

**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.]

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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.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2013.

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*Governor*