

J

SB 626

FILED

2006 APR -3 P 4: 14

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 626

(By Senators Helmick and Minard)

PASSED March 9, 2006

In Effect 90 days from Passage

FILED

2006 APR -3 P 4: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 626

(BY SENATORS HELMICK AND MINARD)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating to personal income tax; requiring employers to submit copy of employee's withholding statement with an annual reconciliation of income tax withheld; and requiring employer with two hundred fifty or more employees to submit withholding statements electronically.

Be it enacted by the Legislature of West Virginia:

That §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 employers.

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
4 the close of such calendar quarter, file a withholding
5 return as prescribed by the Tax Commissioner and pay
6 over to the Tax Commissioner the taxes so required to be
7 deducted and withheld. Where the average quarterly
8 amount so deducted and withheld by any employer is less
9 than one hundred fifty dollars and the aggregate for the
10 calendar year can reasonably be expected to be less than
11 six hundred dollars, the Tax Commissioner may by
12 regulation permit an employer to file an annual return and
13 pay over to the Tax Commissioner the taxes deducted and
14 withheld on or before the last day of the month following
15 the close of the calendar year: *Provided*, That the Tax
16 Commissioner may, by nonemergency legislative rules
17 promulgated pursuant to article three, chapter twenty-
18 nine-a of this code, change the minimum amounts estab-
19 lished by this subsection. The Tax Commissioner may, if
20 he or she believes such action necessary for the protection
21 of the revenues, require any employer to make the return
22 and pay to him or her the tax deducted and withheld at
23 any time, or from time to time.

24 (b) *Monthly returns and payments of withheld tax on*
25 *and after the first day of January, two thousand one.* -
26 Notwithstanding the provisions of subsection (a) of this
27 section, on and after the first day of January, two thou-
28 sand one, every employer required to deduct and withhold
29 tax under this article shall, for each of the first eleven
30 months of the calendar year, on or before the twentieth
31 day of the succeeding month and for the last calendar
32 month of the year, on or before the last day of the succeed-
33 ing month, file a withholding return as prescribed by the
34 Tax Commissioner and pay over to the Tax Commissioner
35 the taxes so required to be deducted and withheld, if such
36 withheld taxes aggregate two hundred fifty dollars or
37 more for the month, except any employer with respect to
38 whom the Tax Commissioner may have by regulation

39 provided otherwise in accordance with the provisions of
40 subsection (a) of this section.

41 (c) *Annual returns and payments of withheld tax of*
42 *certain domestic and household employees.* – Employers
43 of domestic and household employees whose withholdings
44 of federal income tax are annually paid and reported by
45 the employer pursuant to the filing of Schedule H of
46 federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS
47 or 1041 may, on or before the thirty-first day of January
48 next succeeding the end of the calendar year for which
49 withholdings are deducted and withheld, file an annual
50 withholding return with the Tax Commissioner and
51 annually remit to the Tax Commissioner West Virginia
52 personal income taxes deducted and withheld for the
53 employees. The Tax Commissioner may promulgate
54 legislative or other rules pursuant to article three, chapter
55 twenty-nine-a of this code for implementation of this
56 subsection.

57 (d) *Deposit in trust for Tax Commissioner.* – Whenever
58 any employer fails to collect, truthfully account for, or pay
59 over the tax, or to make returns of the tax as required in
60 this section, the Tax Commissioner may serve a notice
61 requiring the employer to collect the taxes which become
62 collectible after service of the notice, to deposit the taxes
63 in a bank approved by the Tax Commissioner, in a sepa-
64 rate account, in trust for and payable to the Tax Commis-
65 sioner, and to keep the amount of the tax in the separate
66 account until payment over to the Tax Commissioner. The
67 notice shall remain in effect until a notice of cancellation
68 is served by the Tax Commissioner.

69 (e) *Accelerated payment.* – (1) Notwithstanding the
70 provisions of subsections (a) and (b) of this section, for
71 calendar years beginning after the thirty-first day of
72 December, one thousand nine hundred ninety, every
73 employer required to deduct and withhold tax whose
74 average payment per calendar month for the preceding
75 calendar year under subsection (b) of this section exceeded

76 one hundred thousand dollars shall remit the tax attribut-
77 able to the first fifteen days of June each year on or before
78 the twenty-third day of June.

79 (2) For purposes of complying with subdivision (1) of this
80 subsection, the employer shall remit an amount equal to
81 the withholding tax due under this article on employee
82 compensation subject to withholding tax payable or paid
83 to employees for the first fifteen days of June or, at the
84 employer's election, the employer may remit an amount
85 equal to fifty percent of the employer's liability for
86 withholding tax under this article on compensation
87 payable or paid to employees for the preceding month of
88 May.

89 (3) For an employer which has not been in business for
90 a full calendar year, the total amount the employer was
91 required to deduct and withhold under subsection (b) of
92 this section for the prior calendar year shall be divided by
93 the number of months, including fractions of a month, that
94 it was in business during the prior calendar year, and if
95 that amount exceeds one hundred thousand dollars, the
96 employer shall remit the tax attributable to the first
97 fifteen days of June each year on or before the twenty-
98 third day of June, as provided in subdivision (2) of this
99 subsection.

100 (4) When an employer required to make an advanced
101 payment of withholding tax under subdivision (1) of this
102 subsection makes out its return for the month of June,
103 which is due on the twentieth day of July, that employer
104 may claim as a credit against its liability under this article
105 for tax on employee compensation paid or payable for
106 employee services rendered during the month of June the
107 amount of the advanced payment of tax made under
108 subdivision (1) of this subsection.

109 (f) The amendments to this section enacted in the year
110 two thousand six are effective for tax years beginning on
111 or after the first day of January, two thousand six.

112 (g) An annual reconciliation of West Virginia personal
113 income tax withheld shall be submitted by the employer
114 on or before the twenty-eighth day of February following
115 the close of the calendar year, together with Tax Division
116 copies of all withholding tax statements for that preceding
117 calendar year. The reconciliation shall be accompanied by
118 a list of the amounts of income withheld for each employee
119 in such form as the Tax Commissioner prescribes and shall
120 be filed separately from the employer's monthly or quar-
121 terly return.

122 (h) Any employer required to file a withholding return
123 for two hundred fifty or more employees shall file its
124 return using electronic filing as defined in section fifty-
125 four of this article. An employer that is required to file
126 electronically but does not do so is subject to a penalty in
127 the amount of twenty-five dollars per employee for whom
128 the return was not filed electronically, unless the employer
129 shows that the failure is due to reasonable cause and not
130 due to willful neglect.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *April* 2006.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 3 0 2006

Time 12:15pm