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2003 MAR 18 P 6:19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 3077

(By Delegates Craig, Morgan, Campbell, Amores and Stalnaker)



Passed March 6, 2003

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3077

(BY DELEGATES CRAIG, MORGAN, CAMPBELL,
AMORES AND STALNAKER)

[Passed March 6, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia tax procedure and administration act; and authorizing tax commissioner to enter into agreements with Internal Revenue Service for offsetting tax refunds against tax liabilities.

Be it enacted by the Legislature of West Virginia:

That section eleven, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-11. Collection of tax.

- 1 (a) *General.* — The tax commissioner shall collect the
- 2 taxes, additions to tax, penalties and interest imposed by this
- 3 article or any of the other articles of this chapter to which this

4 article is applicable. In addition to all other remedies available
5 for the collection of debts due this state, the tax commissioner
6 may proceed by foreclosure of the lien provided in section
7 twelve, or by levy and distraint under section thirteen.

8 (b) *Prerequisite to final settlement of contracts with*
9 *nonresident contractor; user personally liable.*

10 (1) Any person contracting with a nonresident contractor
11 subject to the taxes imposed by articles thirteen, twenty-one and
12 twenty-four of this chapter, shall withhold payment, in the final
13 settlement of the contract, of a sufficient amount, not exceeding
14 six percent of the contract price, as will in the person's opinion
15 be sufficient to cover the taxes, until the receipt of a certificate
16 from the tax commissioner to the effect that the above refer-
17 enced taxes imposed against the nonresident contractor have
18 been paid or provided for.

19 (2) If any person shall fail to withhold as provided in
20 subdivision (1) of this subsection, that person is personally
21 liable for the payment of all taxes attributable to the contract,
22 not to exceed six percent of the contract price. The taxes
23 attributable shall be recoverable by the tax commissioner by
24 appropriate legal proceedings, which may include issuance of
25 an assessment under this article.

26 (c) *Prerequisite for issuance of certificate of dissolution or*
27 *withdrawal of corporation.* — The secretary of state shall
28 withhold the issuance of any certificate of dissolution or
29 withdrawal in the case of any corporation organized under the
30 laws of this state, or organized under the laws of another state
31 and admitted to do business in this state, until the receipt of a
32 certificate from the tax commissioner to the effect that every
33 tax administered under this article imposed against any corpora-
34 tion has been paid or provided for, or that the applicant is not
35 liable for any tax administered under this article.

36 (d) *Prerequisite to final settlement of contract with this*
37 *state or political subdivision; penalty.* — All state, county,
38 district and municipal officers and agents making contracts on
39 behalf of this state or any political subdivision thereof shall
40 withhold payment, in the final settlement of any contract, until
41 the receipt of a certificate from the tax commissioner to the
42 effect that the taxes imposed by articles thirteen, twenty-one
43 and twenty-four of this chapter against the contractor have been
44 paid or provided for. If the transaction embodied in the contract
45 or the subject matter of the contract is subject to county or
46 municipal business and occupation tax, then the payment shall
47 also be withheld until receipt of a release from the county or
48 municipality to the effect that all county or municipal business
49 and occupation taxes levied or accrued against the contractor
50 have been paid. Any official violating this section is subject to
51 a civil penalty of one thousand dollars, recoverable as a debt in
52 a civil action brought by the tax commissioner.

53 (e) *Limited effect of tax commissioner's certificates.* — The
54 certificates of the tax commissioner provided for in subsections
55 (b), (c) and (d) of this section shall not bar subsequent investi-
56 gations, assessments, refunds and credits with respect to the
57 taxpayer.

58 (f) *Payment when person sells out or quits business;*
59 *liability of successor; lien.*

60 (1) If any person subject to any tax administered under this
61 article sells out his, her or its business or stock of goods, or
62 ceases doing business, any tax, additions to tax, penalties and
63 interest imposed by this article or any of the other articles of
64 this chapter to which this article is applicable shall become due
65 and payable immediately and that person shall, within thirty
66 days after selling out his, her or its business or stock of goods
67 or ceasing to do business, make a final return or returns and pay

68 any tax or taxes which are due. The unpaid amount of any tax
69 is a lien upon the property of that person.

70 (2) The successor in business of any person who sells out
71 his, her or its business or stock of goods, or ceases doing
72 business, is personally liable for the payments of tax, additions
73 to tax, penalties and interest unpaid after expiration of the
74 thirty-day period allowed for payment: *Provided*, That if the
75 business is purchased in an arms-length transaction, and if the
76 purchaser withholds so much of the consideration for the
77 purchase as will satisfy any tax, additions to tax, penalties and
78 interest which may be due until the seller produces a receipt
79 from the tax commissioner evidencing the payment thereof, the
80 purchaser is not personally liable for any taxes attributable to
81 the former owner of the business unless the contract of sale
82 provides for the purchaser to be liable for some or all of the
83 taxes. The amount of tax, additions to tax, penalties and interest
84 for which the successor is liable is a lien on the property of the
85 successor, which shall be enforced by the tax commissioner as
86 provided in this article.

87 (g) *Priority in distribution of estate or property in receiver-*
88 *ship; personal liability of fiduciary.* — All taxes due and unpaid
89 under this article shall be paid from the first money available
90 for distribution, voluntary or compulsory, in receivership,
91 bankruptcy or otherwise, of the estate of any person, firm or
92 corporation, in priority to all claims, except taxes and debts due
93 the United States which under federal law are given priority
94 over the debts and liens created by this article. Any trustee,
95 receiver, administrator, executor or person charged with the
96 administration of an estate who violates the provisions of this
97 section is personally liable for any taxes accrued and unpaid
98 under this article, which are chargeable against the person, firm
99 or corporation whose estate is in administration.

100 (h) *Injunction.* — If the taxpayer fails for a period of more
101 than sixty days to fully comply with any of the provisions of
102 this article or of any other article of this chapter to which this
103 article is applicable, the tax commissioner may institute a
104 proceeding to secure an injunction to restrain the taxpayer from
105 doing business in this state until the taxpayer fully complies
106 with the provisions of this article or any other articles. No bond
107 is required of the tax commissioner in any action instituted
108 under this subsection.

109 (i) *Costs.* — In any proceeding under this section, upon
110 judgment or decree for the tax commissioner, he or she shall be
111 awarded his or her costs.

112 (j) *Refunds; credits; right to offset.*

113 (1) Whenever a taxpayer has a refund or credit due it for an
114 overpayment of any tax administered under this article, the tax
115 commissioner may reduce the amount of the refund or credit by
116 the amount of any tax administered under this article, whether
117 it be the same tax or any other tax, which is owed by the same
118 taxpayer, and collectible as provided in subsection (a) of this
119 section.

120 (2) The tax commissioner may enter into agreements with
121 the Internal Revenue Service that provide for offsetting state tax
122 refunds against federal tax liabilities; offsetting federal tax
123 refunds against state tax liabilities; and establishing the amount
124 of the offset fee per transaction which both agencies may
125 charge each other: *Provided*, That offsets under subdivision (1)
126 of this subsection shall occur prior to offset under this subdivi-
127 sion. At the times moneys are received as a result of an offset
128 of a taxpayer's federal tax refund under the provisions of
129 section 6402(e) of the Internal Revenue Code, the taxpayer is
130 given credit against state tax liability for the amount of the

131 offset less a deduction for the offset fee imposed by the Internal
132 Revenue Service.

133 (k) *Spouse relieved of liability in certain cases.*

134 (1) *In general.* — Under regulations prescribed by the tax
135 commissioner, if:

136 (A) A joint personal income tax return has been made for
137 a taxable year;

138 (B) On the return there is a substantial understatement of
139 tax attributable to grossly erroneous items of one spouse;

140 (C) The other spouse establishes that in signing the return
141 he or she did not know, and had no reason to know, that there
142 was a substantial understatement; and

143 (D) Taking into account all the facts and circumstances, it
144 is inequitable to hold the other spouse liable for the deficiency
145 in tax for the taxable year attributable to the substantial
146 understatement, then the other spouse is relieved of any liability
147 for tax, including interest, additions to tax, and other amounts
148 for the taxable year to the extent the liability is attributable to
149 the substantial understatement.

150 (2) *Grossly erroneous items.* — For purposes of this
151 subsection, the term “grossly erroneous items” means, with
152 respect to any spouse:

153 (A) Any item of gross income attributable to a spouse
154 which is omitted from gross income; and

155 (B) Any claim of a deduction, credit, or basis by a spouse
156 in an amount for which there is no basis in fact or law.

157 (3) *Substantial understatement.* — For purposes of this
158 subsection, the term “substantial understatement” means any

159 understatement, as defined in regulations prescribed by the tax
160 commissioner which exceed five hundred dollars.

161 (4) *Understatement must exceed specified percentage of*
162 *spouse's income.*

163 (A) *Adjusted gross income of \$20,000 or less.* — If the
164 spouse's adjusted gross income for the preadjustment year is
165 twenty thousand dollars or less, this subsection applies only if
166 the liability described in paragraph (1) of this subsection is
167 greater than ten percent of the adjusted gross income.

168 (B) *Adjusted gross income of more than twenty thousand*
169 *dollars.* — If the spouse's adjusted gross income for the
170 preadjustment year is more than twenty thousand dollars,
171 subparagraph (A) of this subdivision is applied by substituting
172 "twenty-five percent" for "ten percent."

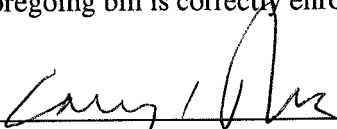
173 (C) *Preadjustment year.* — For purposes of this paragraph,
174 the term "preadjustment year" means the most recent taxable
175 year of the spouse ending before the date the deficiency notice
176 is mailed.

177 (D) *Computation of spouse's adjusted gross income.* — If
178 the spouse is married to another spouse at the close of the
179 preadjustment year, the spouse's adjusted gross income shall
180 include the income of the new spouse whether or not they file
181 a joint return.

182 (E) *Exception for omissions from gross income.* — This
183 paragraph shall not apply to any liability attributable to the
184 omission of an item from gross income.

185 (5) *Adjusted gross income.* — For purposes of this subsec-
186 tion, the term "adjusted gross income" means the West Virginia
187 adjusted gross income of the taxpayer, determined under article
188 twenty-one of this chapter.

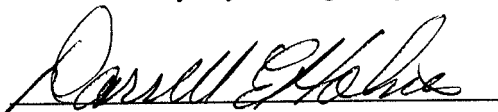
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

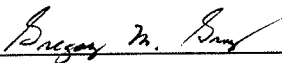

Chairwoman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage

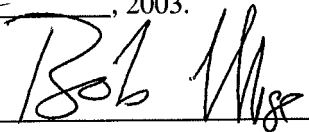

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 18th
day of March, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/03

Time 11:10am