

# WEST VIRGINIA CODE: §11-10-5X

## **§11-10-5x. Waiver of derivative tax, interest and penalty imposed on board members or directors of charitable and tax exempt organizations imposed on innocent governing board resulting from defaults or delinquencies of the organization.**

(a) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may waive imposition of derivative tax liabilities and associated interest and penalties on one or more uncompensated members of the governing board or of the board of directors on an organization qualified and classified as a tax exempt organization under section 501(c) (3) or section 501(c) (4) of the Internal Revenue Code of 1986, as amended.

(b)(1) For purposes of this section, the term "derivative liabilities" means liabilities of the tax exempt organization for any tax administered under this article, including, but not limited to, employee personal income tax withholding trust fund tax remittance liabilities and consumers sales and service tax trust fund tax remittance liabilities, that are attributed by law to one or more members of the governing board or board of directors of the tax exempt organization so as to become personal liabilities of that member or members.

(2) For purposes of this section a member is uncompensated if the member is not paid or otherwise remunerated directly or indirectly:

(A) For service on the governing board or board of directors;

(B) For any other service rendered to the tax exempt organization;

(C) For service to any entity affiliated with the tax exempt organization; or

(D) For any sale of real or tangible personal property or intangible personal property during the preceding calendar year to the tax exempt organization or to any person, entity or organization affiliated with the tax exempt organization.

(3) Reimbursement of actual expenses incurred to carry out the duties and responsibilities of board membership shall not be treated as compensation.

(4) Compensation paid to a person or organization having a relationship to the member that is specified in section 267(b) of the Internal Revenue Code of 1986, as amended, constitutes compensation to the member for purposes of this section.

(c) The Tax Commissioner may only issue the waiver authorized by this section if the Tax Commissioner determines that:

(1) The board member or members were misled, defrauded or deceived as to the accrual or existence of unpaid tax liabilities owed by the tax exempt organization, and had no reason to know of the accrual or existence of the liabilities owed;

(2) The board member or members took no active role in the day-to-day management of the tax exempt organization and the tax liability resulted from a computational or clerical error or good faith reliance on erroneous professional advice which the member or members could not have reasonably discovered through the exercise of due diligence; or

(3) The board member or members reasonably believed that the tax had been paid or accumulated for payment and the amounts believed to have been so paid or accumulated were in fact lost, stolen, destroyed or otherwise rendered irretrievable, without the acquiescence or consent of the member or members.

(d) The petition for a waiver under this section shall be made in writing and filed with the Tax Commissioner in that form and pursuant to those procedures as the Tax Commissioner may prescribe.

(e) Any controversy arising pursuant to this section shall be resolved through an appeal to the office of tax appeals in accordance with the provisions of article ten-a of this chapter. The issuance of a waiver under this section is within the discretion of the Tax Commissioner and the Tax Commissioner's determination shall not be overturned absent a showing of abuse of discretion.

(f) This section shall not be interpreted as restricting the authority of the Tax Commissioner to otherwise compromise, assess, correct, adjust or reassess any amount of tax, interest or penalty determined to be due under this article.