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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



ENROLLED

House Bill No. 2917

(By Delegates Caputo, DeLong, Fragale, Hatfield, Hrutkay,
Morgan, M. Poling, Varner, White, Boggs and Kominar)



Passed February 19, 2007

In Effect from Passage

FILED

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H. B. 2917
OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES CAPUTO, DELONG, FRAGALE, HATFIELD,
HRUTKAY, MORGAN, M. POLING, VARNER, WHITE, BOGGS AND
KOMINAR)

[Passed February 19, 2007; in effect from passage.]

AN ACT to amend and reenact §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, relating to the accelerated payment of consumers sales and service tax and personal income tax withholding tax; and eliminating the requirement for such accelerated payments after a certain date.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-16. Tax return and payment; exception.

- 1 (a) *Payment of tax.* -- Subject to the exceptions set forth
- 2 in subsection (b) of this section, the taxes levied by this
- 3 article are due and payable in monthly installments, on or
- 4 before the twentieth day of the month next succeeding the
- 5 month in which the tax accrued, except as otherwise provided
- 6 in this article.

7 (b) *Tax return.* -- The taxpayer shall, on or before the
8 twentieth day of each month, make out and mail to the tax
9 commissioner a return for the preceding month, in the form
10 prescribed by the tax commissioner, showing:

11 (1) The total gross proceeds of the vendor's business for
12 the preceding month;

13 (2) The gross proceeds of the vendor's business upon
14 which the tax is based;

15 (3) The amount of the tax for which the vendor is liable;
16 and

17 (4) Any further information necessary in the
18 computation and collection of the tax which the tax
19 commissioner may require, except as otherwise provided in
20 this article or article fifteen-b of this chapter.

21 (c) *Remittance to accompany return.* -- Except as
22 otherwise provided in this article or article fifteen-b of this
23 chapter, a remittance for the amount of the tax shall
24 accompany the return.

25 (d) *Deposit of collected tax.* -- Tax collected by the tax
26 commissioner shall be deposited as provided in section thirty
27 of this article, except that:

28 (1) Tax collected on sales of gasoline and special fuel
29 shall be deposited in the state road fund; and

30 (2) Any sales tax collected by the alcohol beverage
31 control commissioner from persons or organizations licensed
32 under authority of article seven, chapter sixty of this code
33 shall be paid into a revolving fund account in the state
34 treasury, designated the drunk driving prevention fund, to be
35 administered by the commission on drunk driving prevention,
36 subject to appropriations by the Legislature.

37 (e) *Return to be signed.* -- A return shall be signed by
38 the taxpayer or the taxpayer's duly authorized agent, when a

39 paper return is prepared and filed. When the return is filed
40 electronically, the return shall include the digital mark or
41 digital signature, as defined in article three, chapter thirty-
42 nine-a of this code, or the personal identification number of
43 the taxpayer, or the taxpayer's duly authorized agent, made in
44 accordance with any procedural rule that may be promulgated
45 by the tax commissioner.

46 (f) *Accelerated payment.* --

47 (1) Taxpayers whose average monthly payment of the
48 taxes levied by this article and article fifteen-a of this chapter
49 during the previous calendar year exceeds one hundred
50 thousand dollars, shall remit the tax attributable to the first
51 fifteen days of June each year on or before the twentieth day
52 of June: *Provided*, That on and after the first day of June,
53 two thousand seven, the provisions of this subsection (f) that
54 require the accelerated payment on or before the twentieth
55 day of June of the tax imposed by this article and article
56 fifteen-a of this chapter are no longer effective, and any such
57 tax due and owing shall be payable in accordance with
58 subsection (a) of this section.

59 (2) For purposes of complying with subdivision (1) of
60 this subsection the taxpayer shall remit an amount equal to
61 the amount of tax imposed by this article and article fifteen-a
62 of this chapter on actual taxable sales of tangible personal
63 property and custom software and sales of taxable services
64 during the first fifteen days of June or, at the taxpayer's
65 election, the taxpayer may remit an amount equal to fifty
66 percent of the taxpayer's liability for tax under this article on
67 taxable sales of tangible personal property and custom
68 software and sales of taxable services made during the
69 preceding month of May.

70 (3) For a business which has not been in existence for a
71 full calendar year, the total tax due from the business during
72 the prior calendar year shall be divided by the number of
73 months, including fractions of a month, that it was in
74 business during the prior calendar year; and if that amount
75 exceeds one hundred thousand dollars, the tax attributable to

76 the first fifteen days of June each year shall be remitted on or
77 before the twentieth day of June as provided in subdivision
78 (2) of this subsection.

79 (4) When a taxpayer required to make an advanced
80 payment of tax under subdivision (1) of this subsection
81 makes out its return for the month of June, which is due on
82 the twentieth day of July, the taxpayer may claim as a credit
83 against liability under this article for tax on taxable
84 transactions during the month of June, the amount of the
85 advanced payment of tax made under subdivision (1) of this
86 subsection.

87 **ARTICLE 21. PERSONAL INCOME TAX.**

88 **§11-21-74. Filing of employer's withholding return and** 89 **payment of withheld taxes; annual** 90 **reconciliation; e-filing required for certain** 91 **tax preparers and employers.**

92 (a) *General.* -- Every employer required to deduct and
93 withhold tax under this article shall, for each calendar
94 quarter, on or before the last day of the month following the
95 close of such calendar quarter, file a withholding return as
96 prescribed by the Tax Commissioner and pay over to the Tax
97 Commissioner the taxes so required to be deducted and
98 withheld. Where the average quarterly amount so deducted
99 and withheld by any employer is less than one hundred fifty
100 dollars and the aggregate for the calendar year can reasonably
101 be expected to be less than six hundred dollars, the Tax
102 Commissioner may by regulation permit an employer to file
103 an annual return and pay over to the Tax Commissioner the
104 taxes deducted and withheld on or before the last day of the
105 month following the close of the calendar year: *Provided,*
106 That the Tax Commissioner may, by nonemergency
107 legislative rules promulgated pursuant to article three, chapter
108 twenty-nine-a of this code, change the minimum amounts
109 established by this subsection. The Tax Commissioner may,
110 if he or she believes such action necessary for the protection
111 of the revenues, require any employer to make the return and
112 pay to him or her the tax deducted and withheld at any time,
113 or from time to time.

114 (b) *Monthly returns and payments of withheld tax on*
115 *and after the first day of January, two thousand one. --*
116 Notwithstanding the provisions of subsection (a) of this
117 section, on and after the first day of January, two thousand
118 one, every employer required to deduct and withhold tax
119 under this article shall, for each of the first eleven months of
120 the calendar year, on or before the twentieth day of the
121 succeeding month and for the last calendar month of the year,
122 on or before the last day of the succeeding month, file a
123 withholding return as prescribed by the Tax Commissioner
124 and pay over to the Tax Commissioner the taxes so required
125 to be deducted and withheld, if such withheld taxes aggregate
126 two hundred fifty dollars or more for the month, except any
127 employer with respect to whom the Tax Commissioner may
128 have by regulation provided otherwise in accordance with the
129 provisions of subsection (a) of this section.

130 (c) *Annual returns and payments of withheld tax of*
131 *certain domestic and household employees. --* Employers of
132 domestic and household employees whose withholdings of
133 federal income tax are annually paid and reported by the
134 employer pursuant to the filing of Schedule H of federal form
135 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,
136 on or before the thirty-first day of January next succeeding
137 the end of the calendar year for which withholdings are
138 deducted and withheld, file an annual withholding return with
139 the Tax Commissioner and annually remit to the Tax
140 Commissioner West Virginia personal income taxes deducted
141 and withheld for the employees. The Tax Commissioner may
142 promulgate legislative or other rules pursuant to article three,
143 chapter twenty-nine-a of this code for implementation of this
144 subsection.

145 (d) *Deposit in trust for Tax Commissioner. --* Whenever
146 any employer fails to collect, truthfully account for, or pay
147 over the tax, or to make returns of the tax as required in this
148 section, the Tax Commissioner may serve a notice requiring
149 the employer to collect the taxes which become collectible
150 after service of the notice, to deposit the taxes in a bank
151 approved by the Tax Commissioner, in a separate account, in
152 trust for and payable to the Tax Commissioner, and to keep

153 the amount of the tax in the separate account until payment
154 over to the Tax Commissioner. The notice shall remain in
155 effect until a notice of cancellation is served by the Tax
156 Commissioner.

157 (e) *Accelerated payment.* -- (1) Notwithstanding the
158 provisions of subsections (a) and (b) of this section, for
159 calendar years beginning after the thirty-first day of
160 December, one thousand nine hundred ninety, every
161 employer required to deduct and withhold tax whose average
162 payment per calendar month for the preceding calendar year
163 under subsection (b) of this section exceeded one hundred
164 thousand dollars shall remit the tax attributable to the first
165 fifteen days of June each year on or before the twenty-third
166 day of June: *Provided*, That on and after the first day of
167 June, two thousand seven, the provisions of this subsection
168 (e) that require the accelerated payment on or before the
169 twenty-third day of June of the tax imposed by this article are
170 no longer effective, and any such tax due and owing shall be
171 payable in accordance with subsection (a) of this section.

172 (2) For purposes of complying with subdivision (1) of
173 this subsection, the employer shall remit an amount equal to
174 the withholding tax due under this article on employee
175 compensation subject to withholding tax payable or paid to
176 employees for the first fifteen days of June or, at the
177 employer's election, the employer may remit an amount equal
178 to fifty percent of the employer's liability for withholding tax
179 under this article on compensation payable or paid to
180 employees for the preceding month of May.

181 (3) For an employer which has not been in business for
182 a full calendar year, the total amount the employer was
183 required to deduct and withhold under subsection (b) of this
184 section for the prior calendar year shall be divided by the
185 number of months, including fractions of a month, that it was
186 in business during the prior calendar year, and if that amount
187 exceeds one hundred thousand dollars, the employer shall
188 remit the tax attributable to the first fifteen days of June each
189 year on or before the twenty-third day of June, as provided in
190 subdivision (2) of this subsection.

191 (4) When an employer required to make an advanced
192 payment of withholding tax under subdivision (1) of this
193 subsection makes out its return for the month of June, which
194 is due on the twentieth day of July, that employer may claim
195 as a credit against its liability under this article for tax on
196 employee compensation paid or payable for employee
197 services rendered during the month of June the amount of the
198 advanced payment of tax made under subdivision (1) of this
199 subsection.


200 (f) The amendments to this section enacted in the year
201 two thousand six are effective for tax years beginning on or
202 after the first day of January, two thousand six.

203 (g) An annual reconciliation of West Virginia personal
204 income tax withheld shall be submitted by the employer on
205 or before the twenty-eighth day of February following the
206 close of the calendar year, together with Tax Division copies
207 of all withholding tax statements for that preceding calendar
208 year. The reconciliation shall be accompanied by a list of the
209 amounts of income withheld for each employee in such form
210 as the Tax Commissioner prescribes and shall be filed
211 separately from the employer's monthly or quarterly return.


212 (h) Any employer required to file a withholding return
213 for two hundred fifty or more employees shall file its return
214 using electronic filing as defined in section fifty-four of this
215 article. An employer that is required to file electronically but
216 does not do so is subject to a penalty in the amount of
217 twenty-five dollars per employee for whom the return was
218 not filed electronically, unless the employer shows that the
219 failure is due to reasonable cause and not due to willful
220 neglect.

Enr. H.B. 2917]

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



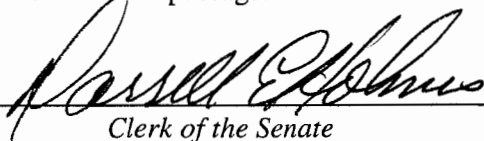
Chairman Senate Committee



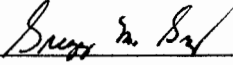
Chairman House Committee

Originating in the House.

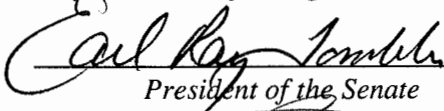
In effect from passage.



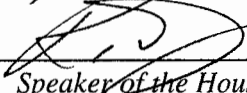
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 0 1 2007

Time

4:00 pm