

1 **ENROLLED**

2 **Senate Bill No. 331**

3 (BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,

4 BY REQUEST OF THE EXECUTIVE)

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6 [Passed March 5, 2014; in effect from passage.]
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9
10 AN ACT to amend and reenact §11-15-16 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §11-21-74 of said
12 code, all relating to providing accelerated payment of
13 consumers sales and service and use tax and employee
14 withholding taxes for certain taxpayers and employers.

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

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

19 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

20 **§11-15-16. Tax return and payment; exception; requiring a**
21 **combined return.**

22 (a) *Payment of tax.* -- Subject to the exceptions set forth in

1 subsection (b) of this section, the taxes levied by this article
2 are due and payable in monthly installments, on or before the
3 twentieth day of the month next succeeding the month in which the
4 tax accrued, except as otherwise provided in this article.

5 (b) *Combined return required.* --

6 (1) The Tax Commissioner shall, no later than June 15, 2008,
7 design a return that combines filing of the taxes levied by this
8 article and article fifteen-a of this chapter.

9 (2) Beginning July 1, 2008, each person required to file a
10 return required by this article or article fifteen-a of this
11 chapter, or both this article and article fifteen-a of this
12 chapter, shall complete and file the return required by the Tax
13 Commissioner.

14 (3) The Tax Commissioner may promulgate rules pursuant to
15 article three, chapter twenty-nine-a of this code and otherwise use
16 any combination of notices, forms and instructions he or she
17 determines necessary to implement the use of the form required by
18 subsection (c) of this section.

19 (c) *Tax return.* -- The taxpayer shall, on or before the
20 twentieth day of each month, make out and mail to the Tax
21 Commissioner a return for the preceding month, in the form
22 prescribed by the Tax Commissioner, showing:

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

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

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

6 (4) Any further information necessary in the computation and
7 collection of the tax which the Tax Commissioner may require,
8 except as otherwise provided in this article or article fifteen-b
9 of this chapter.

10 (d) *Remittance to accompany return.* -- Except as otherwise
11 provided in this article or article fifteen-b of this chapter, a
12 remittance for the amount of the tax shall accompany the return.

13 (e) *Deposit of collected tax.* -- Tax collected by the Tax
14 Commissioner shall be deposited as provided in section thirty of
15 this article, except that:

16 (1) Tax collected on sales of gasoline and special fuel shall
17 be deposited in the State Road Fund; and

18 (2) Any sales tax collected by the Alcohol Beverage Control
19 Commissioner from persons or organizations licensed under authority
20 of article seven, chapter sixty of this code shall be paid into a
21 revolving fund account in the State Treasury, designated the Drunk
22 Driving Prevention Fund, to be administered by the Commission on

1 Drunk Driving Prevention, subject to appropriations by the
2 Legislature.

3 (f) *Return to be signed.* -- A return shall be signed by the
4 taxpayer or the taxpayer's duly authorized agent, when a paper
5 return is prepared and filed. When the return is filed
6 electronically, the return shall include the digital mark or
7 digital signature, as defined in article three, chapter
8 thirty-nine-a of this code, or the personal identification number
9 of the taxpayer, or the taxpayer's duly authorized agent, made in
10 accordance with any procedural rule that may be promulgated by the
11 Tax Commissioner.

12 (g) *Accelerated payment.* --

13 (1) Notwithstanding any other provision of this code to the
14 contrary, after June 30, 2014, taxpayers whose average monthly
15 payment of the taxes levied by this article and article fifteen-a
16 of this chapter during the previous calendar year exceeds \$100,000,
17 shall remit the tax attributable to the first fifteen days of June
18 each year by June 20.

19 (2) For purposes of complying with subdivision (1) of this
20 subsection, the taxpayer shall remit an amount equal to the amount
21 of tax imposed by this article and article fifteen-a of this
22 chapter on actual taxable sales of tangible personal property and

1 custom software and sales of taxable services during the first
2 fifteen days of June or, at the taxpayer's election, the taxpayer
3 may remit an amount equal to fifty percent of the taxpayer's
4 liability for tax under this article on taxable sales of tangible
5 personal property and custom software and sales of taxable services
6 made during the preceding month of May.

7 (3) For a business which has not been in existence for a full
8 calendar year, the total tax due from the business during the prior
9 calendar year shall be divided by the number of months, including
10 fractions of a month, that it was in business during the prior
11 calendar year; and if that amount exceeds \$100,000, the tax
12 attributable to the first fifteen days of June each year shall be
13 remitted by June 20 as provided in subdivision (2) of this
14 subsection.

15 (4) When a taxpayer required to make an advanced payment of
16 tax under subdivision (1) of this subsection makes out its return
17 for the month of June, which is due by July 20, the taxpayer may
18 claim as a credit against liability under this article for tax on
19 taxable transactions during the month of June the amount of the
20 advanced payment of tax made under subdivision (1) of this
21 subsection.

22 **ARTICLE 21. PERSONAL INCOME TAX.**

1 **§11-21-74. Filing of employer's withholding return and payment of**
2 **withheld taxes; annual reconciliation; e-filing**
3 **required for certain tax preparers and employer.**

4 (a) *General.* -- Every employer required to deduct and withhold
5 tax under this article shall, for each calendar quarter, on or
6 before the last day of the month following the close of the
7 calendar quarter, file a withholding return as prescribed by the
8 Tax Commissioner and pay over to the Tax Commissioner the taxes
9 required to be deducted and withheld. Where the average quarterly
10 amount deducted and withheld by any employer is less than \$150 and
11 the aggregate for the calendar year can reasonably be expected to
12 be less than \$600, the Tax Commissioner may by rule permit an
13 employer to file an annual return and pay over to the Tax
14 Commissioner the taxes deducted and withheld on or before the last
15 day of the month following the close of the calendar year. The Tax
16 Commissioner may, by nonemergency legislative rules promulgated
17 pursuant to article three, chapter twenty-nine-a of this code,
18 change the minimum amounts established by this subsection. The Tax
19 Commissioner may, if he or she determines necessary for the
20 protection of the revenues, require any employer to make the return
21 and pay to him or her the tax deducted and withheld at any time or
22 from time to time. Notwithstanding the provisions of this

1 subsection, after December 31, 2008, every employer required to
2 deduct and withhold tax under this article shall file a withholding
3 return as prescribed by the Tax Commissioner and pay over to the
4 Tax Commissioner the taxes required to be deducted and withheld, in
5 accordance with the procedures established by the Internal Revenue
6 Service pursuant to Section 3402 of the Internal Revenue Code.

7 (b) *Monthly returns and payments of withheld tax after*
8 *December 31, 2000.* -- Notwithstanding the provisions of subsection
9 (a) of this section, after December 31, 2000, every employer
10 required to deduct and withhold tax under this article shall, for
11 each of the first eleven months of the calendar year, by the
12 twentieth day of the succeeding month, and for the last calendar
13 month of the year, by the last day of the succeeding month, file a
14 withholding return as prescribed by the Tax Commissioner and pay
15 over to the Tax Commissioner the taxes required to be deducted and
16 withheld, if the withheld taxes aggregate \$250 or more for the
17 month, except any employer with respect to whom the Tax
18 Commissioner may have by rule provided otherwise in accordance with
19 the provisions of subsection (a) of this section. Notwithstanding
20 the provisions of this subsection, after December 31, 2008, every
21 employer required to deduct and withhold tax under this article
22 shall file a withholding return as prescribed by the Tax

1 Commissioner and pay over to the Tax Commissioner the taxes
2 required to be deducted and withheld. The due dates for returns
3 and payments shall be established by the Tax Commissioner to match
4 as closely as practicable the due dates in effect for federal
5 income tax purposes, in accordance with the procedures established
6 by the Internal Revenue Service pursuant to Section 3402 of the
7 Internal Revenue Code.

8 (c) *Annual returns and payments of withheld tax of certain*
9 *domestic and household employees.* -- Employers of domestic and
10 household employees whose withholdings of federal income tax are
11 annually paid and reported by the employer pursuant to the filing
12 of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ,
13 1040SS or 1041 may, on or before January 31 next succeeding the end
14 of the calendar year for which withholdings are deducted and
15 withheld, file an annual withholding return with the Tax
16 Commissioner and annually remit to the Tax Commissioner West
17 Virginia personal income taxes deducted and withheld for the
18 employees. The Tax Commissioner may promulgate legislative or
19 other rules pursuant to article three, chapter twenty-nine-a of
20 this code for implementation of this subsection. Notwithstanding
21 the provisions of this subsection, after December 31, 2008, every
22 employer required to deduct and withhold tax under this article

1 shall file a withholding return as prescribed by the Tax
2 Commissioner and pay over to the Tax Commissioner the taxes
3 required to be deducted and withheld. The due dates for annual
4 returns and payments shall be established by the Tax Commissioner
5 to match as closely as practicable the due dates in effect for
6 federal income tax purposes in accordance with the procedures
7 established by the Internal Revenue Service pursuant to Section
8 3402 of the Internal Revenue Code.

9 (d) *Deposit in trust for Tax Commissioner.* -- Whenever any
10 employer fails to collect, truthfully account for or pay over the
11 tax, or to make returns of the tax as required in this section, the
12 Tax Commissioner may serve a notice requiring the employer to
13 collect the taxes which become collectible after service of the
14 notice, to deposit the taxes in a bank approved by the Tax
15 Commissioner, in a separate account, in trust for and payable to
16 the Tax Commissioner and to keep the amount of the tax in the
17 separate account until payment over to the Tax Commissioner. The
18 notice remains in effect until a notice of cancellation is served
19 by the Tax Commissioner.

20 (e) *Accelerated payment.* -- (1) Notwithstanding the provisions
21 of subsections (a) and (b) of this section, after June 30, 2014,
22 every employer required to deduct and withhold tax whose average

1 payment per calendar month for the preceding calendar year under
2 subsection (b) of this section exceeded \$100,000 shall remit the
3 tax attributable to the first fifteen days of June each year by
4 June 23.

5 (2) For purposes of complying with subdivision (1) of this
6 subsection, the employer shall remit an amount equal to the
7 withholding tax due under this article on employee compensation
8 subject to withholding tax payable or paid to employees for the
9 first fifteen days of June or, at the employer's election, the
10 employer may remit an amount equal to fifty percent of the
11 employer's liability for withholding tax under this article on
12 compensation payable or paid to employees for the preceding month
13 of May.

14 (3) For an employer which has not been in business for a full
15 calendar year, the total amount the employer was required to deduct
16 and withhold under subsection (b) of this section for the prior
17 calendar year shall be divided by the number of months, including
18 fractions of a month, that it was in business during the prior
19 calendar year and if that amount exceeds \$100,000, the employer
20 shall remit the tax attributable to the first fifteen days of June
21 each year by June 23, as provided in subdivision (2) of this
22 subsection.

1 (4) When an employer required to make an advanced payment of
2 withholding tax under subdivision (1) of this subsection makes out
3 its return for the month of June, which is due by July 20, that
4 employer may claim as a credit against its liability under this
5 article for tax on employee compensation paid or payable for
6 employee services rendered during the month of June the amount of
7 the advanced payment of tax made under subdivision (1) of this
8 subsection.

9 (f) The amendments to this section enacted in the year 2006
10 are effective for tax years beginning after December 31, 2005.

11 (g) An annual reconciliation of West Virginia personal income
12 tax withheld shall be submitted by the employer by February 28
13 following the close of the calendar year, together with Tax
14 Division copies of all withholding tax statements for that
15 preceding calendar year. The reconciliation shall be accompanied
16 by a list of the amounts of income withheld for each employee in
17 such form as the Tax Commissioner prescribes and shall be filed
18 separately from the employer's monthly or quarterly return.

19 (h) Any employer required to file a withholding return for two
20 hundred fifty or more employees shall file its return using
21 electronic filing as defined in section fifty-four of this article:
22 *Provided, That for any tax period beginning after December 31,*

1 2010, any employer with fifty or more employees shall file its
2 return using electronic filing as defined in section fifty-four of
3 this article. An employer that is required to file electronically
4 but does not do so is subject to a penalty in the amount of \$25 per
5 employee for whom the return was not filed electronically, unless
6 the employer shows that the failure is due to a technical inability
7 to comply.