13 or payment to the subdivision, entity, agency, instrumentality or 14 fund and by transfer of moneys from the subdivision, entity, 15 agency, instrumentality or fund until the amount of the erroneous 16 distribution, transfer, allocation, overpayment or underpayment has 17 been corrected: Provided, That no correction or adjustment may be an erroneous distribution, transfer, allocation, 18 made for 19 overpayment or underpayment of moneys that is first discovered more 20 than three years after the erroneous distribution, transfer, 21 allocation, overpayment or underpayment of moneys was made, and no 22 action lies for collection, correction or remediation of the late 23 discovered erroneous distribution, transfer, allocation, 24 overpayment or underpayment of the moneys.

1 (b) An agency, governmental subdivision or instrumentality of 2 this state is not subject to a fine, penalty, assessment or 3 imposition as a result of, or attributable to, an erroneous 4 distribution, transfer, allocation, overpayment or underpayment of 5 moneys.

NOTE: The purpose of this bill is to specify procedures for adjusting payments and transferring moneys to correct for an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys dedicated, distributed or directed to a state or local governmental subdivision or to a fund, entity, agency or instrumentality, under the tax code or the lottery code.

This section is new; therefore, strike-throughs and underscoring have been omitted.