

1 **H. B. 4351**

2
3 (By Delegates Guthrie, Campbell,
4 L. Phillips, Poore, Young, Skinner,
5 Sponaugle, Craig, Fragale, Skaff and Caputo)
6

7 [Introduced January 28, 2014; referred to the
8 Committee on Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend and reenact §11-10-5s of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §11-10F-1, §11-10F-2, §11-10F-3, §11-
13 10F-4, §11-10F-5, §11-10F-6, §11-10F-7, §11-10F-8, §11-10F-9,
14 §11-10F-10 and §11-10F-11, all relating to creating a review
15 process for tax expenditures; defining terms related to tax
16 expenditures; addressing the expiration of current and future
17 tax expenditures; creating rules for implementing tax
18 expenditures; creating rules for renewing tax expenditures;
19 creating a process for appraising tax expenditures; requiring
20 the Governor to provide an annual report on tax expenditures;
21 creating the Tax Expenditure Sunset Review Committee; setting
22 up a process for committee hearings; requiring an annual
23 committee report; and providing procedures for reviewing tax
24 expenditures.

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

1 That §11-10-5s of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; and that said code be amended by adding
3 thereto a new article, designated §11-10F-1, §11-10F-2, §11-10F-3,
4 §11-10F-4, §11-10F-5, §11-10F-6, §11-10F-7, §11-10F-8, §11-10F-9,
5 §11-10F-10 and §11-10F-11, all to read as follows:

6 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

7 **§11-10-5s. Disclosure of certain taxpayer information.**

8 (a) *Purpose.* - The Legislature ~~hereby~~ recognizes the
9 importance of confidentiality of taxpayer information as a
10 protection of taxpayers' privacy rights and to enhance voluntary
11 compliance with the tax law. The Legislature also recognizes the
12 citizens' right to accountable and efficient state government. To
13 accomplish these ends, the Legislature hereby creates certain
14 exceptions to the general principle of confidentiality of taxpayer
15 information.

16 (b) *Exceptions to confidentiality.* -

17 (1) Notwithstanding any provision in this code to the
18 contrary, the Tax Commissioner shall publish in the State Register
19 the name and address of every taxpayer and the amount, by category,
20 of any credit asserted on a tax return under articles thirteen-c,
21 thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q,
22 thirteen-r and thirteen-s of this chapter and article one, chapter
23 five-e of this code. The categories by dollar amount of credit
24 received are as follows:

- 1 (A) More than \$1 but not more than \$50,000;
- 2 (B) More than \$50,000 but not more than \$100,000;
- 3 (C) More than \$100,000 but not more than \$250,000;
- 4 (D) More than \$250,000 but not more than \$500,000;
- 5 (E) More than \$500,000 but not more than \$1 million; and
- 6 (F) More than \$1 million.

7 (2) Notwithstanding any provision in this code to the
8 contrary, the Tax Commissioner shall publish in the State Register
9 the following information regarding a compromise of a pending civil
10 tax case that occurs on or after the effective date of this section
11 in which the Tax Commissioner is required to seek the written
12 recommendation of the Attorney General and the Attorney General has
13 not recommended acceptance of the compromise or when the Tax
14 Commissioner compromises a civil tax case for an amount that is
15 more than \$250,000 less than the assessment of tax owed made by the
16 Tax Commissioner:

- 17 (A) The names and addresses of taxpayers that are parties to
18 the compromise;
- 19 (B) A summary of the compromise;
- 20 (C) Any written advice or recommendation rendered by the
21 Attorney General regarding the compromise; and
- 22 (D) Any written advice or recommendation rendered by the Tax
23 Commissioner's staff.

24 Under no circumstances may the tax return of the taxpayer or

1 any other information which would otherwise be confidential under
2 other provisions of law be disclosed pursuant to the provisions of
3 this subsection.

4 (3) Notwithstanding any provision in this code to the
5 contrary, the Tax Commissioner may disclose any relevant return
6 information to the prosecuting attorney for the county in which
7 venue lies for a criminal tax offense when there is reasonable
8 cause, based upon and substantiated by the return information, to
9 believe that a criminal tax law has been or is being violated.

10 (4) Notwithstanding any provision in this code to the
11 contrary, the Tax Commissioner may enter into written exchange of
12 information agreements with the commissioners of Labor, ~~Employment~~
13 ~~Security~~, Alcohol Beverage Control and ~~Workers' Compensation~~
14 Insurance and the Executive Director of Workforce West Virginia to
15 disclose and receive timely return information. The Tax
16 Commissioner may ~~promulgate~~ propose rules pursuant to chapter
17 twenty-nine-a of this code regarding additional agencies with which
18 written exchange of information agreements may be sought but may
19 not promulgate emergency rules regarding these additional agencies.
20 The agreements shall be published in the State Register and are
21 only for the purpose of facilitating premium collection, tax
22 collection and facilitating licensure requirements directly
23 enforced, administered or collected by the respective agencies. The
24 provisions of this subsection do not preclude or limit disclosure

1 of tax information authorized by other provisions of this code.
2 Confidential return information so disclosed remains confidential
3 in the other agency to the extent provided by section five-d of
4 this article and by other applicable federal or state laws.

5 (5) Notwithstanding any provision of this code to the
6 contrary, the Tax Commissioner may enter into a written agreement
7 with the State Treasurer to disclose to the State Treasurer the
8 following business registration information:

9 (A) The names, addresses and federal employer identification
10 numbers of businesses which have registered to do business in West
11 Virginia; and

12 (B) The type of business activity and organization of those
13 businesses.

14 Disclosure of this information shall begin as soon as
15 practicable after the effective date of this subsection and may be
16 used only for the purpose of recovery and disposition of unclaimed
17 property in accordance with the provisions of article eight,
18 chapter thirty-six of this code. The provisions of this subsection
19 do not preclude or limit disclosure of tax information authorized
20 by other provisions of this code. Confidential return information
21 disclosed hereunder or thereunder remains confidential as provided
22 by section five-d of this article and by other applicable federal
23 or state laws.

24 (6) Notwithstanding any provision of this code to the

1 contrary, the Tax Commissioner may disclose to the Attorney General
2 any tax return, report, declaration or tax return information,
3 including the identity of a taxpayer, that relates to any
4 taxpayer's sales of tobacco products subject to state excise tax or
5 to such sales of tobacco products that were manufactured or
6 imported by a nonparticipating manufacturer as defined in section
7 two, article nine-d of chapter sixteen of this code, for the
8 purpose of enforcement of articles nine-b and nine-d, chapter
9 sixteen of this code, or for the purpose of representing the State
10 of West Virginia in any arbitration or litigation arising under the
11 Tobacco Master Settlement Agreement or articles nine-b and nine-d,
12 chapter sixteen of this code. Nothing herein shall authorize the
13 disclosure of any taxpayer's income tax returns or business
14 franchise tax returns, or authorize the use of the disclosed
15 information for any purpose other than as specified herein.

16 (7) Notwithstanding any provision of this code to the
17 contrary, the Attorney General, upon the consent of the Tax
18 Commissioner, may disclose information provided by the Tax
19 Commissioner under the authority of subdivision six of this
20 subsection as follows:

21 (A) To a party or parties participating in arbitration or
22 litigation arising under the terms of the Tobacco Master Settlement
23 Agreement; or

24 (B) To a judge, arbitrator, administrative law judge, legal

1 counsel or other officer, official or participant in proceedings
2 for or relating to administration, implementation, enforcement,
3 defense or settlement and arbitration of the provisions of articles
4 nine-b and nine-d of chapter sixteen of this code.

5 (C) Notwithstanding any provision of this code to the
6 contrary, the Attorney General may introduce into evidence or
7 disclose the information in the arbitration or litigation
8 proceedings or an action for administration, implementation,
9 enforcement, defense or settlement and arbitration of the
10 provisions of articles nine-b and nine-d of chapter sixteen of this
11 code.

12 (D) This subdivision does not apply to a document, tax return
13 or other information subject to disclosure restrictions imposed by
14 federal statute or regulation.

15 (E) Any information disclosed pursuant to this subdivision is
16 subject to the following restrictions:

17 (i) Specific identifiers shall first be redacted or otherwise
18 removed from any such information that was reported by a taxpayer
19 who is not a party to any proceeding, arbitration or litigation;
20 and

21 (ii) No such disclosure ~~shall~~ may be made unless it is subject
22 to a protective order or agreement restricting the use of the
23 disclosed information to such proceeding, arbitration or
24 litigation;

1 (F) For purposes of this section, "specific identifiers" ~~shall~~
2 ~~mean~~ means the name, address, telephone number, taxpayer
3 identification number, logo, trademark or other markings unique to
4 the taxpayer.

5 (8) Notwithstanding any provision of this code to the
6 contrary, the Tax Commissioner may enter into a written exchange
7 agreement with the Auditor to disclose certain taxpayer information
8 to facilitate participation in the following:

9 (A) The federal offset program authorized by section thirty-
10 seven, article one, chapter fourteen of this code; and

11 (B) The state offset program, as authorized by subsection (h),
12 section thirty-seven, article one, chapter fourteen of this code,
13 for the purpose of protecting return information as defined in
14 section five-d, article ten of this chapter and collecting debts,
15 fees and penalties due the state, its departments, agencies or
16 institutions.

17 (C) The taxpayer information exchanged or disclosed pursuant
18 to this subdivision is to be used only for the purpose of
19 facilitating the collection of unpaid and delinquent tax
20 liabilities through offset against state payments due and owing to
21 taxpayers, vendors and contractors providing goods or services to
22 the state, its departments, agencies or institutions.

23 (D) The Tax Commissioner may disclose the following taxpayer
24 information:

1 (i) Name;
2 (ii) Address;
3 (iii) Social Security number or tax identification number;
4 (iv) Amount of the tax liability; and
5 (v) Any other information required by the written agreement.
6 (E) Disclosure of this information begins as soon as
7 practicable after the effective date of this subdivision.

8 (F) The provisions of this section do not preclude or limit
9 disclosure of tax information authorized by other provisions of
10 this code. Any confidential return information disclosed hereunder
11 or thereunder remains confidential to the extent provided by
12 section five-d of this article and by other applicable federal or
13 state laws.

14 ~~(c) Tax expenditure reports. Beginning on January 15, 1992,~~
15 ~~and every January 15 thereafter, the Governor shall submit to the~~
16 ~~President of the Senate and the Speaker of the House of Delegates~~
17 ~~a tax expenditure report. This report shall expressly identify all~~
18 ~~tax expenditures. Within three year cycles, the reports shall be~~
19 ~~considered together to analyze all tax expenditures by describing~~
20 ~~the annual revenue loss and benefits of the tax expenditure based~~
21 ~~upon information available to the Tax Commissioner. For purposes of~~
22 ~~this section, the term "tax expenditure" means a provision in the~~
23 ~~tax laws administered under this article including, but not limited~~
24 ~~to, exclusions, deductions, tax preferences, credits and deferrals~~

1 ~~designed to encourage certain kinds of activities or to aid~~
 2 ~~taxpayers in special circumstances. The Tax Commissioner shall~~
 3 ~~promulgate rules setting forth the procedure by which he or she~~
 4 ~~will compile the reports and setting forth a priority for the order~~
 5 ~~in which the reports will be compiled according to type of tax~~
 6 ~~expenditure.~~

7 ~~(d)~~ (c) *Federal and state return information confidential.* -
 8 Notwithstanding any other provisions of this section or of this
 9 code, no return information made available to the Tax Commissioner
 10 by the Internal Revenue Service or department or agency of any
 11 other state may be disclosed to another person in a manner
 12 inconsistent with the provisions of Section 6103 of the Internal
 13 Revenue Code of 1986, as amended, or of the other states'
 14 confidentiality laws.

15 **ARTICLE 10F. Tax Expenditure Sunset and Review Act.**

16 **§11-10F-1. Short title.**

17 This article may be cited as the "Tax Expenditure Sunset and
 18 Review Act."

19 **§11-10F-2. Definitions.**

20 (a) "Committee" means the Tax Expenditure Sunset Review
 21 Committee created by this article.

22 (b) "Tax expenditure" means any tax provision which exempts
 23 certain persons, income, goods, services, or property from the

1 impact of established taxes, including, but not limited to those
2 devices known as tax deductions, tax allowances, tax exclusions,
3 tax credits and tax exemptions.

4 **§11-10F-3. Expiration of future tax expenditures.**

5 A tax expenditure created on or after July 1, 2014 expires
6 with the end of the tax year five years following the year in which
7 it was created, unless, before its expiration date, it is renewed
8 by the Legislature. A tax expenditure does not apply to the taxable
9 year that begins in the year the tax expenditure expires.

10 **§11-10F-4. Tax expenditure creation rules.**

11 Any provision of this code creating a tax expenditure shall
12 specify:

13 (1) The purpose served by the tax expenditure;

14 (2) The date on which the tax expenditure expires;

15 (3) The class of taxpayers that will benefit from the tax
16 expenditure; and

17 (4) Methods to be used to appraise the tax expenditure's
18 effectiveness in serving its purpose.

19 **§11-10F-5. Renewing tax expenditures.**

20 (a) The Legislature may renew a tax expenditure by enacting an
21 act that:

22 (1) Addresses only that subject;

23 (2) Fulfills the criteria specified in section four of this
24 article, including specifying a new expiration date for the tax

1 expenditure; and

2 (3) Improves the tax expenditure's effectiveness in serving
3 its purpose, redefines the tax expenditure's purpose to serve or
4 better serve a public need, improves the tax expenditure's
5 effectiveness in promoting economic growth and development, reduces
6 the amount of revenue lost as a result of the tax expenditure or
7 reenacts the tax expenditure to continue it without change.

8 (b) A repeal of a tax expenditure that has expired may not be
9 combined in an act renewing a tax expenditure.

10 **§11-10F-6. Appraisal of tax expenditures.**

11 Not later than July 1 of a tax expenditure's third year, the
12 Tax Commissioner shall notify the committee of the tax
13 expenditure's expiration. The committee shall then prepare a
14 schedule for appraising the tax expenditure so that the appraisal
15 and the report required under section nine of this article is
16 completed no later than July 1 of the calendar year before the tax
17 expenditure expires. The schedule shall provide for a public
18 hearing on the tax expenditure. The committee chair shall send a
19 copy of the schedule to the Tax Commissioner and make the schedule
20 available to the public.

21 **§11-10F-7. Governor's report on tax expenditures.**

22 (a) No later than July 1 of each year, the Governor shall
23 submit to the committee a tax expenditure report addressing each of
24 the state's tax expenditures. The report shall:

- 1 (1) Explain each tax expenditure's purpose;
2 (2) Express an opinion as to the public need for each tax
3 expenditure;
4 (3) Express an opinion as to whether each tax expenditure has
5 been impeded or enhanced by existing statutes;
6 (4) Describe how, if at all, each tax expenditure promotes
7 economic growth and development;
8 (5) Provide an estimate of the amount of tax revenue lost each
9 fiscal year as a result of each tax expenditure;
10 (6) Express an opinion as to whether each tax expenditure
11 should be allowed to expire or be renewed; and
12 (7) Contain any other information relevant to the committee's
13 appraisal of each tax expenditure.

14 (b) The committee shall hold hearings on any tax expenditures
15 required of it under section six of this article. The committee may
16 by a majority vote choose to hold hearings on any other tax
17 expenditures covered in the Governor's report.

18 **§11-10F-8. Creation of the Sunset Review Committee.**

19 (a) There is created the Tax Expenditure Sunset Review
20 Committee composed of nine members. The President of the Senate,
21 within fifteen days after the start of the first regular session of
22 the 2015 Legislature shall appoint three members of the Senate to
23 the committee, not more than two of whom are members of the same
24 political party. The Speaker of the House of Delegates, within

1 fifteen days after the start of the first regular session of the
2 2015 Legislature, shall appoint three members of the House of
3 Delegates to the committee, not more than two of whom are members
4 of the same political party. The Governor, within fifteen days
5 after the start of the first regular session of the 2015
6 Legislature shall appoint three members to the committee.

7 (b) Legislative members of the committee hold office until
8 their successors are appointed or until they cease to be members of
9 the Senate or House of Delegates, whichever occurs first. Members
10 appointed by the Governor hold office for terms ending on December
11 31 of each even-numbered year. A member appointed by the Governor
12 continues to hold office after the expiration of the member's term
13 until the member's successor is appointed, or until forty-five days
14 have elapsed, whichever occurs first.

15 (c) Within thirty days of all members of the committee being
16 appointed, the committee shall meet and elect from its membership
17 a chair and vice-chair. Members shall select a new chair and vice-
18 chair after new committee members are appointed in succeeding even-
19 numbered years.

20 (d) A vacancy on the committee shall be filled in the same
21 manner as the original appointment. A member appointed to fill a
22 vacancy occurring before the expiration of the term to which the
23 member's predecessor was appointed holds office for the remainder
24 of the unexpired term.

1 (e) Members of the committee serve without compensation, but
2 shall be reimbursed for any expenses they incur in the performance
3 of the committee's duties.

4 (f) The committee shall meet as often as necessary to perform
5 its duties.

6 (g) Five members of the committee constitutes a quorum. So
7 long as a quorum is present, a vacancy on the committee does not
8 impair the ability of the remaining members to perform the
9 committee's duties.

10 **§11-10F-9. Sunset Review Committee hearings.**

11 At a time after July 1 of every year and at a place inside the
12 State Capitol, the committee shall hold a public hearing on all tax
13 expenditures addressed in the Governor's report set forth in
14 section seven of this article. At the hearing, any person may
15 present testimony or tangible evidence relevant to the tax
16 expenditures being considered. After the hearing, the committee
17 shall appraise the tax expenditures. In making its appraisals, the
18 committee shall consider the Governor's report and any knowledge
19 gleaned from the hearing, but is not limited to these sources. Upon
20 the committee's request, the State Tax Department and any other
21 state agency shall provide the committee with any information in
22 its possession the committee requires to appraise the tax
23 expenditure. The Joint Committee on Government and Finance shall
24 provide drafting and clerical support to the committee.

1 **§11-10F-10. Sunset Review Committee report.**

2 (a) No later than January 1 of the year following of its
3 hearings appraising tax expenditures, the committee shall prepare
4 an annual report for release that contains:

5 (1) A statement of the purpose served by each tax expenditure;

6 (2) An appraisal of the tax expenditures' effectiveness in
7 servinq their various purposes;

8 (3) An evaluation of whether each tax expenditures' purpose
9 serves a public need;

10 (4) An evaluation of whether other statutes have enhanced or
11 impeded each tax expenditures' effectiveness in serving its
12 purpose;

13 (5) An appraisal of whether each tax expenditure promotes
14 economic growth and development;

15 (6) An estimate of the amount of revenue lost each fiscal year
16 from each tax expenditure;

17 (7) A recommendation as to whether the tax expenditure should
18 be allowed to expire or be renewed; and

19 (8) Any other information the committee considers relevant.

20 (b) In an appendix to its report, the committee shall include
21 a draft of a bill that would implement its recommendation and, if
22 the tax expenditure is recommended for renewal, complies with
23 section five of thus article. If the committee recommends renewal
24 of the tax expenditure, the appendix shall include a commentary to

1 the bill draft explaining how renewal of the tax expenditure
2 complies with section five of this article.

3 (c) The committee shall provide a copy of the report to the
4 Governor, the Tax Commissioner and each member of the Legislature.

5 The report is a public record.

6 **§11-10F-11. Procedures for reviewing tax expenditures.**

7 On or before January 15, 2015, the Governor shall prepare a
8 list of the tax expenditures in existence on January 1, 2015, and
9 make the list public. Upon the appointment of the committee, it
10 shall schedule a hearing on all tax expenditures existing as of
11 January 1, 2015. The committee shall then prepare a report
12 appraising all the existing tax expenditures for release no later
13 than January 1, 2016.

NOTE: The purpose of this bill is to promote transparency in the tax expenditure process, and to provide a review process for tax expenditures.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 10F is new; therefore, it has been completely underscored.