

1 **Senate Bill No. 331**

2 (By Senators Kessler (Mr. President) and M. Hall,

3 By Request of the Executive)

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5 [Introduced January 10, 2014; referred to the Committee on
6 Finance.]
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10 A BILL 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) Taxpayers whose average monthly payment of the taxes
14 levied by this article and article fifteen-a of this chapter during
15 the previous calendar year exceeds \$100,000, shall remit the tax
16 attributable to the first fifteen days of June each year ~~on or~~
17 ~~before~~ by June 20: *Provided, That ~~on and after June 1, May 31,~~*
18 2007, the provisions of this subsection that require the
19 accelerated payment ~~on or before~~ by June 20 of the tax imposed by
20 this article and article fifteen-a of this chapter are no longer
21 effective and any such tax due and owing ~~shall be~~ is payable in
22 accordance with subsection (a) of this section: *Provided, however,*

1 That after June 30, 2014, the provisions of this subsection that
2 require the accelerated payment by June 20 of the tax imposed by
3 this article and article fifteen-a of this chapter become effective
4 again and any such tax due and owing is payable in accordance with
5 this subsection.

6 (2) For purposes of complying with subdivision (1) of this
7 subsection, the taxpayer shall remit an amount equal to the amount
8 of tax imposed by this article and article fifteen-a of this
9 chapter on actual taxable sales of tangible personal property and
10 custom software and sales of taxable services during the first
11 fifteen days of June or, at the taxpayer's election, the taxpayer
12 may remit an amount equal to fifty percent of the taxpayer's
13 liability for tax under this article on taxable sales of tangible
14 personal property and custom software and sales of taxable services
15 made during the preceding month of May.

16 (3) For a business which has not been in existence for a full
17 calendar year, the total tax due from the business during the prior
18 calendar year shall be divided by the number of months, including
19 fractions of a month, that it was in business during the prior
20 calendar year; and if that amount exceeds \$100,000, the tax
21 attributable to the first fifteen days of June each year shall be
22 remitted ~~on or before~~ by June 20 as provided in subdivision (2) of

1 this subsection.

2 (4) When a taxpayer required to make an advanced payment of
3 tax under subdivision (1) of this subsection makes out its return
4 for the month of June, which is due ~~on~~ by July 20, the taxpayer may
5 claim as a credit against liability under this article for tax on
6 taxable transactions during the month of June the amount of the
7 advanced payment of tax made under subdivision (1) of this
8 subsection.

9 **ARTICLE 21. PERSONAL INCOME TAX.**

10 **§11-21-74. Filing of employer's withholding return and payment of**
11 **withheld taxes; annual reconciliation; e-filing**
12 **required for certain tax preparers and employer.**

13 (a) *General.* -- Every employer required to deduct and withhold
14 tax under this article shall, for each calendar quarter, on or
15 before the last day of the month following the close of the
16 calendar quarter, file a withholding return as prescribed by the
17 Tax Commissioner and pay over to the Tax Commissioner the taxes
18 required to be deducted and withheld. Where the average quarterly
19 amount deducted and withheld by any employer is less than \$150 and
20 the aggregate for the calendar year can reasonably be expected to
21 be less than \$600, the Tax Commissioner may by ~~regulation~~ rule
22 permit an employer to file an annual return and pay over to the Tax

1 Commissioner the taxes deducted and withheld on or before the last
2 day of the month following the close of the calendar year. The Tax
3 Commissioner may, by nonemergency legislative rules promulgated
4 pursuant to article three, chapter twenty-nine-a of this code,
5 change the minimum amounts established by this subsection. The Tax
6 Commissioner may, if he or she determines necessary for the
7 protection of the revenues, require any employer to make the return
8 and pay to him or her the tax deducted and withheld at any time or
9 from time to time. Notwithstanding the provisions of this
10 subsection, ~~on or after January 1, 2009~~ December 31, 2008, every
11 employer required to deduct and withhold tax under this article
12 shall file a withholding return as prescribed by the Tax
13 Commissioner and pay over to the Tax Commissioner the taxes
14 required to be deducted and withheld, in accordance with the
15 procedures established by the Internal Revenue Service pursuant to
16 Section 3402 of the Internal Revenue Code.

17 (b) *Monthly returns and payments of withheld tax* ~~on and after~~
18 ~~January 1, 2001~~ December 31, 2000. -- Notwithstanding the
19 provisions of subsection (a) of this section, ~~on and after January~~
20 ~~1, 2001~~ December 31, 2000, every employer required to deduct and
21 withhold tax under this article shall, for each of the first eleven
22 months of the calendar year, ~~on or before~~ by the twentieth day of

1 the succeeding month, and for the last calendar month of the year,
2 ~~on or before~~ by the last day of the succeeding month, file a
3 withholding return as prescribed by the Tax Commissioner and pay
4 over to the Tax Commissioner the taxes required to be deducted and
5 withheld, if the withheld taxes aggregate \$250 or more for the
6 month, except any employer with respect to whom the Tax
7 Commissioner may have by ~~regulation~~ rule provided otherwise in
8 accordance with the provisions of subsection (a) of this section.
9 Notwithstanding the provisions of this subsection, ~~on and~~ after
10 ~~January 1, 2009~~ December 31, 2008, every employer required to
11 deduct and withhold tax under this article shall file a withholding
12 return as prescribed by the Tax Commissioner and pay over to the
13 Tax Commissioner the taxes required to be deducted and withheld.
14 The due dates for returns and payments shall be established by the
15 Tax Commissioner to match as closely as practicable the due dates
16 in effect for federal income tax purposes, in accordance with the
17 procedures established by the Internal Revenue Service pursuant to
18 Section 3402 of the Internal Revenue Code.

19 (c) *Annual returns and payments of withheld tax of certain*
20 *domestic and household employees.* -- Employers of domestic and
21 household employees whose withholdings of federal income tax are
22 annually paid and reported by the employer pursuant to the filing

1 of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ,
2 1040SS or 1041 may, on or before January 31 next succeeding the end
3 of the calendar year for which withholdings are deducted and
4 withheld, file an annual withholding return with the Tax
5 Commissioner and annually remit to the Tax Commissioner West
6 Virginia personal income taxes deducted and withheld for the
7 employees. The Tax Commissioner may promulgate legislative or
8 other rules pursuant to article three, chapter twenty-nine-a of
9 this code for implementation of this subsection. Notwithstanding
10 the provisions of this subsection, ~~on or after January 1, 2009~~
11 December 31, 2008, every employer required to deduct and withhold
12 tax under this article shall file a withholding return as
13 prescribed by the Tax Commissioner and pay over to the Tax
14 Commissioner the taxes required to be deducted and withheld. The
15 due dates for annual returns and payments shall be established by
16 the Tax Commissioner to match as closely as practicable the due
17 dates in effect for federal income tax purposes in accordance with
18 the procedures established by the Internal Revenue Service pursuant
19 to Section 3402 of the Internal Revenue Code.

20 (d) *Deposit in trust for Tax Commissioner.* -- Whenever any
21 employer fails to collect, truthfully account for or pay over the
22 tax, or to make returns of the tax as required in this section, the

1 Tax Commissioner may serve a notice requiring the employer to
2 collect the taxes which become collectible after service of the
3 notice, to deposit the taxes in a bank approved by the Tax
4 Commissioner, in a separate account, in trust for and payable to
5 the Tax Commissioner and to keep the amount of the tax in the
6 separate account until payment over to the Tax Commissioner. The
7 notice ~~shall remain~~ remains in effect until a notice of
8 cancellation is served by the Tax Commissioner.

9 (e) *Accelerated payment.* -- (1) Notwithstanding the provisions
10 of subsections (a) and (b) of this section, for calendar years
11 beginning after December 31, 1990, every employer required to
12 deduct and withhold tax whose average payment per calendar month
13 for the preceding calendar year under subsection (b) of this
14 section exceeded \$100,000 shall remit the tax attributable to the
15 first fifteen days of June each year ~~on or before~~ by June 23:
16 *Provided, That* ~~on and after June 1,~~ May 31, 2007, the provisions of
17 this subsection that require the accelerated payment ~~on or before~~
18 by June 23 of the tax imposed by this article are no longer
19 effective and any tax due and owing ~~shall be~~ is payable in
20 accordance with subsection (a) of this section: *Provided, however,*
21 That after June 30, 2014, the provisions of this subsection that
22 require the accelerated payment by June 23 of the tax imposed by

1 this article become effective again and any such tax due and owing
2 is payable in accordance with this subsection.

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

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

21 (4) When an employer required to make an advanced payment of
22 withholding tax under subdivision (1) of this subsection makes out

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

7 (f) The amendments to this section enacted in the year 2006
8 are effective for tax years beginning ~~on or after January 1, 2006~~
9 December 31, 2005.

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

18 (h) Any employer required to file a withholding return for two
19 hundred fifty or more employees shall file its return using
20 electronic filing as defined in section fifty-four of this article:
21 *Provided,* That for any tax period beginning ~~on or after January 1,~~
22 ~~2011,~~ December 31, 2010, any employer with fifty or more employees

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

(NOTE: The purpose of this bill is to require accelerated payment of consumers sales and service and use tax and employee withholding taxes in June of the taxable year.

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