

Senate Bill No. 331

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

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

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.

(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.)