WEST VIRGINIA CODE: §11-10-18

§11-10-18. Additions to tax.

(a) Failure to file tax return or pay tax due. --

(1) In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That the addition to tax shall be imposed only on the net amount of tax due;

(3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in paragraph (1) which is not so shown within fifteen days of the date of notice and demand therefore, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That this addition to tax shall be imposed only on the net amount of tax due.

(b) Limitation and special rule. --

(1) Additions under more than one paragraph:

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2);

(B) With respect to any return, the maximum amount of the addition permitted under

WV Legislature

paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.

(2) Amount of tax shown more than amount required to be shown. -- If the correct amount of tax due is less than the amount shown on the return, paragraphs (1) and (2) of subsection (a) shall only apply to the lower amount.

(3) Exception for estimated tax. -- Subsection (a) shall not apply to any failure to pay any estimated tax.

(c) Negligence or intentional disregard of rules and regulations. -- If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: Provided, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided in subsection (a), and the Tax Commissioner shall state in his or her notice of assessment the reason or reasons for imposing this addition to tax with sufficient particularity to put the taxpayer on notice regarding why it was assessed.

(d) False or fraudulent return. -- In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the Tax Commissioner. In the case of a joint personal income tax return under article twenty-one of this chapter, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse.

(e) Additions to tax treated as tax. -- Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.

(f) Penalties for promoting abusive tax shelters and for failure to report listed transactions. --

(1) A penalty is hereby imposed on every person who engages in activities promoting abusive tax shelters described in Section 6700(a) of the Internal Revenue Code of 1986, or any subsequent corresponding provisions of the Internal Revenue Code, as from time to time amended, and who is subject to a penalty imposed thereunder, whether or not such penalty has been imposed, where such activities affect tax returns required to be filed with the Tax Commissioner. The amount of the penalty imposed hereunder shall be equal to fifty percent of the gross income derived from activities by such person which are subject to that penalty

WV Legislature

under paragraph (2)(A) of said section 6700(a) for making a false or fraudulent statement; and shall be the lesser of $1,000 or one hundred percent of such gross income when the activity is subject to that penalty under paragraph (1) of said section 6700(a).

(2) For audits of returns commencing on or after July 1, 2006, when it appears that any part of the deficiency for which an assessment is made is due to failure to disclose a listed transaction or a reportable transaction other than a listed transaction, as the terms are defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding provision of the Internal Revenue Code, as from time to time amended, on the taxpayer's federal income tax return, there shall be imposed a penalty. In the case of a listed transaction the amount of the penalty shall be equal to seventy percent of the amount of the deficiency, and in the case of other reportable transactions the amount of the penalty shall be equal to thirty-five percent of the amount of the deficiency.

(g) Coordination with other penalties. -- Unless provided otherwise by rules, the penalties imposed by this section are in addition to any other penalty imposed by this article or article ten-e of this chapter.

WV Legislature