

**Senate Bill No. 582**

(By Senators Unger and Klempa)

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[Introduced February 14, 2012; referred to the Committee on the Judiciary.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §50-3-2c, relating to permitting magistrate courts to collect unpaid costs, fines, forfeitures and penalties it has imposed on a defendant; permitting those unpaid costs, fines, forfeitures and penalties to be deducted from a defendant's income tax refund; creating the Magistrate Fines and Fees Collection Fund; permitting the Tax Commissioner to charge an administrative fee; and providing rule-making authority.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §50-3-2c, to read as follows:

**ARTICLE 3. COSTS, FINES AND RECORDS.**

**§50-3-2c. Withholding of personal income tax refunds for failure to pay fines and costs or failure to appear in court.**

(a) If costs, fines, forfeitures or penalties imposed by the magistrate

court upon conviction of a person for a criminal offense as defined by this code are not paid in full within one hundred eighty days of the judgment, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Tax Commissioner that the defendant has failed to pay the costs, fines, forfeitures or penalties assessed by the court. The notice provided by the magistrate court to the Tax Commissioner must include the defendant's social security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a defendant the costs, fines, forfeitures or penalties due, the Tax Commissioner's administration fee for the withholding and any and all fees that the magistrate court would have collected had the defendant appeared. The Tax Commissioner's administration fee may be set by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the "Magistrate Fines and Fees Collection Fund", and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection. (b) After deduction of the Tax Commissioner's administration fee, the Tax Commissioner shall remit to the magistrate court all remaining amounts withheld pursuant to this section and the magistrate court shall distribute applicable costs, fines, forfeitures or penalties owed to the magistrate court, the Regional Jail Authority Fund, the Crime Victims Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on law-enforcement training or any other fund or payee that may be applicable. After the costs, fines, forfeitures or penalties are withheld, the

Tax Commissioner shall refund any remaining balance due the defendant. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties being withheld pursuant to this section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the magistrate court. The magistrate court shall then allocate the money so remitted to the magistrate court in the following manner: (1) Any costs, fines, forfeitures or penalties due to the magistrate court; (2) seventy-five percent of the remaining balance shall be paid to the appropriate Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community Corrections Fund; and (5) the final four percent shall be paid to the Governor's subcommittee on law-enforcement training.

(c) In the event the costs, fines, forfeitures or penalties exceed the defendant's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate magistrate court no later than July 1, of each year. If the magistrate court subsequently determines that any such costs, fines, forfeitures or penalties were erroneously imposed, the magistrate court shall promptly notify the Tax Commissioner. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the magistrate court and shall so inform the magistrate court. If the refunds have already been withheld and remitted to the magistrate court, the Tax Commissioner shall so inform the

magistrate court. In either event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by the magistrate court and not by the Tax Commissioner.

(d) *Rules and effective date.* -- The Tax Commissioner may propose for legislative approval such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature, to be effective on July 1, 2012. Rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to permit magistrate courts, like municipal courts, to collect unpaid costs, fines, forfeitures and penalties it has imposed on a defendant. The bill permits those unpaid costs, fines, forfeitures and penalties be deducted from a defendant's income tax refund. The bill creates the Magistrate Fines and Fees Collection Fund. The bill permits the Tax Commissioner to charge an administrative fee. The bill provides rule-making authority.

This section is new; therefore, strike-throughs and underscoring have been omitted.