WEST VIRGINIA LEGISLATURE EIGHTY-FIRST LEGISLATURE REGULAR SESSION, 2013

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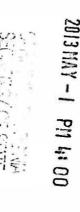
COMMITTEE SUBSTITUTE

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 penaltics 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 that conviction, or imposed by either court for failure to 5 6 appear are not paid in full within one year of the judgment. 7 the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Tax Commissioner 8 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 ten, chapter eight of this code. The Tax Commissioner's 22 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 j i 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 payce, 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, fines, fees, forfeitures, restitution or penalties to be withheld pursuant to this section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the appropriate clerk. The clerk shall then allocate the money so remitted on a pro rata basis as

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

- (c) In the event the costs, fines, fees, forfeitures, restitution or penalties exceed the defendant's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines. fees, forfeitures, restitution or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate clerk no later than July 1 of each year. If the circuit court or the magistrate court subsequently determines that any costs, fines, fees, forfeitures, restitution or penalties were erroneously imposed, the clerk of the court shall promptly notify the Tax Commissioner. If the amounts due are paid in full to the court from a source other than the Tax Commissioner after the clerk of the court has provided notice of the failure to pay to the tax commissioner, the clerk of the court shall promptly notify the Tax Commissioner of the payment. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the appropriate court and shall so in form the clerk of the court. If the refunds have already been withheld and remitted to the court, the Tax Commissioner shall so inform the clerk of the court. In either event, all refunds for erroncously imposed costs, fines, forfeitures or penalties shall be made by the appropriate court and not by the Tax Commissioner.
- 90 (d) Rules. The Tax Commissioner may propose for legislative approval such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.

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

Member Choirphyn Sengel Committee Chairman House Committee
Originated in the Senate.
In effect ninety days from passage.
Jaseph M. Minard Clerk of the Senate
Clerk of the House of Delegates Plesifient of the Senate Speaker of the House of Delegates
The within is a system this the 157 Day of May , 2013.
Cal Ray Somble

PRESENTED TO THE GOVERNOR

APR 2 6 2013

Time _11:00 am