

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 146

(By Senators Unger and Beach)

[Originating in the Committee on the Judiciary;
reported March 7, 2013.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-3-2c, relating to permitting magistrate courts to collect unpaid costs, fines, fees, forfeitures, restitution and penalties it has imposed on a defendant; permitting those unpaid amounts to be deducted from a defendant's income tax refund; providing a process for deducting and distributing 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 of personal income tax refunds for failure to pay fines and costs or 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 or for failure to
4 appear are not paid in full within one year of the judgment,
5 the magistrate court clerk or, upon a judgment rendered on
6 appeal, the circuit clerk shall notify the Tax Commissioner
7 that the defendant has failed to pay the costs, fines,
8 forfeitures or penalties assessed by the court. The notice
9 provided by the magistrate court to the Tax Commissioner
10 must include the defendant's Social Security number. The
11 Tax Commissioner, or his or her designee, shall withhold
12 from any personal income tax refund due and owing to a

13 defendant the costs, fines, fees, forfeitures, restitution or
14 penalties due, the Tax Commissioner's administration fee for
15 the withholding and any and all fees that the magistrate court
16 would have collected had the defendant appeared: *Provided*,
17 That no withholding shall be made under this section if there
18 is an unsatisfied withholding request made pursuant to
19 section two-b, article ten, chapter eight of this code. The Tax
20 Commissioner's administration fee shall not exceed \$25,
21 unless this maximum amount is increased by legislative rule
22 promulgated in accordance with article three, chapter twenty-
23 nine-a of this code. The administrative fees deducted shall
24 be deposited in the special revolving fund hereby created in
25 the State Treasury, which shall be designated as the
26 Magistrate Fines and Fees Collection Fund, and the Tax
27 Commissioner shall make such expenditures from the fund
28 as he or she deems appropriate for the administration of this
29 subsection.

30 (b) After deduction of the Tax Commissioner's
31 administration fee, the Tax Commissioner shall remit to the

32 magistrate court all remaining amounts withheld pursuant to
33 this section and the magistrate court shall distribute
34 applicable costs, fines, fees, forfeitures, restitution or
35 penalties owed to the appropriate fund or payee, as
36 applicable and listed in subsection (j), section two-a of this
37 article. After the costs, fines, fees, forfeitures, restitution or
38 penalties are withheld, the Tax Commissioner shall refund
39 any remaining balance due the defendant. If the refund is not
40 sufficient to cover all the costs, fines, fees, forfeitures,
41 restitution or penalties being withheld pursuant to this
42 section, the Tax Commissioner's administration fee shall be
43 retained by the Tax Commissioner and the remaining money
44 withheld shall be remitted by the Tax Commissioner to the
45 magistrate court. The magistrate court shall then allocate the
46 money so remitted to the magistrate court in the manner
47 listed in subsection (j), section two-a of this article.

48 (c) In the event the costs, fines, fees, forfeitures,
49 restitution or penalties exceed the defendant's income tax

50 refund, the Tax Commissioner shall withhold the remaining
51 balance in subsequent years until such time as the costs,
52 fines, fees, forfeitures, restitution or penalties owed are paid
53 in full. The Tax Commissioner shall remit the moneys that
54 he or she collects to the appropriate magistrate court no later
55 than July 1 of each year. If the magistrate court subsequently
56 determines that any costs, fines, fees, forfeitures, restitution
57 or penalties were erroneously imposed, the magistrate court
58 shall promptly notify the Tax Commissioner. If the refunds
59 have not been withheld and remitted, the Tax Commissioner
60 may not withhold and remit payment to the magistrate court
61 and shall so inform the magistrate court. If the refunds have
62 already been withheld and remitted to the magistrate court,
63 the Tax Commissioner shall so inform the magistrate court.
64 In either event, all refunds for erroneously imposed costs,
65 fines, forfeitures or penalties shall be made by the magistrate
66 court and not by the Tax Commissioner.

67 (d) *Rules.* – The Tax Commissioner may propose for
68 legislative approval such rules as may be useful or necessary

69 to carry out the purpose of this section and to implement the
70 intent of the Legislature. Rules shall be promulgated in
71 accordance with article three, chapter twenty-nine-a of this
72 code.