

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

## **Senate Bill 338**

BY SENATORS BLAIR AND BOSO

[Introduced January 22, 2018; Referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating  
2 generally to employer withholding taxes; changing due date for employers to file annual  
3 reconciliation and withholding statements with Tax Commissioner to January 31; requiring  
4 certain employers to file withholding return information electronically with the Tax  
5 Commissioner; and deleting obsolete language.

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

**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 withhold tax under this article shall  
2 for each calendar quarter, on or before the last day of the month following the close of the calendar  
3 quarter, ~~file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax~~  
4 ~~Commissioner the taxes required to be deducted and withheld. Where the average quarterly~~  
5 ~~amount deducted and withheld by any employer is less than \$150 and the aggregate for the~~  
6 ~~calendar year can reasonably be expected to be less than \$600, the Tax Commissioner may by~~  
7 ~~rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes~~  
8 ~~deducted and withheld on or before the last day of the month following the close of the calendar~~  
9 ~~year. The Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to~~  
10 ~~article three, chapter twenty-nine-a of this code, change the minimum amounts established by~~  
11 ~~this subsection. The Tax Commissioner may, if he or she determines necessary for the protection~~  
12 ~~of the revenues, require any employer to make the return and pay to him or her the tax deducted~~  
13 ~~and withheld at any time or from time to time. Notwithstanding the provisions of this subsection,~~  
14 ~~after December 31, 2008, every employer required to deduct and withhold tax under this article~~  
15 ~~shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax~~  
16 ~~Commissioner the taxes required to be deducted and withheld, in accordance with the procedures~~  
17 ~~established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue~~

18 Code.

19 ~~(b) Monthly returns and payments of withheld tax after December 31, 2000.--~~

20 Notwithstanding the provisions of subsection (a) of this section, after December 31, 2000,  
21 every employer required to deduct and withhold tax under this article shall, for each of the first  
22 eleven months of the calendar year, by the twentieth day of the succeeding month, and for the  
23 last calendar month of the year, by the last day of the succeeding month, file a withholding return  
24 as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required  
25 to be deducted and withheld, if the withheld taxes aggregate \$ 250 or more for the month, except  
26 any employer with respect to whom the Tax Commissioner may have by rule provided otherwise  
27 in accordance with the provisions of subsection (a) of this section. Notwithstanding the provisions  
28 of this subsection, after December 31, 2008, every employer required to deduct and withhold tax  
29 under this article shall file a withholding return as prescribed by the Tax Commissioner and pay  
30 over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for  
31 returns and payments shall be established by the Tax Commissioner to match as closely as  
32 practicable the due dates in effect for federal income tax purposes, in accordance with the  
33 procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal  
34 Revenue Code except as otherwise provided in this section: *Provided*, That not later than January  
35 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax  
36 Commissioner the annual reconciliation of West Virginia income tax withheld, together with state  
37 copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not  
38 limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding  
39 calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year  
40 ending on December 31 or a fiscal tax year ending on a date other than December 31.  
41 Notwithstanding the provisions of this section, where the average quarterly amount deducted and  
42 withheld by any employer is less than \$150 and the aggregate for the calendar year can  
43 reasonably be expected to be less than \$600, the Tax Commissioner may by rule permit an

44 employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and  
45 withheld on or before the last day of the month following the close of the calendar year.

46 ~~(e)~~ (b) *Annual returns and payments of withheld tax of certain domestic and household*  
47 *employees.* — Employers of domestic and household employees whose withholdings of federal  
48 income tax are annually paid and reported by the employer pursuant to the filing of Schedule H  
49 of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 ~~may~~ shall, on or before  
50 January 31 next succeeding the end of the calendar year for which withholdings are deducted  
51 and withheld, file an annual withholding return with the Tax Commissioner, and annually remit to  
52 the Tax Commissioner, West Virginia personal income taxes deducted and withheld for the  
53 employees together with state copies of all withholding tax statements reflecting West Virginia tax  
54 withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee  
55 or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may  
56 have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than  
57 December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-  
58 3-1 *et seq.* this code for implementation of this subsection. ~~Notwithstanding the provisions of this~~  
59 ~~subsection, after December 31, 2008, every employer required to deduct and withhold tax under~~  
60 ~~this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to~~  
61 ~~the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns~~  
62 ~~and payments shall be established by the Tax Commissioner to match as closely as practicable~~  
63 ~~the due dates in effect for federal income tax purposes, in accordance with the procedures~~  
64 ~~established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue~~  
65 ~~Code~~

66 ~~(d)~~ (c) *Deposit in trust for Tax Commissioner.* — Whenever any employer fails to collect,  
67 truthfully account for, or pay over the tax, or to make returns of the tax as required in this section,  
68 the Tax Commissioner may serve a notice requiring the employer to collect the taxes which  
69 become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax

70 Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to  
71 keep the amount of the tax in the separate account until payment over to the Tax Commissioner.  
72 The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

73 ~~(e)~~ (d) *Accelerated payment.* —

74 (1) ~~Notwithstanding the provisions of subsections (a) and (b) of this section, after June 30,~~  
75 ~~2014, every~~ Every employer required to deduct and withhold tax whose average payment per  
76 calendar month for the preceding calendar year under ~~subsection (b)~~ §11-21-74(a) of this code  
77 exceeded \$100,000 shall remit the tax attributable to the first 15 days of June each year by June  
78 23.

79 (2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit  
80 an amount equal to the withholding tax due under this article on employee compensation subject  
81 to withholding tax payable or paid to employees for the first ~~fifteen~~ 15 days of June or, at the  
82 employer's election, the employer may remit an amount equal to ~~fifty~~ 50 percent of the employer's  
83 liability for withholding tax under this article on compensation payable or paid to employees for  
84 the preceding month of May.

85 (3) For an employer which has not been in business for a full calendar year, the total  
86 amount the employer was required to deduct and withhold under ~~subsection (b)~~ §11-21-74(a) of  
87 this code for the prior calendar year shall be divided by the number of months, including fractions  
88 of a month, that it was in business during the prior calendar year and if that amount exceeds  
89 \$100,000, the employer shall remit the tax attributable to the first ~~fifteen~~ 15 days of June each  
90 year by June 23, as provided in §11-21-74(d)(2) of this code.

91 (4) When an employer required to make an advanced payment of withholding tax under  
92 §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20,  
93 that employer may claim as a credit against its liability under this article for tax on employee  
94 compensation paid or payable for employee services rendered during the month of June the  
95 amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

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

98 ~~(g)~~ (e) An annual reconciliation of West Virginia personal income tax withheld shall be  
99 submitted by the employer by ~~February 28~~ January 31, following the close of the calendar year,  
100 together with Tax Division copies of all withholding tax statements for that preceding calendar  
101 year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each  
102 employee in such form as the Tax Commissioner prescribes and shall be filed separately from  
103 the employer's monthly or quarterly return.

104 ~~(h)~~ (f) Any employer required to file a withholding return for ~~two hundred fifty or more~~  
105 ~~employees shall file its return using electronic filing as defined in section fifty-four of this article:~~  
106 ~~Provided, That for any tax period beginning after December 31, 2010, any employer with 50 or~~  
107 ~~more employees shall file its return using electronic filing as defined in section fifty-four~~ §11-21-  
108 54 of this article code: Provided, That for any tax period beginning after December 31, 2017, any  
109 employer that uses a payroll service or is required to file a withholding return for 25 or more  
110 employees shall file its return using electronic filing as defined in §11-21-54 of this code. An  
111 employer that is required to file electronically but does not do so is subject to a penalty in the  
112 amount of \$25 per employee for whom the return was not filed electronically, unless the employer  
113 shows that the failure is due to a technical inability to comply.

NOTE: The purpose of this bill is to change the due date for employers to file their annual reconciliation and withholding statements with the Tax Commissioner to January 31, which date is consistent with the date by which employers must file their annual employer withholding reconciliation statements with the Internal Revenue Service; and to require more employers to file withholding return information electronically with the Tax Commissioner. Additionally, obsolete language would be deleted from the current law.

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