WEST VIRGINIA CODE: §11-10-18A

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

(a) Additions to tax. -- Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under article twenty-one, twenty-three or twenty-four of this chapter, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) Amount of underpayment. -- For purposes of subsection (a) of this section, the amount of the underpayment shall be the excess of the amount determined under subdivision (1) of this subsection over the amount determined under subdivision (2) of this subsection.

(1) The amount of the installment required to be paid on or before the due date for the installment, if the estimated tax due for the taxable year were an amount equal to ninety percent of the tax shown on the annual return for the taxable year divided by the number of installments taxpayer was required to make for the taxable year, or, if no return was filed, ninety percent of the tax for such year divided by the number of installment payments taxpayer was required to make for the taxable year.

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment of that installment.

(c) Period of underpayment. -- The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Exception. -- Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

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(1) Prior year's tax. -- One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;

(2) Annualized tax. -- In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision, there shall be four required installments for each taxable year and the "annualized income installment" is the difference (if any) determined by subtracting the amount determined under paragraph (B) of this subdivision from the amount determined under the appropriate clause of paragraph (A) of this subdivision. When making these computations, the rules in paragraph (C) of this subdivision shall be followed:

(A) (i) Corporations. -- An amount equal to the applicable percentage of the tax of a corporation for the taxable year computed by placing on an annualized basis its taxable income:

(I) For the first three months of the taxable year, in the case of the first installment;

(II) For the first three months of or the first five months of the taxable year, in the case of the second installment;

(III) For the first six months or the first eight months of the taxable year, in the case of the third installment; and

(IV) For the first nine months or for the first eleven months of the taxable year, in the case of the fourth installment.

(ii) Individuals. -- An amount equal to the applicable percentage of the tax of an individual for the taxable year computed by placing on an annualized basis the taxable income of the individual for months in the taxable year ending before the due date for the installment.

(B) The aggregate amount of any prior required installments for the taxable year.

(C) Special rules. -- For purposes of this subdivision:

(i) Annualization. -- Taxpayer's taxable income shall be placed on an annualized basis in the same manner that taxable income is annualized for federal income tax purposes for the taxable year.

(ii) Applicable percentage. -- The applicable percentage shall be determined from the following table:

In the case of the following The applicable

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required installments: percentage is:

1st 22.5

2nd 45

3rd 67.5

4th 90

(e) Additional exceptions. --

(1) Where tax amount is small. -- No addition to tax shall be imposed under subsection (a) of this section for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable for withheld tax, is less than $600.

(2) Where individual has no personal income tax liability for preceding taxable year. -- No addition to tax shall be imposed under subsection (a) of this section for any taxable year if:

(A) The individual's preceding taxable year was a taxable year of twelve months;

(B) The individual did not have any West Virginia personal income tax liability for the preceding taxable year;

(C) The individual was a citizen or resident of the United States throughout the preceding taxable year; and

(D) The individual's West Virginia personal income tax liability for the current taxable year is less than $5,000.

(3) Waiver in certain cases. -- No addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment if and to the extent the Tax Commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax computed after application of credits against tax. -- For purposes of this section, the term "tax" means the amount of any annual tax or fee administered under this article that is generally payable in two or more installment payments during the taxable year, minus the amount of credits allowable against such tax or fee, other than taxes withheld from the taxpayer under section seventy-one or seventy-one-a, article twenty-one of this chapter (relating to taxes withheld on wages, or from distributions of pass-through income to nonresident partners, S corporation shareholders or beneficiaries of an estate or trust).

(g) Application of section in case of personal income tax withheld on wages. --

(1) In general. -- For purposes of applying this section, the amount of the credit allowed

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under section seventy-one, article twenty-one of this chapter, for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed to have been paid on each installment payment due date for such taxable year, unless the taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application. -- The taxpayer may apply subdivision (1) of this subsection separately with respect to:

(A) Wage withholding; and

(B) All other amounts withheld for which credit is allowed under section seventy-one, article twenty-one of this chapter.

(h) Application of section in case of income tax withheld by pass-through entities from distributions to nonresidents. -- For purposes of applying this section, the amount of credit allowed under section seventy-one-a, article twenty-one of this chapter to a nonresident distributee of a pass-through entity, shall be deemed to be a payment of estimated income tax for the taxable year of the nonresident distributee, and an equal part of such amount shall be deemed (only for purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(i) Special rule where personal income tax return filed on or before the thirty-first day of January. -- If on or before the last day of the first month following the end of the taxable year, the taxpayer files his or her annual personal income tax return for that taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment of the fourth required installment for that taxable year.

(j) Special rules for farmers. -- For purposes of this section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that taxable year;

(2) The due date for such installment is January 15, of the following taxable year;

(3) The amount of such installment shall be equal to the required annual payment determined under subsection (b) of this section by substituting "sixty-six and two-thirds percent" for "ninety percent"; and

(4) Subsection (h) of this section shall be applied:

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(A) By substituting "March 1" for the phrase "the thirty-first day of January"; and

(B) By treating the required installment described in subdivision (1) of this subsection as the fourth required installment.

(k) Fiscal years and short years. --

(1) Fiscal years. -- In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months of the fiscal year that correspond thereto.

(2) Short taxable year. -- The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

(l) Reserved.

(m) Estates and trusts. --

(1) In general. -- Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for certain estates and certain trusts. -- With respect to any taxable year ending before the date two years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent; or

(B) Any trust all of which was treated for federal income tax purposes as owned by the decedent and to which the residue of the decedent's estate will pass under his or her will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(3) Special rule for annualizations. -- In the case of any estate or trust to which this section applies, paragraph (A), subdivision (2), subsection (d) of this section shall be applied by substituting "ending before the date one month before the due date of the installment" for the phrase "ending before the due date for the installment".

(n) Rules. -- The Tax Commissioner may prescribe such rules as the commissioner deems necessary to carry out the purpose of this section. This includes, but is not limited to, equitable rules allowing payment of adjusted seasonal installments in lieu of annualized income installments when the commissioner determines, based on known facts and circumstances, that payment of the annualized income installment will result in significant hardship to the taxpayer due to the seasonal nature of taxpayer's business, and equitable rules for payment of estimated personal income tax by an individual who is: (1) An employee; (2) employed in another state for some portion or all of the taxable year; and (3) required to pay personal income taxes to such other state on (or measured by) wages earned in that

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state, for which credit is allowed under section twenty, article twenty-one of this chapter.

(o) Effective date. --

(1) This section, as amended in the year 1992, shall apply to taxable years beginning after June 30, 1992, and this section as in effect on January 1, 1992, is preserved and shall apply to taxable years beginning before July 1, 1992.

(2) This section, as amended in the year 1993, shall apply to taxable years ending after June 30, 1993. For taxable years ending on or before such dates, the provisions of this section as in effect for such years are fully preserved.

(3) This section, as amended in the year 1998, shall apply to taxable years ending after June 30, 1998. For taxable years ending on or before these dates, the provisions of this section as in effect for those years are fully preserved.

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