WEST VIRGINIA CODE: §11-10-18B

§11-10-18b. Additions to tax for failure to pay any other estimated tax.

(a) General rule. - If a person required to make monthly or quarterly installment payments of any annual tax administered under this article, except the taxes imposed by article twenty-one, twenty-three or twenty-four [§§11-21-1 et seq., §§11-23-1 et seq. or §§11-24-1 et seq.] of this chapter fails to timely remit any installment payment of such tax or remits less than the amount of the required installment payment of such tax, there shall be added to the tax due for the taxable year an amount determined by applying the rate established under section seventeen or seventeen-a [§11-10-17 or §11-10-17a] of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(1) Quarterly installment payments. - If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during the taxable year equal to seventy-five percent or more of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one fourth of the tax due for the taxable year is paid by the due date of each installment for that year.

(2) Monthly installment payments. - If a person required to make monthly installment payments of estimated tax timely pays estimated tax during the taxable year equal to at least eleven twelfths of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one twelfth of the tax due for the taxable year is paid by the due date of each installment for that year.

(b) Amount of underpayment. - For purposes of subsection (a) of this section, the amount of the underpayment shall be the excess of the amount that should have been paid by the due date of the required installment payment over the amount taxpayer remitted by the due date of the required installment payment.

(c) Period of underpayment. - The period of underpayment of any 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.

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(d) Waiver in certain cases. - No addition to tax shall be imposed under this section with respect to any underpayment of estimated tax if and to the extent the Tax Commissioner determines that:

(1) By reason of casualty, disaster or other unusual circumstances the imposition of such addition would be against equity and good conscience; or

(2) The amount of the installment payment remitted was determined using the statutory measure of the particular tax, as received or accrued under taxpayer's method of accounting during the period to which the installment payment relates, and the applicable rate of tax.

(e) Burden of proof. - The Tax Commissioner shall make his or her determination under subsection (d) of this section based upon relevant facts and circumstances established by the taxpayer through such proof or proofs as the Tax Commissioner may require.

(f) Short tax years. - This section shall apply to short tax years under rules promulgated by the Tax Commissioner.

(g) Effective date. - This section shall apply to taxable years ending after the thirtieth day of June, one thousand nine hundred ninety-three.

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