

# Senate Bill No. 331

(By Senators Kessler (Mr. President) and M. Hall,  
By Request of the Executive)

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[Introduced January 10, 2014; referred to the Committee  
on Finance.]

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A BILL to amend and reenact §11-15-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-21-74 of said code, all relating to providing accelerated payment of consumers sales and service and use tax and employee withholding taxes for certain taxpayers and employers.

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

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

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

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

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

6           (b) *Combined return required.* –

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

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

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

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

24 (1) The total gross proceeds of the vendor’s business for the  
25 preceding month;

26 (2) The gross proceeds of the vendor’s business upon which  
27 the tax is based;

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

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

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

36 (e) *Deposit of collected tax.* – Tax collected by the Tax  
37 Commissioner shall be deposited as provided in section thirty  
38 of this article, except that:

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

41           (2) Any sales tax collected by the Alcohol Beverage  
42 Control Commissioner from persons or organizations  
43 licensed under authority of article seven, chapter sixty of this  
44 code shall be paid into a revolving fund account in the State  
45 Treasury, designated the Drunk Driving Prevention Fund, to  
46 be administered by the Commission on Drunk Driving  
47 Prevention, subject to appropriations by the Legislature.

48           (f) *Return to be signed.* – A return shall be signed by the  
49 taxpayer or the taxpayer’s duly authorized agent, when a  
50 paper return is prepared and filed. When the return is filed  
51 electronically, the return shall include the digital mark or  
52 digital signature, as defined in article three, chapter  
53 thirty-nine-a of this code, or the personal identification  
54 number of the taxpayer, or the taxpayer’s duly authorized  
55 agent, made in accordance with any procedural rule that may  
56 be promulgated by the Tax Commissioner.

57           (g) *Accelerated payment.* –

58 (1) Taxpayers whose average monthly payment of the  
59 taxes levied by this article and article fifteen-a of this chapter  
60 during the previous calendar year exceeds \$100,000, shall  
61 remit the tax attributable to the first fifteen days of June each  
62 year ~~on or before~~ by June 20: *Provided*, That ~~on and~~ after  
63 ~~June 1, May 31, 2007~~, the provisions of this subsection that  
64 require the accelerated payment ~~on or before~~ by June 20 of  
65 the tax imposed by this article and article fifteen-a of this  
66 chapter are no longer effective and any such tax due and  
67 owing ~~shall be~~ is payable in accordance with subsection (a)  
68 of this section: *Provided, however*, That after June 30, 2014,  
69 the provisions of this subsection that require the accelerated  
70 payment by June 20 of the tax imposed by this article and  
71 article fifteen-a of this chapter become effective again and  
72 any such tax due and owing is payable in accordance with  
73 this subsection.

74 (2) For purposes of complying with subdivision (1) of  
75 this subsection, the taxpayer shall remit an amount equal to  
76 the amount of tax imposed by this article and article fifteen-a

77 of this chapter on actual taxable sales of tangible personal  
78 property and custom software and sales of taxable services  
79 during the first fifteen days of June or, at the taxpayer's  
80 election, the taxpayer may remit an amount equal to fifty  
81 percent of the taxpayer's liability for tax under this article on  
82 taxable sales of tangible personal property and custom  
83 software and sales of taxable services made during the  
84 preceding month of May.

85 (3) For a business which has not been in existence for a  
86 full calendar year, the total tax due from the business during  
87 the prior calendar year shall be divided by the number of  
88 months, including fractions of a month, that it was in  
89 business during the prior calendar year; and if that amount  
90 exceeds \$100,000, the tax attributable to the first fifteen days  
91 of June each year shall be remitted ~~on or before~~ by June 20  
92 as provided in subdivision (2) of this subsection.

93 (4) When a taxpayer required to make an advanced  
94 payment of tax under subdivision (1) of this subsection  
95 makes out its return for the month of June, which is due ~~on~~

96 by July 20, the taxpayer may claim as a credit against liability  
97 under this article for tax on taxable transactions during the  
98 month of June the amount of the advanced payment of tax  
99 made under subdivision (1) of this subsection.

## **ARTICLE 21. PERSONAL INCOME TAX.**

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

1 (a) *General.* – Every employer required to deduct and  
2 withhold tax under this article shall, for each calendar  
3 quarter, on or before the last day of the month following the  
4 close of the calendar quarter, file a withholding return as  
5 prescribed by the Tax Commissioner and pay over to the Tax  
6 Commissioner the taxes required to be deducted and  
7 withheld. Where the average quarterly amount deducted and  
8 withheld by any employer is less than \$150 and the aggregate  
9 for the calendar year can reasonably be expected to be less  
10 than \$600, the Tax Commissioner may by ~~regulation~~ rule

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

30           (b) *Monthly returns and payments of withheld tax ~~on and~~*  
31 *after ~~January 1, 2001~~ December 31, 2000.* – Notwithstanding  
32 the provisions of subsection (a) of this section, ~~on and~~ after  
33 ~~January 1, 2001~~ December 31, 2000, every employer  
34 required to deduct and withhold tax under this article shall,  
35 for each of the first eleven months of the calendar year, ~~on or~~  
36 ~~before~~ by the twentieth day of the succeeding month, and for  
37 the last calendar month of the year, ~~on or before~~ by the last  
38 day of the succeeding month, file a withholding return as  
39 prescribed by the Tax Commissioner and pay over to the Tax  
40 Commissioner the taxes required to be deducted and  
41 withheld, if the withheld taxes aggregate \$250 or more for  
42 the month, except any employer with respect to whom the  
43 Tax Commissioner may have by ~~regulation~~ rule provided  
44 otherwise in accordance with the provisions of subsection (a)  
45 of this section. Notwithstanding the provisions of this  
46 subsection, ~~on and after January 1, 2009~~ December 31, 2008,  
47 every employer required to deduct and withhold tax under  
48 this article shall file a withholding return as prescribed by the

49 Tax Commissioner and pay over to the Tax Commissioner  
50 the taxes required to be deducted and withheld. The due  
51 dates for returns and payments shall be established by the  
52 Tax Commissioner to match as closely as practicable the due  
53 dates in effect for federal income tax purposes, in accordance  
54 with the procedures established by the Internal Revenue  
55 Service pursuant to Section 3402 of the Internal Revenue  
56 Code.

57 (c) *Annual returns and payments of withheld tax of*  
58 *certain domestic and household employees.* – Employers of  
59 domestic and household employees whose withholdings of  
60 federal income tax are annually paid and reported by the  
61 employer pursuant to the filing of Schedule H of federal form  
62 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,  
63 on or before January 31 next succeeding the end of the  
64 calendar year for which withholdings are deducted and  
65 withheld, file an annual withholding return with the Tax  
66 Commissioner and annually remit to the Tax Commissioner  
67 West Virginia personal income taxes deducted and withheld

68 for the employees. The Tax Commissioner may promulgate  
69 legislative or other rules pursuant to article three, chapter  
70 twenty-nine-a of this code for implementation of this  
71 subsection. Notwithstanding the provisions of this  
72 subsection, ~~on or after January 1, 2009~~ December 31, 2008,  
73 every employer required to deduct and withhold tax under  
74 this article shall file a withholding return as prescribed by the  
75 Tax Commissioner and pay over to the Tax Commissioner  
76 the taxes required to be deducted and withheld. The due  
77 dates for annual returns and payments shall be established by  
78 the Tax Commissioner to match as closely as practicable the  
79 due dates in effect for federal income tax purposes in  
80 accordance with the procedures established by the Internal  
81 Revenue Service pursuant to Section 3402 of the Internal  
82 Revenue Code.

83 (d) *Deposit in trust for Tax Commissioner.* – Whenever  
84 any employer fails to collect, truthfully account for or pay  
85 over the tax, or to make returns of the tax as required in this  
86 section, the Tax Commissioner may serve a notice requiring

87 the employer to collect the taxes which become collectible  
88 after service of the notice, to deposit the taxes in a bank  
89 approved by the Tax Commissioner, in a separate account, in  
90 trust for and payable to the Tax Commissioner and to keep  
91 the amount of the tax in the separate account until payment  
92 over to the Tax Commissioner. The notice ~~shall remain~~  
93 remains in effect until a notice of cancellation is served by  
94 the Tax Commissioner.

95 (e) *Accelerated payment.* – (1) Notwithstanding the  
96 provisions of subsections (a) and (b) of this section, for  
97 calendar years beginning after December 31, 1990, every  
98 employer required to deduct and withhold tax whose average  
99 payment per calendar month for the preceding calendar year  
100 under subsection (b) of this section exceeded \$100,000 shall  
101 remit the tax attributable to the first fifteen days of June each  
102 year ~~on or before~~ by June 23: *Provided*, That ~~on and~~ after  
103 ~~June 1, May 31, 2007~~, the provisions of this subsection that  
104 require the accelerated payment ~~on or before~~ by June 23 of  
105 the tax imposed by this article are no longer effective and any

106 tax due and owing ~~shall be~~ is payable in accordance with  
107 subsection (a) of this section: Provided, however, That  
108 after June 30, 2014, the provisions of this subsection that  
109 require the accelerated payment by June 23 of the tax  
110 imposed by this article become effective again and any  
111 such tax due and owing is payable in accordance with this  
112 subsection.

113 (2) For purposes of complying with subdivision (1) of  
114 this subsection, the employer shall remit an amount equal  
115 to the withholding tax due under this article on employee  
116 compensation subject to withholding tax payable or paid to  
117 employees for the first fifteen days of June or, at the  
118 employer's election, the employer may remit an amount  
119 equal to fifty percent of the employer's liability for  
120 withholding tax under this article on compensation payable  
121 or paid to employees for the preceding month of May.

122 (3) For an employer which has not been in business for  
123 a full calendar year, the total amount the employer was  
124 required to deduct and withhold under subsection (b) of

125 this section for the prior calendar year shall be divided by  
126 the number of months, including fractions of a month, that  
127 it was in business during the prior calendar year and if that  
128 amount exceeds \$100,000, the employer shall remit the tax  
129 attributable to the first fifteen days of June each year ~~on or~~  
130 ~~before~~ by June 23, as provided in subdivision (2) of this  
131 subsection.

132 (4) When an employer required to make an advanced  
133 payment of withholding tax under subdivision (1) of this  
134 subsection makes out its return for the month of June,  
135 which is due ~~on~~ by July 20, that employer may claim as a  
136 credit against its liability under this article for tax on  
137 employee compensation paid or payable for employee  
138 services rendered during the month of June the amount of  
139 the advanced payment of tax made under subdivision (1) of  
140 this subsection.

141 (f) The amendments to this section enacted in the year  
142 2006 are effective for tax years beginning ~~on or~~ after  
143 ~~January 1, 2006~~ December 31, 2005.

144 (g) An annual reconciliation of West Virginia personal  
145 income tax withheld shall be submitted by the employer ~~on~~  
146 ~~or before~~ by February 28 following the close of the  
147 calendar year, together with Tax Division copies of all  
148 withholding tax statements for that preceding calendar  
149 year. The reconciliation shall be accompanied by a list of  
150 the amounts of income withheld for each employee in such  
151 form as the Tax Commissioner prescribes and shall be filed  
152 separately from the employer's monthly or quarterly return.

153 (h) Any employer required to file a withholding return  
154 for two hundred fifty or more employees shall file its return  
155 using electronic filing as defined in section fifty-four of  
156 this article: *Provided*, That for any tax period beginning ~~on~~  
157 ~~or after January 1, 2011,~~ December 31, 2010, any employer  
158 with fifty or more employees shall file its return using  
159 electronic filing as defined in section fifty-four of this  
160 article. An employer that is required to file electronically  
161 but does not do so is subject to a penalty in the amount of  
162 \$25 per employee for whom the return was not filed

163 electronically, unless the employer shows that the failure  
164 is due to a technical inability to comply.

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(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.)