

Senate Bill No. 146

(By Senators Unger and Beach)

[Introduced February 14, 2013; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

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,
forfeitures and penalties it has imposed on a defendant;
permitting those unpaid costs, fines, forfeitures and
penalties to be deducted from a defendant's income tax refund;
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.

1 **§50-3-2c. Withholding of personal income tax refunds for failure**
2 **to pay fines and costs or failure to appear in court.**

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

1 she deems appropriate for the administration of this subsection.

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

1 be paid into the Community Corrections Fund; and (5) the final four
2 percent shall be paid to the Governor's subcommittee on law-
3 enforcement training.

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

21 (d) *Rules and effective date.* -- The Tax Commissioner may
22 propose for legislative approval such rules as may be useful or
23 necessary to carry out the purpose of this section and to implement

1 the intent of the Legislature, to be effective on July 1, 2013.
2 Rules shall be promulgated in accordance with article three,
3 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.