

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2913**

5 (By Delegates White and Marcum)

6
7 [Passed April 12, 2013; in effect ninety days from passage.]
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10 AN ACT to amend the Code of West Virginia, 1931, as amended by
11 adding thereto a new section, designated §11-10-26, relating
12 to correction of certain erroneous distributions, transfers,
13 allocations, overpayments or underpayments; specifying
14 immunity of agencies, subdivisions and instrumentalities of
15 this state from any fine, penalty, assessment or imposition as
16 a result of, or attributable to the erroneous distribution,
17 transfer, allocation, overpayment or underpayment of moneys;
18 and specifying when discovery and distribution have occurred;
19 specifying that provisions shall not be applied to alter,
20 abrogate or terminate any current and ongoing agreement or
21 arrangement in operation on the effective date.

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

23 That of the Code of West Virginia, 1931, as amended, be
24 amended by adding thereto a new section, designated §11-10-26, to
25 read as follows:

26 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

1 **§11-10-26. Adjustment for correction of erroneous distribution of**
2 **funds, limitation period, immunity of agencies,**
3 **subdivisions, and instrumentalities of this state.**

4 (a) (1) An erroneous distribution, transfer, allocation,
5 overpayment or underpayment dedicated, distributed or directed by
6 the state or an instrumentality of the state to a state or local
7 governmental subdivision or a fund, entity, agency or
8 instrumentality of the state or a political subdivision of the
9 state, under the provisions of this code administered under this
10 article, or under the provisions of article twenty-two,
11 twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter
12 twenty-nine of this code, or any other provision of this code, or
13 any combination thereof, caused by clerical error or mistake, or a
14 computational, informational or other mistake or error, may be
15 corrected by an adjustment to a distribution, transfer, allocation
16 or payment to the subdivision, entity, agency, instrumentality or
17 fund and by transfer of moneys from the subdivision, entity,
18 agency, instrumentality or fund until the amount of the erroneous
19 distribution, transfer, allocation, overpayment or underpayment has
20 been corrected: *Provided*, That no correction or adjustment may be
21 made for an erroneous distribution, transfer, allocation,
22 overpayment or underpayment of moneys that is first discovered by
23 the distributor or the distributee more than three years after the
24 date on which the erroneous distribution, transfer, allocation,
25 overpayment or underpayment of moneys was made, and no action lies

1 for collection, correction or remediation of the late discovered
2 erroneous distribution, transfer, allocation, overpayment or
3 underpayment of the moneys.

4 (2) A distribution, transfer, allocation, overpayment or
5 underpayment of moneys is deemed to have been made on the date when
6 the moneys related thereto are under the actual, substantive
7 control of the transferee, and subject to expenditure,
8 disbursement, consumption or disposition by the transferee.

9 (3) An erroneous distribution, transfer, allocation,
10 overpayment or underpayment of moneys is deemed to have been
11 discovered on the date when the distributor or the distributee or
12 any employee, officer, agent or representative of the distributor
13 or distributee has actual substantive knowledge of the erroneous
14 distribution, transfer, allocation, overpayment or underpayment of
15 moneys.

16 (b) An agency, governmental subdivision or instrumentality of
17 this state is not subject to a fine, penalty, assessment or
18 imposition as a result of, or attributable to, an erroneous
19 distribution, transfer, allocation, overpayment or underpayment of
20 moneys.

21 (c) The provisions of subsection (a) of this section shall not
22 be applied to alter, abrogate or terminate any current and ongoing
23 agreement or arrangement which was in operation on the effective
24 date of this section, to correct or adjust an erroneous
25 distribution, transfer, allocation, overpayment or underpayment,
26 between (1) this state or an instrumentality of this state and (2)

1 a state or local governmental subdivision or a fund, entity, agency
2 or instrumentality of the state or a political subdivision of this
3 state.