

SB 331

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

Senate Bill No. 331

(BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED MARCH 5, 2014; IN EFFECT FROM PASSAGE.]

FILED
2014 MAR 28 A 10:23
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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[Passed March 5, 2014; in effect from passage.]

AN ACT 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
- 2 in subsection (b) of this section, the taxes levied by this
- 3 article are due and payable in monthly installments, on or
- 4 before the twentieth day of the month next succeeding the

month in which the tax accrued, except as otherwise provided
6 in this article.

(b) Combined return required. –

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (g) *Accelerated payment.* –

61 (1) Notwithstanding any other provision of this code to
62 the contrary, after June 30, 2014, taxpayers whose average
63 monthly payment of the taxes levied by this article and article
64 fifteen-a of this chapter during the previous calendar year
65 exceeds \$100,000 shall remit the tax attributable to the first
66 fifteen days of June each year by June 20.

67 (2) For purposes of complying with subdivision (1) of
68 this subsection, the taxpayer shall remit an amount equal to
69 the amount of tax imposed by this article and article fifteen-a
70 of this chapter on actual taxable sales of tangible personal
71 property and custom software and sales of taxable services
72 during the first fifteen days of June or, at the taxpayer's
73 election, the taxpayer may remit an amount equal to fifty
74 percent of the taxpayer's liability for tax under this article on
75 taxable sales of tangible personal property and custom
76 software and sales of taxable services made during the
77 preceding month of May.

78 (3) For a business which has not been in existence for a
79 full calendar year, the total tax due from the business during
80 the prior calendar year shall be divided by the number of
81 months, including fractions of a month, that it was in business
82 during the prior calendar year; and if that amount exceeds
83 \$100,000, the tax attributable to the first fifteen days of June
84 each year shall be remitted by June 20 as provided in
85 subdivision (2) of this subsection.

86 (4) When a taxpayer required to make an advanced
87 payment of tax under subdivision (1) of this subsection
88 makes out its return for the month of June, which is due by
89 July 20, the taxpayer may claim as a credit against liability
90 under this article for tax on taxable transactions during the
91 month of June the amount of the advanced payment of tax
92 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 rule permit an
11 employer to file an annual return and pay over to the Tax
12 Commissioner the taxes deducted and withheld on or before
13 the last day of the month following the close of the calendar
14 year. The Tax Commissioner may, by nonemergency
15 legislative rules promulgated pursuant to article three, chapter
16 twenty-nine-a of this code, change the minimum amounts
17 established by this subsection. The Tax Commissioner may,
18 if he or she determines necessary for the protection of the
19 revenues, require any employer to make the return and pay to
20 him or her the tax deducted and withheld at any time or from
21 time to time. Notwithstanding the provisions of this
22 subsection, after December 31, 2008, every employer
23 required to deduct and withhold tax under this article shall
24 file a withholding return as prescribed by the Tax
25 Commissioner and pay over to the Tax Commissioner the
26 taxes required to be deducted and withheld, in accordance
27 with the procedures established by the Internal Revenue
28 Service pursuant to Section 3402 of the Internal Revenue
29 Code.

30 **(b) *Monthly returns and payments of withheld tax after***
31 ***December 31, 2000.*** – Notwithstanding the provisions of
32 subsection (a) of this section, after December 31, 2000, every
33 employer required to deduct and withhold tax under this
34 article shall, for each of the first eleven months of the
35 calendar year, by the twentieth day of the succeeding month,
36 and for the last calendar month of the year, by the last day of
37 the succeeding month, file a withholding return as prescribed
38 by the Tax Commissioner and pay over to the Tax
39 Commissioner the taxes required to be deducted and
40 withheld, if the withheld taxes aggregate \$250 or more for the
41 month, except any employer with respect to whom the Tax
42 Commissioner may have by rule provided otherwise in
43 accordance with the provisions of subsection (a) of this
44 section. Notwithstanding the provisions of this subsection,
45 after December 31, 2008, every employer required to deduct
46 and withhold tax under this article shall file a withholding
47 return as prescribed by the Tax Commissioner and pay over
48 to the Tax Commissioner the taxes required to be deducted
49 and withheld. The due dates for returns and payments shall
50 be established by the Tax Commissioner to match as closely
51 as practicable the due dates in effect for federal income tax
52 purposes, in accordance with the procedures established by
53 the Internal Revenue Service pursuant to Section 3402 of the
54 Internal Revenue Code.

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

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

80 (d) *Deposit in trust for Tax Commissioner.* – Whenever
81 any employer fails to collect, truthfully account for or pay
82 over the tax, or to make returns of the tax as required in this
83 section, the Tax Commissioner may serve a notice requiring
84 the employer to collect the taxes which become collectible
85 after service of the notice, to deposit the taxes in a bank
86 approved by the Tax Commissioner, in a separate account, in
87 trust for and payable to the Tax Commissioner and to keep
88 the amount of the tax in the separate account until payment
89 over to the Tax Commissioner. The notice remains in effect
90 until a notice of cancellation is served by the Tax
91 Commissioner.

92 (e) *Accelerated payment.* – (1) Notwithstanding the
93 provisions of subsections (a) and (b) of this section, after
94 June 30, 2014, every employer required to deduct and
95 withhold tax whose average payment per calendar month for
96 the preceding calendar year under subsection (b) of this
97 section exceeded \$100,000 shall remit the tax attributable to
98 the first fifteen days of June each year by June 23.

99 (2) For purposes of complying with subdivision (1) of
100 this subsection, the employer shall remit an amount equal to
101 the withholding tax due under this article on employee
102 compensation subject to withholding tax payable or paid to
103 employees for the first fifteen days of June or, at the
104 employer's election, the employer may remit an amount equal
105 to fifty percent of the employer's liability for withholding tax
106 under this article on compensation payable or paid to
107 employees for the preceding month of May.

108 (3) For an employer which has not been in business for a
109 full calendar year, the total amount the employer was
110 required to deduct and withhold under subsection (b) of this
111 section for the prior calendar year shall be divided by the
112 number of months, including fractions of a month, that it was
113 in business during the prior calendar year and if that amount
114 exceeds \$100,000, the employer shall remit the tax
115 attributable to the first fifteen days of June each year by June
116 23, as provided in subdivision (2) of this subsection.

117 (4) When an employer required to make an advanced
118 payment of withholding tax under subdivision (1) of this
119 subsection makes out its return for the month of June, which
120 is due by July 20, that employer may claim as a credit against
121 its liability under this article for tax on employec
122 compensation paid or payable for employee services rendered
123 during the month of June the amount of the advanced
124 payment of tax made under subdivision (1) of this subsection.

125 (f) The amendments to this section enacted in the year
126 2006 are effective for tax years beginning after December 31,
127 2005.

128 (g) An annual reconciliation of West Virginia personal
129 income tax withheld shall be submitted by the employer by
130 February 28 following the close of the calendar year, together

131 with Tax Division copies of all withholding tax statements
132 for that preceding calendar year. The reconciliation shall be
133 accompanied by a list of the amounts of income withheld for
134 each employee in such form as the Tax Commissioner
135 prescribes and shall be filed separately from the employer's
136 monthly or quarterly return.

137 (h) Any employer required to file a withholding return for
138 two hundred fifty or more employees shall file its return
139 using electronic filing as defined in section fifty-four of this
140 article: *Provided*, That for any tax period beginning after
141 December 31, 2010, any employer with fifty or more
142 employees shall file its return using electronic filing as
143 defined in section fifty-four of this article. An employer that
144 is required to file electronically but does not do so is subject
145 to a penalty in the amount of \$25 per employee for whom the
146 return was not filed electronically, unless the employer shows
147 that the failure is due to a technical inability to comply.

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

[Signature]
.....
Member ~~Chairman~~ Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

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

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

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

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2014 MAR 28 A 10: 23

FILED

The within *is* *approved* this
the *28th* Day of *March*, 2014.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 pm