



Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

STATE TAX DEPARTMENT

January 4, 2021

The Honorable Mitch Carmichael
President of the Senate
Room 229M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

The Honorable Roger Hanshaw
Speaker of the House of Delegates
Room 228M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

The Honorable Aaron Allred
Legislative Manager/Legislative Auditor
Room E-132
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Gentlemen:

Chapter 11, Article 10, Section 5q(e) requires the Tax Commissioner to submit to the Speaker of the House of Delegates, the President of the Senate and the Legislative Auditor a quarterly report summarizing the issues and amounts of liabilities contained in agreements and compromises pursuant to said section. The enclosed report summarizes one settlement agreement entered into during the period October 1, 2020, through December 31, 2020.

Very truly yours,

Dale W. Steager
State Tax Commissioner

cc: Secretary Hardy, Department of Revenue
Enclosure

QUARTERLY REPORT TO THE LEGISLATURE OF THE STATE OF WEST VIRGINIA

SUMMARY NO. 2020-01

During the period October 1, 2020 through December 31, 2020, the Tax Commissioner entered into a compromise and settlement of a civil case pending before the U.S. District Court for the Northern District of West Virginia. This was an interpleader action, following a Chapter 11 Federal Bankruptcy case, brought by a financial institution in which the sole remaining asset of the taxpayer was held in an account at the financial institution and was deposited into the registry of the Court to pay unpaid tax claims by the IRS, West Virginia, and three other states. Only the IRS and the West Virginia State Tax Department participated in the interpleader - and the remaining states were dismissed by default judgment. The IRS and West Virginia divided the account funds by agreement. The West Virginia State Tax Department's Proof of Claim in the Chapter 11 Bankruptcy case totaled \$448,543.28 the vast majority of which was based on estimates, due to the taxpayer not filing required tax returns.

Federal interpleader actions are authorized by 28 U.S.C. § 1335 and Rule 22 of the Federal Rules of Civil Procedure where persons holding funds or property upon which conflicting claims are being made by others may deposit the funds with the District Court and require the other parties to litigate their interests. *Libby v. City Nat'l Bank*, 592 F.2d 504, 507 (9th Cir. 1978).

COMPROMISE – DOUBT AS TO LIABILITY AND DOUBT AS TO COLLECTABILITY

The crux of the compromise is the existence of both criteria of West Virginia Code §11-10-5q(c). Specifically, there exists doubt as to the amount of the taxpayer's

liability because the West Virginia taxes were estimated. There is even greater doubt as to collectability given that the taxpayer is no longer operating. This compromise was accepted by the Tax Commissioner in the amount of \$2,000.00 as being in the best interests of the State due to doubt as to liability and doubt as to collectability. Payment was received by the Department on November 5, 2020.

RECOMMENDATION OF THE ATTORNEY GENERAL

The Office of the Attorney General is in full agreement with the compromise as well as the basis for the compromise.