WEST VIRGINIA CODE: §11-10-15

§11-10-15. Limitations on assessment.

(a) General rule. — The amount of any tax, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing): Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return was filed, the assessment may be made at any time: Provided, however, That if a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's state or federal income tax return, an assessment may be made at any time not later than six years after the due date of the return required under §11-21-1 et seq., or §11-24-1 et seq., or §11-21A-1 et seq. of this code for the same taxable year or after such return was filed, or not later than three years after an amended return is filed, whichever is later.

(b) Time return deemed filed. —

(1) Early return. — For purposes of this section, a return filed before the last day prescribed by law, or by rules promulgated by the Tax Commissioner for filing thereof, shall be considered as filed on such last date;

(2) Returns executed by Tax Commissioner. — The execution of a return by the Tax Commissioner pursuant to the authority conferred by §11-10-5c of this code shall not start the running of the period of limitations on assessment and collection.

(c) Exceptions. — Notwithstanding subsection (a) of this section:

(1) Extension by agreement. — The Tax Commissioner and the taxpayer may enter into written agreements to extend the period within which the Tax Commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon;

(2) Deficiency in federal tax. — Notwithstanding subsection (a) of this section, in the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation, upon assessment of a deficiency reflecting such final determinations in the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, may not expire until 90 days after the Tax Commissioner is advised of the determination by the taxpayer as provided in §11-21-59 and §11-24-20 of this code, or until the period of limitations upon assessment provided in subsection (a) of this section has expired, whichever

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expires the later, and regardless of the tax year of the deficiency;

(3) Special rule for certain amended returns. — Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax for any taxable year would otherwise expire, the Tax Commissioner receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Tax Commissioner receives such document;

(4) Net operating loss or capital loss carrybacks. — In the case of a deficiency attributable the application by the taxpayer of a net operating loss carryback or a capital loss carryback (including that attributable to a mathematical or clerical error in application of the loss carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed;

(5) Certain credit carrybacks. — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term "credit carryback" means any carryback allowed under §5E-1-8 of this code;

(6) Overpayment of tax credited against payment of another tax. — In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered under this article, the period of limitation upon assessment of a deficiency in the payment of such other tax due to the overstating of the allowable credit, may not expire until 90 days after the Tax Commissioner receives written notice from the taxpayer advising the Tax Commissioner of the final determination reducing the taxpayer's liability for a tax allowed as a credit against a tax administered under this article, or until the period of limitations upon assessment provided in subsection (a) of this section has expired, whichever expires the later, and regardless of the tax year of the deficiency.

(d) Cases under bankruptcy code. — The running of limitations provided in subsection (a) of this section, on the making of assessments, or provided in §11-10-16 of this code, on collection, shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Tax Commissioner is prohibited by reason of such case from making the assessment or from collecting the tax and:

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(1) For assessment, 60 days thereafter; and

(2) For collection, six months thereafter.

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