

April 1936

## Discrepancy between the Enrolled Bill and the Official Published Copy of the Tax Refund Statute

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### Recommended Citation

Bernard Sclove, *Discrepancy between the Enrolled Bill and the Official Published Copy of the Tax Refund Statute*, 42 W. Va. L. Rev. (1936).

Available at: <https://researchrepository.wvu.edu/wvlr/vol42/iss4/4>

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# West Virginia Law Quarterly and The Bar

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Published by the Faculty of the College of Law of West Virginia University, and issued in December, February, April and June of each academic year. Official publication of The West Virginia Bar Association.

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Subscription price to individuals, not members of The West Virginia Bar Association, \$2.00 per year. To those who are members of the Association the price is \$1.00 per year and is included in their annual dues. Single copies, 50 cents.

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## DISCREPANCY BETWEEN THE ENROLLED BILL AND THE OFFICIAL PUBLISHED COPY OF THE TAX REFUND STATUTE

In a recent article entitled *Refunds and Recovery of State Taxes Erroneously, Illegally, or Unconstitutionally Imposed in West Virginia*, the new statute dealing with refunds of excessive tax payments was discussed.<sup>1</sup> The act was criticized mainly because it conferred the authority to make refunds of all kinds of state taxes exclusively on the state tax commissioner. It left other state officials without blanket authority to receive claims for refunds of all state taxes collected by their respective departments, and required the tax commissioner to pass upon claims concerning which his department would have no previous knowledge. The

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<sup>1</sup> Sclove (1935) 41 W. VA. L. Q. 347, at 358.

discussion was based on an advance leaflet printing purporting to be a copy of the enrolled bill lodged with the Secretary of State. It was obtained from the senate journal room at the close of the regular session of the Legislature of 1935. This draft reads as follows:

“AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding section two-(a), relating to the refunding of excess payment of taxes.

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

“That article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding section two-(a), relating to the refunding of excess payment of taxes, to read as follows:

“Section 2-(a). Within one year after an excess payment of a state tax, the taxpayer may submit to the tax commissioner a certified claim for a refund. If the tax commissioner determines that there has been an excess payment and that the claim for a refund is legitimate, he shall issue his requisition upon the treasurer for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer, and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.”

A careful examination of the original enrolled bill on file in the office of the Secretary of State discloses the fact that it is identical with the copy quoted above. A material discrepancy has been discovered now between the original enrolled bill and the official published copy of the law appearing in the paper-bound volume containing the Acts of 1935.<sup>2</sup> This latter draft meets the criticism made of the enrolled bill by conferring a blanket authority to make refunds on all officials or departments charged with the collection of taxes. It reads:

“AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding section two-(a), relating to the refunding of excess payment of taxes.

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

“That article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one be amended

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<sup>2</sup> W. Va. Acts 1935, c. 87. This appears in W. VA. CODE ANN. (Michie Supp. 1935) § 655 (1), as c. 11. art. 1, § 2a.

by adding section two-(a), relating to the refunding of excess payment of taxes, to read as follows:

“Section 2-(a). On and after the effective date of this act, any taxpayer claiming to be aggrieved through being required to pay any tax into the treasury of this state, may, within one year from the date of such payment, and not after, file with the official or department through which the tax was paid, a petition in writing to have refunded to him any such tax or any part thereof, the payment whereof is claimed by him to have been required lawfully; and if, on such petition, and the proofs filed in support thereof, the official collecting the same shall be of the opinion that the payment of the tax collected, or any part thereof was improperly required, he shall refund the same to the taxpayer by the issuance of his or its requisition on the treasury; and the auditor shall issue his warrant on the treasurer therefor, payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid: *Provided however*, That no refund shall be made, at any time, on any claim involving the valuation, assessment or appraisal of which was fixed at the time the tax was originally paid.”

Both drafts carry the same imprint: “Senate Bill 291 — By Mr. Hodges, by request — Passed March 9, 1935.”<sup>3</sup> It is understood that, because it was extremely doubtful whether the power to make refunds existed as to several kinds of state taxes,<sup>4</sup> the matter was brought to the attention of the Legislature. In the confusion which accompanies the closing of every legislative session, the fact that there were two drafts of the proposed law was probably overlooked and they were mistakenly interchanged. Looking only to the records, it is difficult, if not impossible, to know which draft the Legislature actually intended to pass. It has been held by our Supreme Court of Appeals that, in such cases of variance between the enrolled bill and the official published copy, the enrolled bill is the best evidence of the intent of the Legislature.<sup>5</sup> Consequently, the draft on file with the Secretary of State controls in this instance, and unless authority is specifically conferred in some other statute with respect to a particular tax, no state official other than the tax commissioner has the legal right to make tax refunds. In

<sup>3</sup> The copy of the enrolled bill is marked “in effect ninety days from passage”. The official published copy is marked “in effect from passage”.

<sup>4</sup> REP. ATT’Y GEN. OF W. VA. 1933-34, 620; Sclove, *supra* n. 1, at 353-4.

<sup>5</sup> *Combs v. City of Bluefield*, 97 W. Va. 395, 398, 125 S. E. 239 (1924), cited in 59 C. J. 595, § 143, subject “Statutes”.

a few jurisdictions where the problem has arisen, it has been held that acquiescence and observance of the law as published over a long period of years is sufficient to sustain the application of the published copy even though it is at variance with the original enrolled act.<sup>6</sup> In the present situation, the official published copy of the refund statute shows more careful draftsmanship, and undoubtedly is to be preferred. However, it is not supported, as yet, by long administrative application, and according to the rule laid down in the *Combs* case,<sup>7</sup> it is not the governing law.

—BERNARD SCLOVE.

Member of the Charleston bar.

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<sup>6</sup> 59 C. J. 595, n. 27; *Pacific v. Seifert*, 79 Mo. 210 (1883) (lapse of twenty years); *Pease v. Peck*, 18 How. 595, 597, 15 L. Ed. 518 (1855) (lapse of thirty years); *Reed v. Clark*, 20 Fed. Cas. No. 11,643, 3 McLean 480 (1844) (lapse of forty-four years).

<sup>7</sup> *Supra* n. 5.