WEST virginia legislature

2021 regular session

Introduced

House Bill 3021

By Delegates Householder and Criss
[By Request of Tax & Revenue Department

[Introduced March 09, 2021; Referred to the Committee on Finance]

A BILL to amend and reenact §11-10-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-10-14e, all relating to incomplete, duplicative or redundant claims for refund; providing that interest does not run a claim for refund until a lawful, mathematically, uncontested correct claim for refund has been filed; providing for definitions; providing that incomplete, overlapping, duplicative, and conflicting claims for refund or credit will be rejected and requiring taxpayers to file one comprehensive claim for refund or credit; providing that the Tax Commissioner may require additional documentation to substantiate claims for refund or credit and providing time for the Tax Commissioner to review the documentation before any appeal; and clarifying existing language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-14. Overpayments; credits; refunds and limitations.

(a) Refunds or credits of overpayments. — In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer’s liability for the tax for other periods. ~~The refund~~ A lawful, mathematically correct, uncontested claim for refund or credit shall include any interest due the taxpayer under §11-10-17 of this code. For the purposes of this section and §11-10-17 of this code, a lawful, mathematically correct, uncontested claim for refund is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by all necessary documentation; and appears on its face to be correct. Any person asserting or exercising a claim for a refund or a credit shall file such records or documents as the Tax Commissioner may require proving or verifying the taxpayer's right and entitlement to such refund or credit.

(b) Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax. — Any person who seeks a refund or credit of gasoline and special fuel excise taxes under §11-14-10, §11-14-11, §11-14-12, §11-14A-9, or §11-14A-11 of this code, or of motor fuel excise tax under §11-14C-9 of this code shall file his or her claim for refund or credit in accordance with the provisions of the applicable sections. The 90-day time period for determination of claims for refund or credit provided in subsection (d) of this section does not apply to these claims for refund or credit: *Provided*, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code are subject to the 90-day time period provided in subsection (d) of this section: *Provided, however*, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code made by the United States government or unit or agency thereof, any municipal government or any agency thereof, or any county board of education made pursuant to §11-14C-9(c)(1), (2), (3), (4), (5), and (6) of this code will be subject to a 30-day time period.

(c) Claims for refund or credit. — No refund or credit ~~shall~~ may be made unless the taxpayer has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom an assessment or an administrative decision at the Office of Tax Appeals has become final is not entitled to file a claim for refund or credit covering that same period or a portion thereof with the Tax Commissioner ~~as prescribed herein~~. The Tax Commissioner shall determine the taxpayer’s claim and notify the taxpayer in writing of his or her determination.

(d) Petition for refund or credit; hearing. —

(1) If the taxpayer is not satisfied with the Tax Commissioner’s determination of taxpayer’s claim for refund or credit, or if the Tax Commissioner has not determined the taxpayer’s claim within 90 days after the claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, after the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by certified mail, a petition for refund or credit: *Provided*, That no petition for refund or credit may be filed more than 60 days after the taxpayer is served with notice of denial of taxpayer’s claim: *Provided, however*, That after December 31, 2002, the taxpayer shall file the petition with the Office of Tax Appeals in accordance with §11-10A-9 of this code.

(2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer, or by taxpayer’s duly authorized agent having knowledge of the facts, and set forth with particularity the items of the determination objected to, together with the reasons for the objections.

(3) When a petition for refund or credit is properly filed, the procedures for hearing and for decision applicable when a petition for reassessment is timely filed shall be followed.

(e) Appeal. — An appeal from the Office of Tax Appeals’ administrative decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that provided for judicial review of an administrative decision on a petition for reassessment, but no bond is required of the taxpayer. An appeal from the administrative decision of the Office of Tax Appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken as provided in §11-10A-19 of this code.

(f) Decision of the court. — Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event ~~shall~~ may it enter a judgment for money.

(g) Refund made or credit established. — The Tax Commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The Auditor shall issue his or her warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid: *Provided*, That refunds of personal income tax may also be paid out of the fund established pursuant to §11-21-93 of this code.

(h) Forms for claim for refund or a credit; where return constitutes claim. — The Tax Commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by §11-21-1 *et seq.*, §11-21A-1 *et seq.,* §11-23-1 *et seq.,* or §11-24-1 *et seq.* of this code, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim for refund or credit.

(i) Remedy exclusive. — The procedure provided by this section constitutes the sole method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy, including the Uniform Declaratory Judgments Act embodied in §55-13-1 et seq. of this code, and §11-1-2a of this code.

(j) Applicability of this section. — The provisions of this section apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) Erroneous refund or credit. — If the Tax Commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment within the period prescribed in §11-10-15 of this code or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within two years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(l) Limitation on claims for refund or credit. —

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax (or fee) was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) Extensions of time for filing claim by agreement. — The Tax Commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period ~~shall~~ may not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is made under §11-10-15 of this code extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement are also extended for the period of the extension agreement plus 90 days.

(4) Overpayment of federal tax. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer’s federal income or estate tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code may not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

(5) Tax paid to the wrong state. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a transaction which was lawfully taxable by another state and, therefore, not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not expire until 90 days after the tax is lawfully paid to the other state.

(6) Exception for gasoline and special fuel excise tax, motor fuel excise tax, and motor carrier road tax. — This subsection does not apply to refunds or credits of gasoline and special fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under §11-14-1 *et seq.*, §11-14A-1 *et seq.,* or §11-14C-1 *et seq.* of this code.

§ 11-10-14e Overlapping, conflicting, and duplicate claims for refund.

(a) A claim for refund or credit that has been submitted to the Tax Commissioner, but has not yet been approved, shall be treated as incomplete and as an inaccurate claim not properly filed with the Tax Commissioner upon the receipt of a subsequently submitted claim for refund or credit for or from the same taxpayer for the same tax period or part of the same tax period, or for the same transactions as those covered by the subsequently submitted claim or claims. In addition, the subsequently submitted claim for refund or credit may also be treated as incomplete and as an inaccurate claim not properly filed where the previously submitted claim for refund and credit is still pending. The Tax Commissioner shall send a letter rejecting claims as incomplete or improperly filed.

(b) A taxpayer submitting a claim rejected under §11-10-14e(a) of this code, upon receipt of a rejection letter, may refile one comprehensive claim covering the periods and transactions to be covered, and resolving and eliminating all overlapping, conflicting, redundant, partially redundant, incomplete, inaccurate, or duplicate claims. This comprehensive claim for refund or credit shall be subject to the provisions of §11-10-14 of this code.

(c) This section may not be interpreted to allow or authorize any filing, refiling, or submission of any claim for refund or credit for any period outside of the statute of limitations, or any filing, refiling, or submission of any claim for refund or credit that is otherwise not lawful. Furthermore, this section does not toll the statute of limitations on any claim.

(d) If any claim for refund or credit has been approved by the Tax Commissioner, and a subsequently filed claim for refund or credit is determined by the commissioner to cover the same period or a portion thereof that is contained in any claim previously approved for a refund or credit, the Tax Commissioner may require additional documentation to substantiate claims for refund or credit. If the Tax Commissioner requests additional documentation under this section, then the 90-day determination period set forth in §11-10-14(d) of this code does not begin to run until the additional documentation has been submitted to the Tax Commissioner for review.

NOTE: The purpose of this bill is to clarify that incomplete claims for refund are not filed and will not start interest accruing. Furthermore, to clarify that, if a taxpayer attempts to make one or more claims for refund or credit after the submission of a currently pending claim for refund or credit, they will be treated as incomplete and inaccurate claims, not properly filed if the subsequent claim, or claims, for refund or credit are for or from the same Taxpayer for the same tax period or part of the same tax period, or for the same transactions as those covered by the previously submitted claim.

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