

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §8-10-2b

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

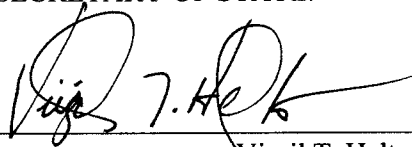
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Virgil T. Helton
Cabinet Secretary of Tax and Revenue

#3.40

**TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT**

**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 State Tax Commissioner may withhold an income 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 and 11-10-5.

1.3 Filing Date. -- --.

1.4 Effective Date. -- --.

§110-40-2. Amount to be withheld.

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

§110-40-3. Priority of competing claims.

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

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

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

3.1.c. 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;

3.1.d. 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;

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

3.1.e.1. The oldest municipal obligation shall be paid first, without regard to whether it is one municipality or more that are owed; and

3.1.e.2. 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.

§110-40-4 Spouse relieved of obligation in certain cases.

4.1. 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:

4.1.a. The taxpayer filed an injured spouse claim on a form provided by the State Tax Department;

4.1.b. A joint personal income tax return was made for a taxable year;

4.1.c. 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,

4.1.d. 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.

§110-40-5 Additional procedures.

5.1. 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:

5.1.a. The name and address of the municipal court;

5.1.b. 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;

5.1.c. The name and address of the municipal court's bank;

5.1.d. The bank's routing number;

5.1.e. The municipal court's bank account number; and

5.1.f. 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 State Tax Commissioner for participation.

5.2. Upon receipt of the "Application to Participate", the State Tax Department shall 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.

5.3. 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 State Tax Commissioner shall notify the municipal court in writing that it may begin live transmission of data to the State Tax Department.

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

5.5. To receive refund offsets, the municipal court shall provide to the State Tax Commissioner, in an electronic format prescribed by the State 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:

5.5.a. The taxpayer's social security number;

5.5.b. The taxpayer's name;

5.5.c. The taxpayer's last known mailing address;

5.5.d. The amount of the unpaid municipal costs, fines, forfeitures or penalties;

5.5.e. An optional external control number used by the court;

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

5.5.g. Any other information required by the State Tax Commissioner.

5.6. The State Tax Commissioner shall remove the taxpayer's name 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.

5.7. The State Tax Commissioner shall submit the required list in a comma-delimited ASCII text file generated from a computer application maintained by the municipal court. If the municipal court cannot generate this type of file from its computer application, the State Tax Department shall provide a formatted spreadsheet that the municipal court shall use to create the offset input file to be sent to the State Tax Department.

5.8. 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.

5.9. 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.

5.10. The State Tax Department shall 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 shall use this site to send electronic listings of successful refund offsets back to the municipal courts.

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

5.12. The State Tax Commissioner shall 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 State Tax Commissioner shall refer the taxpayer to the municipal court for any questions regarding the unpaid municipal costs, fines, forfeitures or penalties.

5.13. Once a month, the State 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 court. The total amount of refund offsets shall be sent to the municipal court's bank account by direct deposit. In addition, the State Tax Commissioner shall place a file on the secure FTP site that the municipal court may download. This file shall contain:

5.13.a. The taxpayer's social security number;

5.13.b. The taxpayer's name;

5.13.c. The taxpayer's last known mailing address;

5.13.d. The amount of the refund offset;

5.13.e. Any optional external control number provided by the court; and

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

§110-40-6 Appeals.

6.1. A taxpayer may request a hearing before the West Virginia Office of Tax Appeals challenging the State 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 State Tax Commissioner's notice, that states:

6.1.a. The nature of the case;

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

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

6.2. Because the State 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.