

Senate Bill No. 582

(By Senators Unger and Klempa)

[Introduced February 14, 2012; referred to the Committee on the
Judiciary.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §50-3-2c, relating to
12 permitting magistrate courts to collect unpaid costs, fines,
13 forfeitures and penalties it has imposed on a defendant;
14 permitting those unpaid costs, fines, forfeitures and
15 penalties to be deducted from a defendant's income tax refund;
16 creating the Magistrate Fines and Fees Collection Fund;
17 permitting the Tax Commissioner to charge an administrative
18 fee; and providing rule-making authority.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §50-3-2c, to read as
22 follows:

23 **ARTICLE 3. COSTS, FINES AND RECORDS.**

24 **§50-3-2c. Withholding of personal income tax refunds for failure**

1 **to pay fines and costs or failure to appear in court.**

2 (a) If costs, fines, forfeitures or penalties imposed by the
3 magistrate court upon conviction of a person for a criminal offense
4 as defined by this code are not paid in full within one hundred
5 eighty days of the judgment, the magistrate court clerk or, upon a
6 judgment rendered on appeal, the circuit clerk shall notify the Tax
7 Commissioner 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 must
10 include the defendant's social security number. The Tax
11 Commissioner, or his or her designee, shall withhold from any
12 personal income tax refund due and owing to a defendant the costs,
13 fines, forfeitures or penalties due, the Tax Commissioner's
14 administration fee for the withholding and any and all fees that
15 the magistrate court would have collected had the defendant
16 appeared. The Tax Commissioner's administration fee may be set by
17 legislative rule promulgated in accordance with article three,
18 chapter twenty-nine-a of this code. The administrative fees
19 deducted shall be deposited in the special revolving fund hereby
20 created in the State Treasury, which shall be designated as the
21 "Magistrate Fines and Fees Collection Fund", and the Tax
22 Commissioner shall make such expenditures from the fund as he or
23 she deems appropriate for the administration of this subsection.

24 (b) After deduction of the Tax Commissioner's administration

1 fee, the Tax Commissioner shall remit to the magistrate court all
2 remaining amounts withheld pursuant to this section and the
3 magistrate court shall distribute applicable costs, fines,
4 forfeitures or penalties owed to the magistrate court, the Regional
5 Jail Authority Fund, the Crime Victims Compensation Fund, the
6 Community Corrections Fund, the Governor's subcommittee on law-
7 enforcement training or any other fund or payee that may be
8 applicable. After the costs, fines, forfeitures or penalties are
9 withheld, the Tax Commissioner shall refund any remaining balance
10 due the defendant. If the refund is not sufficient to cover all
11 the costs, fines, forfeitures or penalties being withheld pursuant
12 to this section, the Tax Commissioner's administration fee shall be
13 retained by the Tax Commissioner and the remaining money withheld
14 shall be remitted by the Tax Commissioner to the magistrate court.
15 The magistrate court shall then allocate the money so remitted to
16 the magistrate court in the following manner: (1) Any costs,
17 fines, forfeitures or penalties due to the magistrate court; (2)
18 seventy-five percent of the remaining balance shall be paid to the
19 appropriate Regional Jail Authority Fund; (3) fifteen percent of
20 the remaining balance shall be paid to the Crime Victims
21 Compensation Fund; (4) six percent of the remaining balance shall
22 be paid into the Community Corrections Fund; and (5) the final four
23 percent shall be paid to the Governor's subcommittee on law-
24 enforcement training.

1 (c) In the event the costs, fines, forfeitures or penalties
2 exceed the defendant's income tax refund, the Tax Commissioner
3 shall withhold the remaining balance in subsequent years until such
4 time as the costs, fines, forfeitures or penalties owed are paid in
5 full. The Tax Commissioner shall remit the moneys that he or she
6 collects to the appropriate magistrate court no later than July 1,
7 of each year. If the magistrate court subsequently determines that
8 any such costs, fines, forfeitures or penalties were erroneously
9 imposed, the magistrate court shall promptly notify the Tax
10 Commissioner. If the refunds have not been withheld and remitted,
11 the Tax Commissioner may not withhold and remit payment to the
12 magistrate court and shall so inform the magistrate court. If the
13 refunds have already been withheld and remitted to the magistrate
14 court, the Tax Commissioner shall so inform the magistrate court.
15 In either event, all refunds for erroneously imposed costs, fines,
16 forfeitures or penalties shall be made by the magistrate court and
17 not by the Tax Commissioner.

18 (d) *Rules and effective date.* -- The Tax Commissioner may
19 propose for legislative approval such rules as may be useful or
20 necessary to carry out the purpose of this section and to implement
21 the intent of the Legislature, to be effective on July 1, 2012.
22 Rules shall be promulgated in accordance with article three,
23 chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to permit magistrate courts, like municipal courts, to collect unpaid costs, fines, forfeitures and penalties it has imposed on a defendant. The bill permits those unpaid costs, fines, forfeitures and penalties be deducted from a defendant's income tax refund. The bill creates the Magistrate Fines and Fees Collection Fund. The bill permits the Tax Commissioner to charge an administrative fee. The bill provides rule-making authority.

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