

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

RECEIVED

2013 JUL 26 PM 4:10

SECRETARY OF STATE
STATE OF WEST VIRGINIA

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV State Tax Department TITLE NUMBER: 110

CITE AUTHORITY: Legislative

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 40

TITLE OF RULE BEING AMENDED: WITHHOLDING OR DENIAL OF PERSONAL INCOME TAX
REFUNDS FROM TAXPAYERS WHO OWE MUNICIPAL OR
MAGISTRATE COURT COSTS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 26, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Legal Division, 1001 Lee Street, East, Charleston, WV 25324-1005 (304) 558-5330

LEGISLATIVE RULE TITLE: Withholding or Denial of Personal Income Tax Refunds from Taxpayers Who Owe Municipal or Magistrate Court Costs, Fines Forfeitures or Penalties

1. Authorizing statute(s) citation West Virginia Code §§8-10-2b, 50-3-2c and 11-10-5

2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 19, 2013

 - b. What other notice, including advertising, did you give of the hearing?
None

 - c. Date of Public Hearing(s) or Public Comment Period ended:
July 19, 2013

 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
Pending

 - f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)
Mark S. Morton, General Counsel for Revenue Operations

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

304-558-5330 (tel) 304-558-8728 (fax)

Mark.S.Morton@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

**PROPOSED
TITLE 110
LEGISLATIVE RULE
TAX DEPARTMENT
SERIES 40**

**WITHHOLDING OR DENIAL OF PERSONAL INCOME TAX REFUNDS FROM
TAXPAYERS WHO OWE MUNICIPAL OR MAGISTRATE COURT COSTS, FINES,
FORFEITURES OR PENALTIES
STATEMENT OF CIRCUMSTANCES**

The passage of S.B. 146 in the 2013 Legislative Session created a new personal income tax offset program similar in nature to the municipal court offset program originally covered by this rule. The amendments to this rule is necessary to provide clarification of when the Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay magistrate fines, the amounts that may be withheld, and the order of priority for refund offsets when there are competing claims.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Withholding or Denial of Personal Income Tax Refunds from Taxpayers Who Owe Municipal or Magistrate Court 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 State Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay municipal fines or magistrate court 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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

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

Rule Title:

Withholding or Denial of Personal Income Tax Refunds from Taxpayers Who Owe Municipal or Magistrate Court 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 State Tax Commissioner may withhold a tax refund from a taxpayer for failure to pay municipal fines or magistrate court 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: _____

Signature of Agency Head or Authorized Representative

RECEIVED

2013 JUL 26 PM 4: 10

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SECRETARY OF STATE
STATE OF WEST VIRGINIA

SERIES 40
WITHHOLDING OR DENIAL OF PERSONAL INCOME TAX REFUNDS FROM TAXPAYERS
WHO OWE MUNICIPAL OR MAGISTRATE COURT 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 or magistrate court 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, 50-3-2c 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 or magistrate court, the State Tax Commissioner's administration fee for the withholding, and any and all fees that the municipal or magistrate court would have collected had the taxpayer appeared, except that there shall be no withholding on behalf of a municipality or magistrate court 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

110CSR

3.1.c.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.

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

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

3.2.e.2. If multiple magistrate courts 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 magistrate courts.

§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~~ municipality, magistrate court, magistrate court clerk, or upon a judgment rendered on appeal, the circuit clerk 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 or magistrate court;

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

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

5.1.d. The bank's routing number;

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

5.1.f. A positive affirmation by the municipal or magistrate 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 or magistrate court a memorandum of understanding setting forth the duties and responsibilities of the State Tax Department and the municipal or magistrate 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 or magistrate 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 or magistrate 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 or magistrate court to ensure successful participation in the refund offset process.

5.5. To receive refund offsets, the municipal or magistrate 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 or magistrate court costs, fines, forfeitures or penalties eligible to be offset under the provisions of W. Va. Code §§ 8-10-2b or 50-3-2c. 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 or magistrate court 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 or county 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 or magistrate court costs, fines, forfeitures or penalties have been paid to the municipal or magistrate court. The amount of the unpaid municipal or magistrate court costs, fines, forfeitures or penalties shall be reduced in the next list submitted by the municipal or magistrate court for any partial payments or refund offsets received against the unpaid municipal or magistrate court 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 or magistrate court that does not contain a social security number.

~~5.9.5.8.~~ Municipal or magistrate courts may submit data to the State Tax Department no more frequently than once a month, unless otherwise specified in the memorandum of understanding.

~~5-10-5.9.~~ The State Tax Department shall make available and provide access to a secure ~~FTP (File Transfer Protocol)~~ website that the municipal or magistrate 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 or magistrate courts.

~~5-11-5.10.~~ 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 or magistrate court.

~~5-12-5.11.~~ 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 or magistrate 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 or magistrate court for any questions regarding the unpaid municipal or magistrate costs, fines, forfeitures or penalties.

~~5-13-5.12.~~ At least once a month, the State Tax Commissioner shall notify the municipal or magistrate court of the amount of refund offsets set aside since the last offset file was sent to the municipal or magistrate court. The total amount of refund offsets shall be sent to the municipal or magistrate court's bank account by direct deposit. In addition, the State Tax Commissioner shall place a file on the secure ~~FTP site~~ website that the municipal or magistrate court may download. This file shall contain:

~~5-13-a-5.12.a.~~ The taxpayer's social security number;

~~5-13-b-5.12.b.~~ The taxpayer's name;

~~5-13-c-5.12.c.~~ The taxpayer's last known mailing address;

~~5-13-d-5.12.d.~~ The amount of the refund offset;

~~5-13-e-5.12.e.~~ Any optional external control number provided by the court; and

~~5-13-f-5.12.f.~~ The FIPS (Federal Information Processing System) Code for the municipality or county 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.