

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2089

FISCAL  
NOTE

BY DELEGATES ANDERSON AND J. KELLY

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §11-3-27 of the Code of West Virginia, 1931, as amended, relating  
2 to erroneous tax assessments and overpayments to the county; clarifying that relief may  
3 be sought for overpayment of taxes by a taxpayer; establishing a procedure for petitioning  
4 the Auditor for additional review of a county commission's decision; granting the Auditor  
5 express authority to order the county commission to make reimbursement or issue a tax  
6 credit where a county commission's decision is found to be clearly erroneous; and granting  
7 the Auditor express authority to promulgate emergency rules in order to comply with this  
8 section.

*Be it enacted by the Legislature of West Virginia:*

**§11-3-27. Relief in county commission from erroneous assessments or overpayment; right to petition State Auditor for relief.**

1 (a) Any taxpayer, or the prosecuting attorney or Tax Commissioner, upon behalf of the  
2 state, county and districts, claiming to be aggrieved by any entry in the property books of the  
3 county, including entries with respect to classification and taxability of property, resulting from a  
4 clerical error or a mistake occasioned by an unintentional or inadvertent act, including the  
5 overpayment of estimated taxes by a taxpayer, as distinguished from a mistake growing out of  
6 negligence or the exercise of poor judgment, may, within one year from the time the property  
7 books are delivered to the sheriff or within one year from the time such clerical error, overpayment,  
8 or mistake is discovered or reasonably could have been discovered, apply for relief to the county  
9 commission of the county in which such books are made out: *Provided*, That upon the discovery  
10 of any such clerical error or mistake by the sheriff or assessor, or either officer having knowledge  
11 thereof, the sheriff or assessor shall initiate an application for relief from the erroneous  
12 assessment or overpayment on behalf of the taxpayer or cause notice to be sent to any taxpayer  
13 affected by the clerical error or mistake by first-class United States mail advising the taxpayer of  
14 the right to make application for relief from the erroneous assessment. Before the application is  
15 heard, the taxpayer shall give notice to the prosecuting attorney of the county, or the state shall

16 give notice to the taxpayer, as the case may be. The application, whether by the taxpayer or the  
17 state, shall have precedence over all other business before the ~~court~~ county commission; but any  
18 order or judgment shall show that either the prosecuting attorney or Tax Commissioner was  
19 present defending the interests of the state, county and districts: *Provided, however,* That the  
20 provisions of this section shall not be construed as giving county commissions jurisdiction to  
21 consider any question involving the classification or taxability of property which has been the  
22 subject matter of an appeal under the provisions of §11-3-24a of this code; and any other such  
23 clerical error or mistake involving the classification or taxability of property, may be corrected by  
24 the county commission under the provisions of this section only when approved, in writing, by the  
25 county assessor.

26 (b) In the event it is ascertained that the taxpayer is entitled to relief, any excess taxes  
27 already paid shall be refunded and, if charged but not paid, the applicant shall be released from  
28 the payment of such excess: *Provided,* That in the event a mistake or error is discovered more  
29 than one year after the property books for the year or years in question are delivered to the sheriff,  
30 any relief granted to the taxpayer shall be in the form of a credit against taxes owing for up to the  
31 following two years: *Provided, however,* That if there are insufficient future taxes to credit or if the  
32 sheriff or county commission determines that a refund is appropriate, then the sheriff or county  
33 commission shall refund the uncredited balance to the taxpayer.

34 (c) Whenever any correction is made by the county commission, the clerk shall certify  
35 copies of the order to the Auditor, sheriff and assessor, and in the case of real estate, the assessor  
36 shall thereupon make a correction in accordance with the order in his or her land book for the  
37 next year. Any such order delivered to the sheriff or other collecting officer shall restrain him or  
38 her from collecting so much as is erroneously charged against the taxpayer, and, if already  
39 collected, shall compel him or her to refund the money if such officer has not already paid it into  
40 the treasury. In either case, when endorsed by the person exonerated, it shall be sufficient  
41 voucher to entitle the officer to a credit for so much in his or her settlement which he or she is

42 required to make. If the applicant is the state, the order certified to the sheriff shall show the  
43 correct amount of taxes due the state, county and districts and shall be sufficient to authorize  
44 collection in the same manner as for other state, county and district taxes.

45 (d) In the event that a taxpayer seeking relief under this section has failed to secure a  
46 correction from the county commission, the taxpayer may petition the Auditor for review, and in  
47 the event that the decision is found to be clearly erroneous based on the evidence produced by  
48 the petitioner to the county commission, or on the discovery of new evidence, the Auditor shall  
49 direct the county commission to order a correction pursuant to the remedies and procedures  
50 detailed in §11-3-27(b) and §11-3-27(c) of this code. The Auditor shall promulgate emergency  
51 rules necessary for the development of procedures in order to comply with this section.

NOTE: The purpose of this bill is to create a method by which aggrieved taxpayers, who believe that they were erroneously assessed or overpaid taxes based on an overestimation or unintentional mistake, may seek additional review by the State Auditor in order to reverse an adverse decision by a county commission. The bill clarifies that relief may be sought for overpayment of taxes by a taxpayer. The bill establishes a process to petition the Auditor for additional review of a county commission's decision. The bill grants the Auditor express authority to order the county commission to make reimbursement or issue a tax credit where a county commission's decision is found to be clearly erroneous. Finally, this bill grants the Auditor express authority to promulgate emergency rules in order to comply with this section.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.