

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

-Do Not Mark In this Box

2008 JUN 27 PM 3:42

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §8-10-2b

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

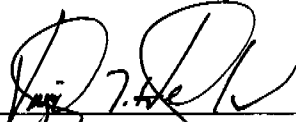
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 40

TITLE OF RULE BEING PROPOSED: Withholding or Denial of Personal Income
Tax Refunds from Taxpayers Who Owe Municipal Costs, Fines,
Forfeitures, or Penalties

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 2008 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Legal Division
State Tax Department
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Virgil T. Helton
Cabinet Secretary of the Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT**

2000 JUN 27 PM 3:41

**SERIES 40
WITHHOLDING OR DENIAL OF PERSONAL INCOME TAX REFUNDS
FROM TAXPAYERS WHO OWE MUNICIPAL COSTS, FINES, FORFEITURES
OR PENALTIES**

§110-40-1. General.

1.1. Scope -- This rule specifies when the Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay municipal fines, the amounts that may be withheld, and the order of priority for refund offsets when there are competing claims.

1.2. Authority. -- W. Va. Code §8-10-2b.

1.3. Filing Date. -- --.

1.4. Effective Date. -- --.

§110-40.2. Withholding of refund.

2.1. Upon notice given by the municipal court of original jurisdiction of a taxpayer's failure to pay costs, fines, forfeitures or penalties imposed by a municipal court upon the conviction of that taxpayer for a criminal offense as defined in W. Va. Code §17B-3-3c, or the failure of a taxpayer to respond to a citation for such an offense, the tax commissioner shall withhold from any personal income tax refund due and owing or credit due to the taxpayer the costs, fines, forfeitures or penalties due the municipality

2.2. In addition to the costs, fines, forfeitures or penalties, the Tax Commissioner may withhold an administration fee, as provided in section 3 of this rule.

§110-40.3. Amount to be withheld.

3.1. The Tax Commissioner shall withhold the total of the costs, fines, forfeitures or penalties due to the municipality, the Tax Commissioner's administration fee for the withholding, and any and all fees that the municipal court would have collected had the person appeared, except that there shall be no withholding on behalf of a municipality for any amount less than fifty dollars.

3.2. The Tax Commissioner's administration fee for any withholding on behalf of a municipality may not exceed twenty-five dollars, except as provided in subdivision 3.3. of this rule.

3.3. For fiscal years beginning on or after July 1, 2008, the Tax Commissioner may change the administration fee by legislative rule.

§110-40.4. Disposition of municipal fines and fees.

4.1. The administrative fees deducted from refunds withheld to pay municipal fines and fees shall be deposited in the special revolving fund created by W. Va. Code §8-10-2b, known as the “municipal fines and fees collection fund.”

4.2. The Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this rule.

4.3. After deduction of the Tax Commissioner’s administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant to W. Va. Code §8-10-2b.

4.4. The municipal court shall allocate the funds according to the provisions of subdivision 5.1.5 of this rule.

4.5. After the costs, fines, forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the taxpayer.

§110-40.5. Priority of competing claims.

5.1. In the case of competing claims, the Tax Commissioner shall allocate the funds received from any personal income tax refund according to the following schedule of priorities:

5.1.1. Overdue child support, as authorized by W. Va. Code §48-18-118;

5.1.2. Overpaid child support, as authorized by W. Va. Code §48-18-118;

5.1.3. Any state tax administered under the provisions of W. Va. Code §11-10-1, et seq., without regard to the particular tax to which the refund or credit is attributable;

5.1.4. Federal tax obligations subject to an agreement with the State Tax Department, without regard to the particular tax to which the refund or credit is attributable;

5.1.5. Municipal fines, costs, forfeitures or penalties, but only if the refund is attributable to overpayment of the personal income tax, according to the following priorities:

5.1.5.a. The oldest municipal obligation shall be paid first, without regard to whether it is one municipality or more that are owed;

5.1.5.b. If multiple municipalities are owed, and all liabilities are equally old, and the amount of the refund is not sufficient to pay the entire amount, then the amount available for payment shall be allocated equally among the municipalities.

§110-40.6 Spouse relieved of obligation in certain cases.

6.1. The spouse of a taxpayer owing an obligation as described in section 2 of this rule shall not be subject to the withholding of refunds under this rule if all of the following conditions apply:

6.1.1. The taxpayer must file an injured spouse claim on a form provided by the State Tax Department;

6.1.2. A joint personal income tax return has been made for a taxable year;

6.1.3. The amounts of tax attributable to each spouse may reasonably be ascertained, and each spouse's proportional share of the refund may be allocated accordingly; and,

6.1.4. Taking into account all facts and circumstances, it is inequitable to hold one spouse accountable for the obligation of the other, for which the refund is being withheld.

§110-40.7 Additional procedures.

7.1. To participate in the State Tax Department's refund offset program, the municipal court must submit an "Application to Participate" to the State Tax Department. This application will include:

7.1.1. The name and address of the municipal court,

7.1.2. The name, address, telephone number and e-mail address of a contact person at the municipal court to whom the State Tax Department may refer questions;

7.1.3. The name and address of the municipal court's bank,

7.1.4. The bank's routing number,

7.1.5. The municipal court's bank account number, and,

7.1.6. A positive affirmation by the municipal court of its desire to participate in the refund offset program and to comply with the procedures set forth by the Tax Commissioner for participation.

7.2. Upon receipt of the "Application to Participate", the State Tax Department will send to the municipal court a memorandum of understanding setting forth the duties and responsibilities of the State Tax Department and the municipal court under the refund offset program.

7.3. Upon acceptance of the "Application to Participate" by the State Tax Department and execution of the memorandum of understanding, the municipal court shall test the file exchange process established by the State Tax Department and, upon successful completion of the test, the Tax Commissioner shall notify the municipal court in writing that it is authorized to begin live transmission of data to the State Tax Department.

7.4. During the testing process, the State Tax Department will provide testing support and training to the municipal court to insure successful participation in the refund offset process.

7.5. To receive refund offsets, the municipal court must provide to the Tax Commissioner, in an electronic format prescribed by the Tax Commissioner, a listing, by social security number, of the unpaid municipal costs, fines, forfeitures or penalties eligible to be offset under the provisions of W. Va. Code § 8-10-2b. This listing shall contain:

7.5.1. The taxpayer's social security number,

7.5.2. The taxpayer's name,

7.5.3. The taxpayer's last known mailing address,

7.5.4. The amount of the unpaid municipal costs, fines, forfeitures or penalties,

7.5.5. An optional external control number used by the court,

7.5.6. The FIPS (Federal Information Processing System) Code for the municipality in which the court is located, and,

7.5.7. Such other information as the Tax Commissioner may require.

7.6. The taxpayer's name shall be removed from the list when the municipal costs, fines, forfeitures or penalties have been paid to the municipal court. The amount of the unpaid municipal costs, fines, forfeitures or penalties shall be reduced in the next list submitted by the municipal court for any partial payments or refund offsets received against the unpaid municipal costs, fines, forfeitures or penalties.

7.7. The list shall be submitted in a comma-delimited ASCII text file generated from a computer application maintained by the municipal court. If the municipal court

cannot generate such a file from its computer application, the State Tax Department will provide a formatted spreadsheet that the municipal court must use to create the offset input file to be sent to the State Tax Department.

7.8. The State Tax Department will not process any request for an individual refund offset from a municipal court that does not contain a social security number.

7.9. Municipal courts may submit data to the State Tax Department no more frequently than once a month, unless otherwise specified in the memorandum of understanding.

7.10. The State Tax Department will make available and provide access to a secure FTP (File Transfer Protocol) website that the municipal courts will use to send the electronic listing to the department. The State Tax Department will use this site to send electronic listings of successful refund offsets back to the municipal courts.

7.10. Upon receipt of the listing, the Tax Commissioner will establish a record in the State Tax Department's computer system that will be used by the Tax Commissioner to offset any personal income tax refund. This record will be used by the Tax Commissioner until a replacement listing is received from the municipal court.

7.11. The Tax Commissioner will notify any taxpayer in writing that his or her refund has been fully or partially offset to satisfy a municipal court liability, along with the name and address of the court that has requested the offset. The Tax Commissioner will refer the taxpayer to the municipal court for any questions regarding the unpaid municipal costs, fines, forfeitures or penalties.

7.12. Once a month, the Tax Commissioner shall notify the municipal court of the amount of refund offsets set aside since the last offset file was sent to the municipal courts. The total amount of refund offsets shall be sent to the municipal court's bank account by direct deposit. In addition, the tax commissioner shall place a file on the secure FTP site that the municipal court must download. This file will contain:

7.12.1. The taxpayer's social security number,

7.12.2. The taxpayer's name,

7.12.3. The taxpayer's last known mailing address,

7.12.4. The amount of the refund offset,

7.12.5. Any optional external control number provided by the court.

7.12.6. The FIPS (Federal Information Processing System) Code for the municipality in which the court is located.

§110-40.9 Appeals.

9.1. A taxpayer may request a hearing before the West Virginia Office of Tax Appeals challenging the Tax Commissioner's notice of withholding or denial of the taxpayer's refund or credit. The taxpayer may initiate a proceeding before the Office of Tax Appeals by timely filing a written petition with the Office of Tax Appeals, within 60 days after receiving the Tax Commissioner's notice, that succinctly states:

9.1.1. The nature of the case;

9.1.2. The facts on which the appeal is based; and,

9.1.3. Each question presented for review by the Office of Tax Appeals.

9.2. Because the Tax Commissioner is required by the W. Va. Code to deny or withhold a tax refund, or, as the case may be, a tax credit, when notified in writing by the appropriate authority of the taxpayer's liability under section two of this rule, the only issue to be determined upon challenge in the Office of Tax Appeals, is whether or not the taxpayer was listed by the appropriate authority as delinquent in paying that obligation at the time the refund or credit was denied or withheld.

BRIEF SUMMARY

TITLE 110, SERIES 40 LEGISLATIVE RULE

The proposed rule authorizes the Tax Department to withhold state personal income tax refunds from persons who owe municipal fines in order to pay the fines.

The proposed rule specifies the amount that may be withheld, and authorizes the Tax Department to collect an administration fee from the refund, and to make payments to participating municipalities.

The rule authorizes memoranda of understanding between the Tax Department and the participating municipalities; it provides for the electronic transfer of the funds from the Tax Department to the municipality.

The proposed rule also specifies the order of priorities for competing claims when the taxpayer has other obligations for which the State Code authorizes the withholding of a personal income tax refund.

The proposed rule provides for the protection of a refund due an injured spouse in the case of a joint return where only one of the parties owes a municipal fine.

The proposed rule provides for an appeal of a withholding or denial of a personal income tax refund to the Office of Tax Appeals.

110 C.S.R. 40
WITHHOLDING OR DENIAL OF PERSONAL INCOME TAX REFUNDS FROM
TAXPAYERS WHO OWE MUNICIPAL COSTS, FINES, FORFEITURES OR
PENALTIES

The legislative rule was authorized by enrolled committee substitute for S.B. 435, amending W. Va. Code §8-10-2b, authorizing the Tax Commissioner to promulgate rules prescribing the criteria and procedures for withholding of personal income tax refunds from taxpayers who owe municipal fines, in order to pay those fines.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Withholding or Denial of Personal Income Tax Refunds form Taxpayers Who Owe Municipal Costs, Fines, Forfeitures or Penalties (110 CSR 40)

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street
Charleston, WV 25301

Phone Number: (304) 558-5330 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, provides clarification of when the Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay municipal fines, the amounts that may be withheld, and the order of priority for refund offsets when there are competing claims. Approval of the rule will have no impact on State costs and revenues.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$0	\$0
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$0	\$0
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: Withholding or Denial of Personal Income Tax Refunds form Taxpayers Who Owe Municipal Costs, Fines, Forfeitures or Penalties (110 CSR 40)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

Approval of this proposed rule will not increase or decrease revenue or costs.

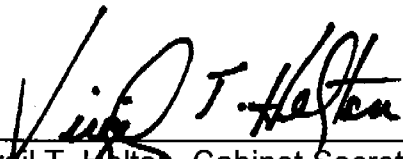
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The rule, as written, provides clarification of when the Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay municipal fines, the amounts that may be withheld, and the order of priority for refund offsets when there are competing claims. Since the rule merely clarifies the application of previously enacted Legislation, the rule itself does not have any net fiscal impact.

Date: 6/27/08

Signature of Agency Head or Authorized Representative:



Virgil T. Helton, Cabinet Secretary
West Virginia Department of Revenue