WEST VIRGINIA CODE: §11-10-19A

§11-10-19a. Failure to file correct information returns.

(a) Imposition of penalty. -- In addition to any criminal penalty imposed by article nine of this chapter for willful failure to file required return or supply information or for knowingly filing false or fraudulent return, in the case of a failure described in subsection (b) by any person with respect to an information return, such person shall pay a penalty of $50 for each information return with respect to which such failure occurs, but the total amount imposed by this section on such person for all such failures during any calendar year shall not exceed $100,000.

(b) Failures subject to penalty. -- For purposes of subsection (a), the failures described in this subsection are:

(1) Any failure to file an information return with the Tax Commissioner on or before the required filing date; and

(2) Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

(c) Reduction of penalty where correction in specified period. --

(1) Correction within thirty days. -- If any failure described in subsection (b) is corrected on or before the day, thirty days after the required filing date, the penalty imposed by subsection (a) shall be $15 in lieu of $50, and the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed $25,000.

(2) Failures corrected by August first. -- If any failure described in subsection (b) is corrected after the thirtieth day referred to in subdivision (1) of this subsection but on or before August 1, of the calendar year in which the required filing date occurs, the penalty imposed by subsection (a) shall be calculated using $30 in lieu of $50 and the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed $50,000.

(d) Exception for de minimis failures to include all required information. --

(1) In general. -- If an information return is filed with the Tax Commissioner, but there is a failure to include all of the information required to be shown on the return or there is inclusion of incorrect information, and such failure or error is corrected on or before August 1, of the calendar year in which the required filing date occurs, then for purposes of this section, such return shall be treated as having been filed with all of the correct required information.

(2) Limitation. -- The number of information returns to which subdivision (1) of this

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subsection applies for any calendar year shall not exceed the greater of: (A) ten, or (B) one-half of one percent of the total number of information returns required to be filed with the Tax Commissioner by the person during the calendar year.

(e) Penalty in case of intentional disregard. -- If one or more failures described in subsection (b) are due to intentional disregard of the filing requirement or the correct information reporting requirement then, with respect to such failure, subsections (c) and (d) shall not apply and the penalty imposed under subsection (a) shall be $100, or, if greater, ten percent of the aggregate amount of the items required to be reported correctly. When the amount of penalty is determined under this subsection, the $100,000 limitation under subsection (a) shall not apply, and such penalty shall not be taken into account in applying such limitation (or any similar limitation under subsection (c)) to penalties not determined under this subsection (e).

(f) Reasonable cause waiver. -- No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not due to willful neglect.

(g) Payment of penalty. -- Any penalty imposed by this section shall be paid on notice and demand by the Tax Commissioner and in the same manner as tax.

(h) Definitions. -- For purposes of this section:

(1) Information return. -- The term "information return" means any return required by:

(A) Subsection (a)(2) or (4), section fifty-one, article twenty-one of this chapter (relating to estates and trusts);

(B) Subsection (b), section fifty-eight, article twenty-one of this chapter (relating to partnerships);

(C) Subsection (c), section fifty-eight, article twenty-one of this chapter relating to certain information at source; and

(D) Section thirteen-b, article twenty-four of this chapter relating to S corporations.

(2) Required filing date. -- The term "required filing date" means the date prescribed for filing an information return with the Tax Commissioner determined with regard to any extension of time for filing.

(i) Effective date. -- The provisions of this section shall apply to information returns required to be filed for taxable years beginning after December 31, 1991.

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