

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]

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

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

14 (b) Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax. —
15 Any person who seeks a refund or credit of gasoline and special fuel excise taxes under §11-14-
16 10, §11-14-11, §11-14-12, §11-14A-9, or §11-14A-11 of this code, or of motor fuel excise tax
17 under §11-14C-9 of this code shall file his or her claim for refund or credit in accordance with the
18 provisions of the applicable sections. The 90-day time period for determination of claims for refund
19 or credit provided in subsection (d) of this section does not apply to these claims for refund or
20 credit: *Provided*, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of
21 this code are subject to the 90-day time period provided in subsection (d) of this section: *Provided*,
22 *however*, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code
23 made by the United States government or unit or agency thereof, any municipal government or
24 any agency thereof, or any county board of education made pursuant to §11-14C-9(c)(1), (2), (3),
25 (4), (5), and (6) of this code will be subject to a 30-day time period.

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

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

33 (1) If the taxpayer is not satisfied with the Tax Commissioner's determination of taxpayer's
34 claim for refund or credit, or if the Tax Commissioner has not determined the taxpayer's claim
35 within 90 days after the claim was filed, or six months in the case of claims for refund or credit of
36 the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, after
37 the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by
38 certified mail, a petition for refund or credit: *Provided*, That no petition for refund or credit may be
39 filed more than 60 days after the taxpayer is served with notice of denial of taxpayer's claim:

40 *Provided, however,* That after December 31, 2002, the taxpayer shall file the petition with the
41 Office of Tax Appeals in accordance with §11-10A-9 of this code.

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

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

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

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

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

65 (h) Forms for claim for refund or a credit; where return constitutes claim. — The Tax

66 Commissioner may prescribe by rule or regulation the forms for claims for refund or credit.
67 Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by §11-21-1 *et*
68 *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
69 taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim
70 for refund or credit.

71 (i) Remedy exclusive. — The procedure provided by this section constitutes the sole
72 method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being
73 the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy,
74 including the Uniform Declaratory Judgments Act embodied in §55-13-1 *et seq.* of this code, and
75 §11-1-2a of this code.

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

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

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

87 (1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any
88 tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this
89 chapter, or of this code, administered under this article, paid into the treasury of this state, the
90 taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit,
91 within three years after the due date of the return in respect of which the tax (or fee) was imposed,

92 determined by including any authorized extension of time for filing the return, or within two years
93 from the date the tax (or fee) was paid, whichever of the periods expires the later, or if no return
94 was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not
95 thereafter.

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

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

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

114 (5) Tax paid to the wrong state. — Notwithstanding the provisions of subdivisions (1) and
115 (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith
116 erroneously paid personal income tax, estate tax or sales tax, to this state on income or a
117 transaction which was lawfully taxable by another state and, therefore, not taxable by this state,

118 and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time
119 period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not
120 expire until 90 days after the tax is lawfully paid to the other state.

121 (6) Exception for gasoline and special fuel excise tax, motor fuel excise tax, and motor
122 carrier road tax. — This subsection does not apply to refunds or credits of gasoline and special
123 fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under §11-14-1 *et seq.*,
124 §11-14A-1 *et seq.*, or §11-14C-1 *et seq.* of this code.

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

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

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

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

19 (d) If any claim for refund or credit has been approved by the Tax Commissioner, and a
20 subsequently filed claim for refund or credit is determined by the commissioner to cover the same
21 period or a portion thereof that is contained in any claim previously approved for a refund or credit,
22 the Tax Commissioner may require additional documentation to substantiate claims for refund or
23 credit. If the Tax Commissioner requests additional documentation under this section, then the
24 90-day determination period set forth in §11-10-14(d) of this code does not begin to run until the
25 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.