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**WEST VIRGINIA CODE CHAPTER 11**  
**ARTICLE 10**

WV Legislature

**§11-10-1. Legislative findings.**

The Legislature hereby finds and declares that the adoption by this state of certain uniform procedures for the assessment and collection of the taxes administered by the Tax Commissioner to which this article applies will (1) simplify the administration and collection of taxes, and (2) promote efficiency and uniformity of application in the administration of the tax laws. The Legislature does therefore declare that this article ten be construed so as to accomplish the foregoing purposes.

WV Legislature

**§11-10-2. Short title; arrangement and classification.**

This article may be cited as the "West Virginia Tax Procedure and Administration Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter or headings relating to any part, section, subsection or paragraph of this article.

WV Legislature

**§11-10-3. Application of this article.**

(a) The provisions of this article apply to inheritance and transfer taxes, estate tax, and interstate compromise and arbitration of inheritance and death taxes: (1) The business registration tax; (2) the minimum severance tax on coal; (3) the corporate license tax; (4) the business and occupation tax; (5) the severance tax, additional severance taxes, telecommunications tax; (6) the interstate fuel tax; (7) the consumers sales and service tax; (8) the use tax; (9) the economic opportunity district excise taxes; (10) the tobacco products excise taxes; (11) the excise tax on e-vapors; (12) the soft drinks tax; (13) the personal income tax; (14) the business franchise tax; (15) the corporation net income tax; (16) the gasoline and special fuels excise tax; (17) the motor fuels excise tax; (18) the motor carrier road tax; (19) the health care provider taxes; (20) the various solid waste assessment fees administered by the Tax Commissioner pursuant to chapters 17, 17A, 20, 22, and 22C of this code; (21) the excise taxes imposed by this code on sales of alcoholic liquor and wine; (22) the various tax credits administered by the Tax Commissioner; (23) any other tax or fee administered by the Tax Commissioner pursuant to this article; and (24) the tax relief for elderly homeowners and renters administered by the State Tax Commissioner. This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in §11-10-5f of this code for timely filing and payment to the Tax Commissioner or State Tax Department are the same methods utilized for timely filing and payment with the sheriff.

(b) The provisions of this article apply to beer barrel tax levied by §11-16-1 et seq. of this code; and to wine liter tax levied by §60-8-4 of this code.

(c) The provisions of this article apply to any other article of this chapter or of this code when the application is expressly provided by the Legislature.

(d) The provisions of this article apply to municipal sales and use taxes imposed under §8-13C-1 et seq. of this code and collected by the Tax Commissioner.

**§11-10-4. Definitions.**

For the purpose of this article, the term:

(a) "C corporation" means a legal entity that is taxed separately from its owners under subchapter C of the Internal Revenue Code as defined in §11-21-1 et seq. and §11-24-1 et seq. of this code.

(b) "Information return or report" means any document required to be filed with the Tax Commissioner by any article of this code, which provides information to the Tax Commissioner but does not include an accurately calculated tax liability of an individual or business entity. Information return or report includes, but is not limited to, information returns filed by S corporations pursuant to §11-24-13b of this code, information returns filed by partnerships pursuant to §11-21-58 of this code, any statement required to be furnished under IRC § 6226(a)(2) or under any other provision of the Internal Revenue Code which provides for the application of rules similar to those in IRC § 6226; and any other information return or report required to be filed with the Tax Commissioner pursuant to §11-21A-1 et seq. of this code, or any other article of this code that is administered under §11-10-1 et seq. of this code.

(c) "Officer or employee of this state" shall include, but is not limited to, any former officer or employee of the State of West Virginia.

(d) "Office of Tax Appeals" means the West Virginia Office of Tax Appeals created by §11-10A-3 of this code.

(e) "Pass-through entity" means an entity that is not subject to tax under §11-24-1 et seq. of this code imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(f) "Person" shall include, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint venture, limited liability company or other pass-through entity, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee, or member of any of the foregoing who, as an officer, employee, or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article and the provisions of any of the other articles of this chapter or this code which impose taxes administered by the Tax Commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context of this article or any of the other articles of this chapter which impose taxes or fees administered by the Tax Commissioner under this article.

(g) "Return" means for taxable years beginning on or after January 1, 2007, a tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment which is complete and that is required by, or provided

for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to the return so filed. For purposes of this subsection, "complete" means for taxable years beginning on or after January 1, 2007, the information required to be entered is entered on the applicable return forms. A return form is not to be considered complete if the information required to be entered on the applicable return forms is only contained in amendments or supplements thereto, including supporting schedules, attachments, or lists. A return that is not considered complete is deemed not to be filed:

- (1) For purposes of claiming a refund of any tax administered under this article;
  - (2) For purposes of the commencement of any limitation on any assessment under §11-10-15 of this code;
  - (3) For purposes of determining the commencement of the period when the Tax Commissioner shall pay interest for the late payment of a refund;
  - (4) For purposes of additions to tax imposed under §11-10-18, §11-10-18a, or §11-10-18b of this code; or
  - (5) For purposes of penalties imposed under §11-10-19 of this code.
- (h) "State" means any state of the United States or the District of Columbia.
- (i) "Tax" or "taxes" includes within the meaning thereof taxes and fees specified in §11-10-3 of this code, and additions to tax, penalties, and interest, unless the intention to give the same a more limited meaning is disclosed by the context.
- (j) "Tax commissioner" or "commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.
- (k) "Taxpayer" means any person required to file a return for any tax or fee administered under this article, or any person liable for the payment of any tax or fee administered under this article.
- (l) "Tax administered under this article" means any tax or fee to which this article applies as set forth in §11-10-3 of this code.
- (m) "This code" means the Code of West Virginia, 1931, as amended.
- (n) "This state" means the State of West Virginia.

**§11-10-5. General power; regulations and forms.**

The Tax Commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The Tax Commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the state Administrative Procedures Act in chapter twenty-nine-a of this code: Provided, That all rules and regulations of the Tax Commissioner presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the Tax Commissioner in the manner prescribed by law.

**§11-10-5a. Investigations.**

For the purpose of ascertaining the correctness of any tax return or assessment and for the purpose of making an estimate of any taxpayer's liability for tax administered under this article, and for the further purpose of conducting the hearings provided for in section nine or nine-a of this article, the Tax Commissioner shall have the power to examine or cause to be examined, by any agent or representative designated by the Tax Commissioner, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

**§11-10-5aa. Confidentiality of information obtained during telecommunications tax study.**

(a) Section nineteen, article thirteen-b of this chapter was enacted in 2010, and required the Tax Commissioner to study the business of telecommunications service and related businesses. The Tax Commissioner completed the study and reported to the Legislature July 1, 2011. Notwithstanding the repeal of section nineteen, article thirteen-b of this chapter in 2012, the provisions of that section under which information obtained by the Tax Commissioner during the study of the business of telecommunications service and related businesses conducted pursuant to that statute is confidential and exempt from disclosure shall remain in full force and effect, as if fully set forth herein and as more fully set forth herein:

(1) Financial information and other data disclosed to the Tax Commissioner under the provisions of that section shall be considered confidential and exempt from article one, chapter twenty-nine-b of this code.

(2) Any information disclosed to the Tax Commissioner pursuant to the requirements of that section shall have all of the confidentiality protections given to a "return" under section five-d of article ten of this chapter and any disclosure not authorized by that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure of a "return". It is unlawful for the Tax Commissioner or any person conducting the study, including any consultant under contract with the Tax Commissioner to assist in conducting the study, to disclose to any person not conducting the study any financial information or other data disclosed under that section. Such disclosure shall be a violation of the tax information confidentiality provisions of section five-d, article ten of this chapter.

(3) Nothing in this section may be construed as prohibiting the publication or release of statistics so classified as to prevent the identification of a particular person or entity.

(b) Any rules promulgated by the Tax Commissioner to implement the provisions of that section relating to confidentiality or exemptions under that section shall remain in full force and effect until amended or repealed pursuant to article three, chapter twenty-nine-a of this code.

**§11-10-5b. Subpoena and subpoena duces tecum.**

(a) Power to issue. -- For the efficient administration of the powers vested in the Tax Commissioner by the preceding section, and to facilitate determination or collection of any tax under this article, the Tax Commissioner, or his delegate, shall have the power to issue subpoenas and subpoenas duces tecum, in the name of the state Tax Department, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. The Tax Commissioner, or his delegate, may exercise such power, in the name of the state Tax Department, upon request of any person who is a party in any hearing to be held under the provisions of this article, for the purposes of such hearing.

(b) Service. -- Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or certified mail, but a return receipt signed by the person to whom subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. Any party requesting a subpoena or subpoena duces tecum is responsible for service thereof and payment of any fee for such service. Service of other subpoenas and subpoenas duces tecum shall be the responsibility of the Tax Commissioner or his delegate. Any person, except a person in the employ of the state Tax Department, or any party, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

(c) Fees. -- Fees for the attendance of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees shall be paid by the Tax Commissioner if the subpoena or subpoena duces tecum was issued, without the request of an interested party, at the insistence of the state Tax Department. All such fees related to any subpoena or subpoena duces tecum issued at the request of a party to an administrative hearing shall be paid by the party who asked that such subpoena or subpoena duces tecum be issued. All requests by interested parties for issuance of subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(d) Motion to quash. -- Upon motion made promptly, and in an event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held or the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the "West Virginia Rules of Civil Procedure for Trial Courts of Record," could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court.

(e) Enforcement of compliance. -- In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the Tax Commissioner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court for a refusal to testify therein.

(f) Testimony under oath. -- Witnesses subpoenaed under this section shall testify under oath or affirmation.

**§11-10-5bb. Applying lottery prizes to tax liabilities.**

(a) Offsetting lottery prizes against tax liabilities. - Upon notification by the State Tax Department that a person who is entitled to all or part of a lottery prize is delinquent in the payment of any of the taxes administered under chapter eleven, article ten of this code, the Lottery Director shall forward to the State Tax Department the prize or portion thereof to be distributed directly from the State Lottery Office, and such amount shall be applied to pay the tax liabilities of the prize winner: Provided, That such distribution shall be subject to the limitations on collection provided in section sixteen of this article.

(b) Administration. - (1) The Tax Commissioner shall enter into a written agreement with the Lottery Director for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section. The director shall include in the agreement a method by which Lottery Director will provide the names of lottery winners as expeditiously as possible.

(2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose tax information to the Lottery Director for the purpose of administering the collection procedure authorized in subsection (a) of this section, and the Tax Commissioner and Lottery Director may enter into a written agreement allowing and providing for the disclosure of tax information for the purpose of administering the collection procedure authorized in subsection (a) of this section.

(c) Effective date. - The provisions of this section shall apply to all tax years beginning after December 31, 2013.

**§11-10-5c. Returns by Tax Commissioner.**

If any person fails to file any return required by this article or any article administered by this article, at the time required by law or by regulation made under authority of law, or makes and files willfully or otherwise, a false or fraudulent return, the Tax Commissioner may proceed to make such return from any information available to him whether obtained through testimony or otherwise.

WV Legislature

§11-10-5cc. Disclosure of certain tax information to Commissioner of Highways.

(a) Notwithstanding any provision of this article to the contrary, the Tax Commissioner shall enter into a written agreement with the Commissioner of Highways of this state to disclose to designated employees of the Division of Highways:

(1) Whether a bidder for a contract with the Division of Highways has a current business registration certificate under article twelve of this chapter;

(2) Whether a contractor with the Division of Highways, or any subcontractor of that contractor, has had its current business registration certificate revoked or suspended under article twelve of this chapter;

(3) Whether a cease and desist order has been issued under article twelve of this chapter to a contractor working on a project for the Division of Highways or a subcontractor of that contractor working on a road construction or repair project;

(4) Whether a contractor bidding on a contract for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(5) Whether a contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(6) Whether a subcontractor of any contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(7) Whether a bidder for a highway construction contract is in good standing with the Tax Commissioner;

(8) Whether a contractor or subcontractor working on a project for the Division of Highways is in good standing with the Tax Commissioner and, if not in good standing, an explanation of why the contractor or subcontractor is not in good standing; and

(9) Whether a bidder, contractor or subcontractor currently has pending before the Office of Tax Appeals a contest concerning any assessment for additional tax or denial of a claim for refund or credit.

(b) For purposes of this section, the term "good standing" means that the bidder, contractor or subcontractor has: (1) Filed all required tax returns due for taxes administered under this article; (2) paid all taxes shown to be due in the filed returns, including any interest and

additions to tax; and (3) paid all withholding taxes for employees of the bidder, contractor or subcontractor required to be paid under this code.

(c) An agreement executed under subsection (a) of this section may be amended, from time to time, by the Tax Commissioner and the Commissioner of Highways.

(d) Information in the hands of the Commissioner of Highways or his or her designees pursuant to an agreement under this section shall enjoy the same level of confidentiality and protection as the information would enjoy in the hands of the Tax Commissioner.

**§11-10-5d. Confidentiality and disclosure of returns and return information.**

(a) General rule. — Except when required in an official investigation by the Tax Commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the Tax Commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in §11-10-5d(d) through §11-10-5d(n) of this code, it shall be unlawful for any officer, employee, or agent of this state or of any county, municipality, or governmental subdivision to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration, or return required to be filed with the Tax Commissioner by any article of this chapter imposing any tax administered under this article or by any rule of the Tax Commissioner issued thereunder, or disclosed in any audit or investigation conducted under this article. For purposes of this article, tax returns and return information obtained from the Tax Commissioner pursuant to an exchange of information agreement or otherwise pursuant to the provisions of §11-10-5d(d) through §11-10-5d(n) of this code which is in the possession of any officer, employee, agent, or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in this article: *Provided*, That such officers, employees, or agents may disclose the information in an official investigation, by a local or municipal governmental authority or agency charged with the duty and responsibility to administer the tax laws of the jurisdiction, into the amount of tax due under any lawful local or municipal tax administered by that authority or agency, or in any proceeding in which the local or municipal governmental subdivision, authority, or agency is a party before a court of competent jurisdiction to collect or ascertain the amount of the tax. Unlawful disclosure of the information by any officer, employee, or agent of any local, municipal, or governmental subdivision is subject to the sanctions set forth in this article.

(b) Definitions. — For purposes of this section:

(1) Background file document. — The term "background file document", with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state Tax Department and any person outside the state Tax Department in connection with the written determination received before issuance of the written determination.

(2) Disclosure. — The term "disclosure" means making known to any person in any manner whatsoever a return or return information.

(3) Inspection. — The terms "inspection" and "inspected" means any examination of a return or return information.

(4) Return. — The term "return" means any tax or information return or report, declaration of estimated tax, claim, or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the filed return.

(5) Return information. — The term "return information" means:

(A) A taxpayer's identity; the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination or data used or to be used for determining such standards, including, but not limited to:

(i) Audit manuals (for internal bench audits and external field audits), audit and examination guidelines, and audit procedures, guidelines and algorithms, including sampling methodologies used in auditing, and used in internal and external reviews and examinations of tax returns, tax records and business records, audit trigger thresholds, or assessment trigger thresholds;

(ii) Auditor and Tax Division personnel training manuals and training materials;

(iii) Scoring and risk assessment models used in audit selection;

(iv) Audit selection criteria, fraud check materials, thresholds, procedures and methodologies;

(v) Internal policy manuals related to audit and enforcement procedures;

(vi) Data analytics models and methodologies used in compliance evaluation;

(vii) Procedural workflow documents or other nonpublic resources used by audit personnel;  
and

(viii) Applications for licensure, licenses and other information relating to telemarketer registration.

(6) Tax administration. — The term "tax administration" means:

(A) The administration, management, conduct, direction, and supervision of the execution and application of the tax laws or related statutes of this state and the development and formulation of state and local tax policy relating to existing or proposed state and local tax laws and related statutes of this state; and

(B) Includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under the laws of this state and of local governments.

(7) Taxpayer identity. — The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number, or a combination thereof.

(8) Taxpayer return information. — The term "taxpayer return information" means return information as defined in §11-10-5d(b)(5) of this code which is filed with, or furnished to, the Tax Commissioner by or on behalf of the taxpayer to whom such return information relates.

(9) Written determination. — The term "written determination" means a ruling, determination letter, technical advice memorandum, or letter or administrative decision issued by the Tax Commissioner.

(c) Criminal penalty. — Any officer, employee, or agent (or former officer, employee, or agent) of this state or of any county, municipality, or governmental subdivision who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned for not more than one year, or both, together with costs of prosecution.

(d) Disclosure to designee of taxpayer. — Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for any purpose and any period as he or she states in the written waiver. The Tax Commissioner may, subject to such requirements and conditions as he or she may prescribe, thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article, but only to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Tax Commissioner determines that such disclosure would seriously impair administration of this state's tax laws.

(e) Disclosure of returns and return information for use in criminal investigations. —

(1) In general. — Except as provided in §11-10-5d(e)(3) of this code, any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge, federal magistrate, or circuit court judge of this state, under §11-10-5d(e)(2) of this code, be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency, or of any agency of this state, who personally and directly engaged in:

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which this state, the United States, or such agency is or may be a party;

(B) Any investigation which may result in such a proceeding; or

(C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal statute to which this state, the United States, or such agency is or may be a party. Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(2) Application of order. — Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in §11-10-5d(e)(1) of this code. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in §11-10-5d(e)(1) of this code. Upon the application, the judge or magistrate may grant such order if he or she determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The Tax Commissioner may not disclose any return or return information under §11-10-5d(e)(1) of this code if he or she determines and certifies to the court that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest. — The Tax Commissioner may, pursuant

to legislative rules promulgated by him or her, and upon such terms as he or she may require, disclose a return or return information to a person having a material interest in the return or return information: *Provided*, That such disclosure shall only be made if the Tax Commissioner determines, in his or her discretion, that the disclosure would not seriously impair administration of this state's tax laws.

(g) Statistical use. — This section shall not be construed to prohibit the publication or release of statistics classified to prevent the identification of particular returns and the items thereof.

(h) Disclosure of amount of outstanding lien. — If notice of lien has been recorded pursuant to §11-10-12 of this code, the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes written evidence satisfactory to the Tax Commissioner that such person has a right in the property subject to the lien or intends to obtain a right in such property.

(i) Reciprocal exchange. — The Tax Commissioner may, pursuant to written agreement, permit the proper officer of the United States, or the District of Columbia, or any other state, or any political subdivision of this state, or his or her authorized representative, who is charged by law with responsibility for administration of a similar tax, to inspect reports, declarations, or returns filed with the Tax Commissioner or may furnish to such officer or representative a copy of any document, provided any other jurisdiction grants substantially similar privileges to the Tax Commissioner or to the Attorney General of this state: *Provided*, That pursuant to written agreement the Tax Commissioner may provide to the assessor of any county, sheriff of any county, or the mayor of any West Virginia municipality the federal employer identification number of any business being carried on within the jurisdiction of the requesting assessor, sheriff, or mayor. The disclosure shall be only for the purpose of, and only to the extent necessary in, the administration of tax laws: *Provided, however*, That the information may not be disclosed to the extent that the Tax Commissioner determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(j) Exchange with municipalities and counties. —

(1) The Tax Commissioner shall, upon the written request of the mayor or governing body of any West Virginia municipality, allow the duly authorized agent of the municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of the municipality and any other state tax returns (including, but not limited to, consumers sales and service tax return information and health care provider tax return information) that is reasonably requested by the municipality. Such inspection or copying shall include disclosure to the authorized agent of the municipality for tax administration purposes of all available return information from files of the tax department relating to taxpayers who transact business within the municipality. The Tax Commissioner shall be permitted to inspect or make copies of any tax return and any return information or other information related thereto in the possession of any municipality, or its employees, officers, agents, or

representatives, that has been submitted to or filed with the municipality by any person for any tax including, but not limited to, the municipal business and occupation tax, public utility tax, municipal license tax, tax on purchases of intoxicating liquors, license tax on horse racing or dog racing, and municipal amusement tax.

(2) The Tax Commissioner shall, upon the written request of the county commission of a West Virginia county, allow the duly authorized agent of the county to inspect and make copies of the following records related to tax on the sale of intoxicating liquor and wine:

(A) All records of the Tax Commissioner, including available return information, related to the collection of tax in the county or the remittance of tax to the county pursuant to §60-3-9d or §60-3A-21 of this code; and

(B) All records of the Tax Commissioner, including available return information, related to the collection of tax within the corporate limits of a municipality within the county or the remittance of tax to a municipality within the county pursuant to §60-3-9d or §60-3A-21 of this code.

(3) The Tax Commissioner shall, upon the written request of the mayor or governing body of a West Virginia municipality, allow the duly authorized agent of the municipality to inspect and make copies of the following records related to tax on the sale of intoxicating liquor and wine:

(A) All records of the Tax Commissioner, including available return information, related to the collection of tax within the corporate limits of the municipality or the remittance of tax to the municipality pursuant to §60-3-9d and §60-3A-21 of this code;

(B) All records of the Tax Commissioner, including available return information, related to the collection of tax within the county in which the municipality is located but outside the corporate limits of another municipality pursuant to §60-3-9d and §60-3A-21 of this code; and

(C) All records of the Tax Commissioner, including available return information, related to the remittance of tax to the county in which the municipality is located pursuant to §60-3-9d and §60-3A-21 of this code.

(k) Release of administrative decisions. — The Tax Commissioner shall release to the public his or her administrative decisions, or a summary thereof: *Provided*, That unless the taxpayer appeals the administrative decision to a circuit court or waives in writing his or her rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to an extent so as to not disclose the name or identity of the taxpayer.

(l) Release of taxpayer information. — If the Tax Commissioner believes that enforcement of the tax laws administered under this article will be facilitated and enhanced thereby, he or she shall disclose, upon request, the names and address of persons:

(A) Who have a current business registration certificate;

- (B) Who are licensed employment agencies;
  - (C) Who are licensed collection agencies;
  - (D) Who are licensed to sell drug paraphernalia;
  - (E) Who are distributors of gasoline or special fuel;
  - (F) Who are contractors;
  - (G) Who are transient vendors;
  - (H) Who are authorized by law to issue a sales or use tax exemption certificate;
  - (I) Who are required by law to collect sales or use taxes;
  - (J) Who are foreign vendors authorized to collect use tax;
  - (K) Whose business registration certificate has been suspended or canceled or not renewed by the Tax Commissioner;
  - (L) Against whom a tax lien has been recorded under §11-10-12 of this code (including any particulars stated in the recorded lien);
  - (M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws; or
  - (N) Who have been convicted of a criminal violation of this state's tax laws.
- (m) Disclosure of return information to child support enforcement division. —
- (1) State return information. — The Tax Commissioner may, upon written request, disclose to the child support enforcement division created by §48A-2-1 *et seq.* of this code:
- (A) Available return information from the master files of the tax department relating to the Social Security account number, address, filing status, amounts, and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and
  - (B) Available state return information reflected on any state return filed by, or with respect to, any individual described in §11-10-5d(m)(1)(A) of this code relating to the amount of the individual's gross income, but only if such information is not reasonably available from any other source.
- (2) Restrictions on disclosure. — The Tax Commissioner shall disclose return information under §11-10-5d(m)(1) of this code only for purposes of, and to the extent necessary in, collecting child support obligations from and locating individuals owing such obligations.

(n) Disclosure of names and addresses for purposes of jury selection. — The Tax Commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within 30 calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the Tax Commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to the Tax Commissioner that the lists have been destroyed.

(o) Effective date. — The amendments to this section enacted in the year 2026 shall become effective upon passage.

**§11-10-5dd. Disclosure of certain tax information pursuant to written agreements with state agencies purchasing or leasing goods or services or the Enterprise Resource Planning Board to facilitate purchasing; and the State Auditor.**

- (a) General. - Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into written agreements with other agencies of this state, as provided in this section, to share certain tax information, as defined in this section.
- (b) Contracts with the state. - Notwithstanding any provision of this article to the contrary, the Tax Commissioner may enter into a written agreement with the chief executive officer of an agency with authority to award public contracts for the purchase or lease of goods or services, or with the chief executive officer of the Enterprise Resource Planning Board to facilitate purchasing or leasing of goods and service, to disclose whether a vendor, or prospective vendor, is in good standing before a public contract is awarded or renewed.
- (c) State Auditor. - The State Auditor is authorized to request from the Tax Commissioner, and the Tax Commissioner shall provide to the State Auditor, confirmation whether a vendor is in good standing with the Tax Commissioner. When the State Auditor provides the Tax Commissioner an electronic file, the Tax Commissioner will determine in a timely manner whether the vendor is in good standing and, if the vendor is not in good standing, electronically advise the State Auditor of the amount of taxes, interest and additions to tax that are then due and owing by that vendor to the Tax Commissioner that should be offset, if any, or that the vendor needs to contact the Tax Commissioner's office to resolve the issue that prevents the vendor from being in good standing, before the vendor will be paid by the state.
- (d) As used in §11-10-5dd of this code, the term "good standing" means that the person has a current business registration certificate under §11-12-1 et seq. of this code, has filed all required returns for taxes administered under §11-10-1 et seq. and has paid all taxes shown to be due on those returns. A person is in "good standing" even though the person may be paying taxes under a payment plan provided the person is in compliance with the terms of the written payment plan agreement; or is contesting an assessment for one or more taxes administered under §11-10-1 et seq. before the Office of Tax Appeals or in a court of this state.
- (e) Exchanges of information under §11-10-5dd of this code shall occur pursuant to memorandums of understanding executed by the Tax Commissioner and the chief executive officer of any agency to award public contracts for the purchase or lease of goods or services; the chief executive officer of the Enterprise Resource Planning Board; or the State Auditor, as the case may be. These memorandums may be amended from time to time.

**§11-10-5e. Service of notice.**

Notwithstanding any other provision of this code, the Tax Commissioner may designate those assessments, notices, statements of account or other Tax Division documents which shall be sent by personal service or United States Postal Service regular mail, or certified mail or registered mail or by any other means at the discretion of the Tax Commissioner, pursuant to any provision of this chapter. Any service of notice addressed by United States Postal Service regular mail is presumed to be accepted upon mailing unless proven otherwise by the taxpayer. Any service of notice by certified mail shall be valid if accepted by the taxpayer or if addressed to and mailed to the taxpayer's usual place of business or usual place of abode or last known address and accepted by any officer, partner, employee, spouse or child of the taxpayer over the age of eighteen. Any notice addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer.

**§11-10-5ee. Limitations on claiming credits and rebates; rulemaking.**

(a) No capital investment used to qualify for a state tax credit or rebate can be used to qualify for any additional state tax credit or rebate, unless permission to do so has been specifically set forth in the provisions of this code establishing the relevant state tax credits or rebates.

(b) If the provisions of subsection (a) of this section are violated, the State Tax Commissioner shall allow only one of the credits or rebates based upon the following criteria:

(1) The Tax Commissioner shall allow the credit or rebate that has previously been granted based upon the capital investment in question; or

(2) If no credit or rebate based upon the capital investment in question has previously been granted, the Tax Commissioner shall allow the credit or rebate that is most favorable to the taxpayer and deny the additional credits and rebates for which the capital investment was claimed.

(c) When a liability occurs based upon subsection (b) of this section, the following provisions shall apply:

(1) An assessment shall be issued in accordance with the provisions of §11-10-7 of this code;

(2) Interest shall be charged in accordance with the provisions of §11-10-17 of this code; and

(3) Additions to tax shall be charged in accordance with the provisions of §11-10-18 of this code.

(d) The provisions of this section are effective for capital investments made on or after January 1, 2022.

(e) The State Tax Commissioner has the authority to draft emergency, interpretive, procedural, or legislative rules at his or her discretion to administer and carry out the provisions of this section.

**§11-10-5f. Timely filing and paying.**

(a) Delivery in person. -- If any return, claim, statement or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the Tax Commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, is shall be timely filed: Provided, That the Tax Commissioner may authorize such delivery to be made to his agent at such other location or locations in this state, as he may from time to time prescribe.

(b) Timely mailing. -- If any return, claim, statement or other document, required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of this article or the provisions of any article of this chapter imposing any tax administered under this article, is, after such period or such date, delivered by United States mail to the Tax Commissioner or the state Tax Department, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

(1) The postmark date falls within the prescribed period or on or before the prescribed date for filing (including any extension granted for such filing) of the return, claim, statement or other document, or for making the payment (including any extension granted for such payment); and

(2) The return, claim, statement, other document or payment was, within the time prescribed in subparagraph (1), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Tax Commissioner or the state Tax Department.

(c) Postmarks. -- This section shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by rules or regulations prescribed by the Tax Commissioner.

(d) Registered and certified mailing. -- For purposes of this section, if any return, claim, statement, or other document or payment is sent by United States registered or certified mail, the date of registration or certification shall be deemed the postmark date.

(e) Last date for filing or payment. -- The last date for timely filing or timely making payment shall include any extension of time authorized by law or regulation and any extension of time granted in writing by the Tax Commissioner.

**§11-10-5g. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.**

When the last day prescribed under authority of this article or any article of this chapter imposing any tax administered under this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term "legal holiday" means a legal holiday in this state.

**§11-10-5h. Enforcement proceedings.**

The enforcement of any of the collections provisions of this article in any of the courts of this state shall be under the exclusive jurisdiction of the Tax Commissioner. The Tax Commissioner may, at his request, be represented in any such collection civil action by the Attorney General, the prosecuting attorney of any county in which action is instituted or by any attorney permanently employed by the Tax Commissioner and designated by the Attorney General to be a special assistant Attorney General. In all other court proceedings on appeals of administrative decisions of the Tax Commissioner, the Tax Commissioner shall be represented by the Attorney General. Whenever a prosecuting attorney represents the Tax Commissioner in civil collection actions or the like, such prosecuting attorney shall receive no fees or compensation in addition to the salary paid by the county for such office for services rendered.

**§11-10-5i. Enforcement powers.**

Any employee of the state Tax Department, so designated by the Tax Commissioner, and who shall have attended a course of instruction at the State Police academy, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of article nine of this chapter in any county or municipality of this state. Any such employee shall, before entering upon the discharge of his duties, execute a bond with security in the sum of \$3,500, payable to the State of West Virginia, conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the Attorney General, and the same shall be filed with the Secretary of State and preserved in his office. The department of public safety, any county sheriff (or his deputy) or any municipal police officer, upon request by the Tax Commissioner, is hereby authorized to assist the Tax Commissioner in enforcing the provisions of article nine of this chapter and the criminal penalty provisions of this article or any article of this chapter administered under this article.

**§11-10-5j. Liability for taxes withheld or collected.**

Whenever any person is required by this article (or any article of this chapter administered by this article) to collect or withhold any tax from any person and to pay it over to the Tax Commissioner, the amount of tax so collected or withheld shall be deemed to be moneys held in trust for the State of West Virginia. The amount of such moneys shall be assessed, collected and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

WV Legislature

**§11-10-5k. Fractional parts of a cent.**

In the payment of any tax administered by this article, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1¢.

WV Legislature

**§11-10-5l. Payment of estimated tax.**

Payment of estimated tax or any installment thereof, shall be considered payment on account of the tax imposed by any article administered under this article for the taxable year.

WV Legislature

**§11-10-5m. Overpayment of installments.**

In the case of tax payable in installments, if the taxpayer has paid, as an installment of the tax, more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any for the taxable year. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due for the taxable year, the overpayment shall be credited or refunded as provided in section fourteen of this chapter.

WV Legislature

**§11-10-5n. Payment by commercially acceptable means.**

(a) Authority to receive.-- The Tax Commissioner may receive in payment for taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) any commercially acceptable means that the commissioner considers appropriate to the extent and under the conditions provided in rules proposed by the commissioner for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

(b) Ultimate liability.-- If a check, money order or other method of payment, including payment by credit card, debit card or charge card received in payment of taxes or fees or tax stamps or crowns is not duly paid, or is paid and subsequently charged back to the Tax Commissioner, the person by whom the check, money order or other method of payment was tendered remains liable for payment of the tax or fee or for the tax stamps or crowns, and for all legal penalties and additions thereto, to the same extent as if the check, money order or other method of payment had not been tendered.

(c) Liability of bank and others.-- If any certified, treasurer's or cashier's check (or other guaranteed draft), any money order or any means of payment that has been guaranteed by a financial organization (such as a credit card, debit card or charge card transaction which has been guaranteed expressly by a financial organization), is received for payment of taxes or fees or tax stamps or crowns and is not duly paid, the State of West Virginia shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for:

(1) The amount of the check (or draft) upon all the assets of the financial institution on which it is drawn;

(2) The amount of the money order upon all the assets of the issuer thereof; or

(3) The guaranteed amount of any other transaction upon all assets of the institution making the guarantee; and the amount shall be paid out of the assets in preference to any other claims whatsoever against the financial institution, issuer or guaranteeing institution, except the necessary costs and expenses of administration and perfected liens that are prior in time.

(d) Charges and fees due to insufficient funds or nonpayment by financial institution.-- If any check, money order or any other commercially acceptable method of payment permitted under this article, its amendments and related rules, tendered in payment of any amount of tax or fee or tax stamps or crowns or any interest, additions to tax or penalties is not duly paid, then, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered the payment, regardless of its form, upon written notice and demand by the Tax Commissioner, in the same manner as tax, an amount equal to the service charge or fee which the bank or other financial institution charged the state for each payment returned or not duly paid to the Tax Commissioner because the account is closed, there are insufficient funds in the account, payment was stopped or payment was refused by the bank, financial institution or other entity, including the state or political subdivision

thereof. Recovery of such charges and fees will apply to all methods of payment permitted under this section. The Tax Commissioner may propose rules necessary to carry out this subsection and to provide guidelines and requirements necessary to ensure uniform administrative practices statewide to effect the intent of this subsection, all in accordance with article three, chapter twenty-nine-a of this code: Provided, That for purposes of this subsection, the term "payment" includes any transaction performed at the request of the taxpayer, including claims for refund that result in a service charge or fee.

(e) Payment by other means.--

(1) Authority to prescribe rule.-- The Tax Commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as the Tax Commissioner considers necessary to receive payment by commercially acceptable means, including rules that:

(A) Specify which methods of payment by commercially acceptable means are acceptable;

(B) Specify when payment by those means shall be considered received;

(C) Identify types of nontax matters related to payment by those means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Tax Commissioner; and

(D) Ensure that tax matters shall be resolved by the Tax Commissioner, without the involvement of financial intermediaries.

(2) Obtaining services.-- The Tax Commissioner shall use the State Treasurer's contracts and system for receiving payments by credit card, debit card, charge card or any other commercially acceptable means. The Tax Commissioner may not pay any fee or provide any other consideration in obtaining these services. The State Treasurer may not pay any fee or provide any consideration for receiving payments of taxes or fees (or in payment for excise tax stamps and tax crowns) described in this section by credit card, debit card, charge card or any other commercially acceptable means, and any cost for processing the payment shall be included, in advance, in the amount of the transaction and assessed to the party making the payment.

(3) Special provisions for use of credit cards.-- If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a) of this section:

(A) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a credit card shall not be subject to Section 161 of the Truth in Lending Act (15 U. S. C. §1666), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as

to whether the person authorized payment by use of the credit card;

(B) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) shall not be subject to Section 170 of the Truth in Lending Act (15 U. S. C.1666i), or to any similar provisions of state law;

(C) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a debit card shall not be subject to Section 908 of the Electronic Fund Transfer Act (15 U. S. C.1693f), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card;

(D) To the extent allowed under federal law, the term "creditor" under Section 103(f) of the Truth in Lending Act (15 U. S. C.§1602(f)) shall not include the Tax Commissioner with respect to credit card transactions in payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns); and

(E) Notwithstanding any other provisions of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under Section 161 of the Truth in Lending Act (15 U. S. C.§1666) or Section 908 of the Electronic Fund Transfer Act (15 U. S. C.§1693f), the Tax Commissioner is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

(f) Confidentiality of information.--

(1) In general.-- Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit card, debit card or charge card transactions other than for purposes directly related to the processing of the transactions or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions.--

(A) Credit card, debit card or charge card issuers or others acting on behalf of the issuers may also use and disclose the information for purposes directly related to servicing an issuer's accounts.

(B) Credit card, debit card or charge card issuers or others directly involved in the processing of credit card, debit card or charge card transactions or the billing or collection of amounts charged or debited to the credit card, debit card or charge card, may also use and disclose the information for purposes directly related to:

- (I) Statistical risk and profitability assessment;
  - (ii) Transferring receivables, accounts or interest therein;
  - (iii) Auditing the account information;
  - (iv) Complying with federal, state or local law; and
  - (v) Properly authorized civil, criminal or regulatory investigation by federal, state or local authorities.
- (3) Procedures.-- Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Tax Commissioner.

**§11-10-5o. Notice of fiduciary relationship.**

(a) Rights and obligations of fiduciary. -- Upon notice to the Tax Commissioner that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume that power, rights, duties and privileges of such other person in respect of any tax administered under this article (except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

(b) Notice. -- Notice under this section shall be given in accordance with regulations prescribed by the Tax Commissioner.

**§11-10-5p. Effective date of amendments.**

Any amendment to any article administered under this article shall first apply to a particular taxpayer for taxable years beginning on or after the effective date of the act of the Legislature containing such amendment, as determined under article six, section thirty of the Constitution of this state, unless the language of the act provides a controlling internal effective date provision.

WV Legislature

**§11-10-5q. Settlement agreements and compromises.**

(a) Closing agreements authorized. -- The Tax Commissioner is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any tax administered by the Tax Commissioner under this article, for any taxable period.

(b) Finality of closing agreement. -- If a closing agreement is entered into by the Tax Commissioner, (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(1) The matters so agreed upon shall not be reopened, or the agreement modified by any officer, employee or agent of this state; and

(2) In any civil action or administrative proceeding, the closing agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

(c) Compromises authorized. -- The Tax Commissioner may compromise all or part of any civil case arising under the provisions of this article. In all such matters involving issues in respect of tax liability in controversy of \$15,000 or more for one or all of the years involved in such matter, claim or case, the Tax Commissioner shall seek the written recommendation of the Attorney General before entering into such compromise. Any liability for tax (including any interest, additions to tax and penalties) may be compromised upon one or more, or both, of the following grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

(d) Record of compromise. -- Whenever a compromise is made by the Tax Commissioner under subsection (c), there shall be placed on file in the Tax Commissioner's office the opinion of the Tax Commissioner's legal counsel (with his reasons therefor) and any written recommendation of the Attorney General received pursuant to subsection (c) above together with a statement of:

(1) The amount of tax assessed,

(2) The amount of interest, additions to the tax, or assessable penalty imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of compromise.

Notwithstanding the foregoing provisions of this subsection (d), no such opinion shall be required with respect to the compromise of any civil case in which the amount of tax

assessed (including any interest, additions to tax or assessable penalty) is less than \$1,000.

(e) Report to Legislature. -- The Tax Commissioner shall submit to the Speaker of the House of Delegates, the President of the Senate and the Legislative Auditor a quarterly report summarizing the issues and amounts of liabilities contained in the agreements and compromises into which he has entered pursuant to this section. Such report shall be in a form which preserves the confidentiality of the identity of the taxpayers involved in such agreements and compromises. Notwithstanding any other provision of law to the contrary, the agreements and compromises entered into pursuant to this section shall be subject to audit, in their entirety, by the Legislative Auditor.

**§11-10-5r. Technical assistance advisories.**

- (a) The Tax Commissioner may issue an informal technical assistance advisory to a person, upon written request, as to the position of his office on the tax consequences of a stated transaction or event, under existing statutes, rules or policies. However, after the issuance of an assessment to a taxpayer, a technical assistance advisory may not be issued to that taxpayer with respect to the issue or issues involved in the assessment.
- (b) A technical assistance advisory shall have no precedential value except to the taxpayer who requests the advisory and then only for the specific transaction addressed in the technical assistance advisory, unless specifically stated otherwise in the advisory.
- (c) Any modification of an advisory shall be prospective only.
- (d) The Tax Commissioner may, in his discretion, promulgate rules prescribing guidelines and procedures for submission, issuance or denial of assistance, and disclosure of technical assistance advisory: Provided, That the Tax Commissioner shall not disclose a technical assistance advisory to any person other than the person who requested the advisory, or his authorized representative, without first deleting the name, address and other identifying details of the person to whom the technical assistance advisory was issued, unless that person executes a written waiver of confidentiality.
- (e) The Tax Commissioner shall release copies of technical assistance advisories issued pursuant to this section to the public. Any identifying characteristics or facts about the taxpayer shall be omitted or modified in such technical assistance advisories to such an extent so as to not disclose the name or identity of the taxpayer.

**§11-10-5s. Disclosure of certain taxpayer information.**

(a) Purpose. — The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality. —

(1) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the name and address of every taxpayer and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received are as follows:

- (A) More than \$1 but not more than \$50,000;
- (B) More than \$50,000 but not more than \$100,000;
- (C) More than \$100,000 but not more than \$250,000;
- (D) More than \$250,000 but not more than \$500,000;
- (E) More than \$500,000 but not more than \$1 million; and
- (F) More than \$1 million.

(2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the following information regarding a compromise of a pending civil tax case that occurs on or after the effective date of this section in which the Tax Commissioner is required to seek the written recommendation of the Attorney General and the Attorney General has not recommended acceptance of the compromise or when the Tax Commissioner compromises a civil tax case for an amount that is more than \$250,000 less than the assessment of tax owed made by the Tax Commissioner:

- (A) The names and addresses of taxpayers that are parties to the compromise;
- (B) A summary of the compromise;
- (C) Any written advice or recommendation rendered by the Attorney General regarding the compromise; and
- (D) Any written advice or recommendation rendered by the Tax Commissioner's staff.

Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and receive timely return information. The Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding additional agencies with which written exchange of information agreements may be sought but may not promulgate emergency rules regarding these additional agencies. The agreements shall be published in the State Register and are only for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information so disclosed remains confidential in the other agency to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written agreement with the State Treasurer to disclose to the State Treasurer the following business registration information:

(A) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and

(B) The type of business activity and organization of those businesses.

Disclosure of this information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information disclosed hereunder or thereunder remains confidential as provided by section five-d of this article and by other applicable federal or state laws.

(6) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may disclose to the Attorney General any tax return, report, declaration or tax return information, including the identity of a taxpayer, that relates to any taxpayer's sales of tobacco products subject to state excise tax or to such sales of tobacco products that were

manufactured or imported by a nonparticipating manufacturer as defined in section two, article nine-d of chapter sixteen of this code, for the purpose of enforcement of articles nine-b and nine-d, chapter sixteen of this code, or for the purpose of representing the State of West Virginia in any arbitration or litigation arising under the Tobacco Master Settlement Agreement or articles nine-b and nine-d, chapter sixteen of this code. Nothing herein shall authorize the disclosure of any taxpayer's income tax returns or business franchise tax returns, or authorize the use of the disclosed information for any purpose other than as specified herein.

(7) Notwithstanding any provision of this code to the contrary, the Attorney General, upon the consent of the Tax Commissioner, may disclose information provided by the Tax Commissioner under the authority of subdivision six of this subsection as follows:

(A) To a party or parties participating in arbitration or litigation arising under the terms of the Tobacco Master Settlement Agreement; or

(B) To a judge, arbitrator, administrative law judge, legal counsel or other officer, official or participant in proceedings for or relating to administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d, chapter sixteen of this code.

(C) Notwithstanding any provision of this code to the contrary, the Attorney General may introduce into evidence or disclose the information in the arbitration or litigation proceedings or an action for administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d, chapter sixteen of this code.

(D) This subdivision does not apply to a document, tax return or other information subject to disclosure restrictions imposed by federal statute or regulation.

(E) No disclosure may be made pursuant to this subdivision unless it is subject to a protective order or agreement restricting the use of the disclosed information to the proceeding, arbitration or litigation;

(8) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written exchange agreement with the Auditor to disclose certain taxpayer information to facilitate participation in the following:

(A) The federal offset program authorized by section thirty-seven, article one, chapter fourteen of this code; and

(B) The state offset program, as authorized by subsection (h), section thirty-seven, article one, chapter fourteen of this code, for the purpose of protecting return information as defined in section five-d, article ten of this chapter and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

(C) The taxpayer information exchanged or disclosed pursuant to this subdivision is to be used only for the purpose of facilitating the collection of unpaid and delinquent tax liabilities through offset against state payments due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(D) The Tax Commissioner may disclose the following taxpayer information:

(i) Name;

(ii) Address;

(iii) Social Security number or tax identification number;

(iv) Amount of the tax liability; and

(v) Any other information required by the written agreement.

(E) Disclosure of this information begins as soon as practicable after the effective date of this subdivision.

(F) The provisions of this section do not preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder remains confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. — Beginning on January 15, 1992, and every January 15 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year cycles, the reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the Tax Commissioner. For purposes of this section, the term “tax expenditure” means a provision in the tax laws administered under this article including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. — Notwithstanding any other provisions of this section or of this code, no return information made available to the Tax Commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in a manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of the other states’ confidentiality laws.

**§11-10-5t. Payment by electronic fund transfers.**

(a) The term "electronic funds transfer" means and includes automated clearinghouse debit, automated clearinghouse credit, wire transfer, and any other means recognized by the Tax Commissioner for payment of taxes.

(b) The Tax Commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

(c) The rules shall set forth the following:

(1) Acceptable indicia of timely payment;

(2) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(3) Which types of taxes to which electronic filing requirements apply for any given tax year and implementation dates: Provided, That the type of tax to which electronic funds transfer requirements apply during the first tax year is personal income tax withholding by employers;

(4) The dollar amount of tax liability per year which, when exceeded, requires or permits electronic funds transfer. Unless and until a legislative rule is promulgated or this section is amended, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding year was less than \$120,000: Provided, That for tax years beginning on or after January 1, 2019, no person may be required to pay any tax by electronic funds transfer if the amount owed for the tax during the preceding tax year was less than \$50,000;

(5) What, if any, exceptions are allowable, and alternative methods of payment to be used for any exceptions;

(6) Procedures for making voluntary electronic funds transfer payments;

(7) Any provisions needed to implement the civil penalty created by this section; and

(8) Any other provisions necessary to ensure the timely implementation of electronic funds transfer payments.

(d) In addition to any other additions and penalties which may be applicable, there is a civil penalty for failing or refusing to use an appropriate electronic funds transfer method when required to do so. The amount of this penalty is three percent of the total tax liability which is or was to be paid by electronic funds transfer for any tax for which electronic funds transfer methods are required to be used by the taxpayer.

(e) The provisions of this section are not intended to affect the provisions of other sections of this chapter concerning filing of returns or any other provisions which are not in direct conflict with this section.

(f) The State Treasurer shall adopt any procedures or rules necessary or convenient for implementing electronic funds transfers of tax payments authorized by this section and rules adopted by the Tax Commissioner. The Treasurer shall draft any procedures and rules adopted in consultation with the Tax Commissioner and the procedures and rules may not conflict with this section or rules adopted by the Tax Commissioner.

(g) The provisions of this section become effective on or after January 1, 1998.

**§11-10-5u. Disclosure of persons making retail sales of tobacco products.**

Notwithstanding any provision of this article to the contrary, the Tax Commissioner shall, at least semiannually, provide to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the Secretary of the Department of Health by April 1 and October of each year, a list of the names and business locations of each person who indicates on a new application for a business registration certificate or on a current application for renewal of a business registration certificate that the person sells or intends to sell cigarettes or other tobacco products to consumers: *Provided*, That when available, the Tax Commissioner will provide the name of the business owner, county of location, and the business description code: *Provided, however*, That the Tax Commissioner may also file a copy of the list provided to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the Secretary of the Department of Health in the state register maintained by the Secretary of State, who shall make the list available for inspection and copying: *Provided further*, That the results of the inspections of retail establishments which sell tobacco products may be reported to the federal government by the commissioner of the West Virginia alcohol beverage control administration.

**§11-10-5v. Disclosure of tax information to the treasurer for return, recovery and disposition of unclaimed and abandoned property.**

(a) Notwithstanding any provision of this code to the contrary, if the information resides in Tax Division databases, the Tax Commissioner shall disclose to the state Treasurer the name, last known address and social security number, or federal employer identification number, as applicable, of persons or businesses, including joint or combined filers, to which tax refund checks have been issued by this state, which checks have gone unclaimed or uncashed for a period of more than six months after the issuance date of the check. Notwithstanding any provision of this code to the contrary, if the information is included in a Tax Division database, the Tax Commissioner shall disclose to the state Treasurer the date, check number, warrant number, transaction identification number, invoice number, and amount of any such unclaimed or uncashed refund check, and the Tax Commissioner's confirmation or denial of confirmation, as applicable, that the tax refund is currently due and payable to the payee or payees to whom the unclaimed or uncashed check was originally issued.

(b) Disclosure of this information shall begin as soon as practicable after the effective date of this section on such schedule and under such arrangements as the treasurer and the Tax Commissioner may agree. Information so disclosed shall be used by the treasurer only for the purpose of administering and implementing the return, recovery and disposition of abandoned or unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code.

(c) The treasurer as administrator for unclaimed property shall treat information obtained in accordance with this section as records of abandoned property in accordance with article eight, chapter thirty-six of this code, and shall use the information to facilitate locating owners of unclaimed tax refunds. Notwithstanding any provision of this code to the contrary, the treasurer may disclose any or all of the information to an owner, his or her personal representative, next of kin, attorney at law or a person entitled to inherit from the owner.

(d) Of the information received by the treasurer under this section, only the name, city and state of the last known address of the payee or payees to whom the unclaimed or uncashed check was originally issued may be published by the treasurer, and only for the purpose of returning, recovering or disposing of unclaimed tax refunds. Tax information disclosed pursuant to this section to the treasurer shall remain confidential as provided by section five-d of this article, except to the extent disclosure is allowed under this section. The provisions of this section may not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code.

**§11-10-5w. Confidentiality and disclosure of information set forth in the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter to county assessors, the Department of Environmental Protection and to the Public Service Commission; offenses; penalties.**

(a) Confidentiality of certain information reported on the oil and gas combined reporting form, exception. -- The following information provided by or on behalf of any person or entity on the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter is confidential:

- (1) The natural resources account number (NRA);
- (2) Total gross revenue for oil or gas or both;
- (3) Working interest revenue for oil or gas or both;
- (4) The name and address of the owner of a working interest or override royalty interest in the well;
- (5) The ownership interest held by the owner of a working interest or override royalty interest in the well, expressed as a percentage or decimal equivalent, of total ownership of each listed owner; and
- (6) The income of any owner.

Such information is exempt from disclosure under section four, article one, chapter twenty-nine-b of this code, and shall be kept, held and maintained as confidential except to the extent the information is disclosable under subsections (b) and (c) of this section.

(b) Disclosure to county assessors, Department of Environmental Protection and Public Service Commission authorized. -- Notwithstanding the provisions of section five-d, article ten of this chapter to the contrary, and notwithstanding any other provision of this code to the contrary, the Tax Commissioner may disclose the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter, and information set forth thereon to county assessors, the Department of Environmental Protection and the Public Service Commission for the purpose of administering and implementing the assessment, administrative, oversight and regulatory functions and responsibilities with which they are charged by law.

(c) Release and publication of information. --

(1) Statistical and aggregate information. -- This section shall not be construed to prohibit the publication or release of summary statistical information derived from the oil and gas combined reporting form, including summary statistical information derived from the items specified in subsection (a) of this section. Publication or release of such summary statistical information is authorized in the form of aggregated statistics, maps, articles, reports or

professional talks, or in other forms, provided it is presented in accordance with generally accepted practices and in a manner so as to preclude the identification of particular oil and gas combined report filers and to preclude derivation or determination of information specified in subsection (a) of this section about particular oil and gas combined report filers.

(2) Release and publication of certain information. -- Notwithstanding the provisions of this section to the contrary and notwithstanding any other provision of this code to the contrary, the Tax Commissioner, county assessors, the Department of Environmental Protection, and the Public Service Commission may publish or publicly release information provided by or on behalf of any person or entity in the oil and gas combined reporting form except for the information specified as confidential in subsection (a) of this section.

(d) Penalty of unlawful disclosure. -- Any state, county or governmental subdivision employee or representative (including, but not limited to, any county assessor or any employee or representative of the West Virginia Department of Environmental Protection or the West Virginia Public Service Commission), who violates this section by making an unlawful or unauthorized disclosure of confidential information that is reported on the oil and gas combined reporting form is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined, and shall be assessed the cost of prosecution. As used in this section, the term "state, county or governmental subdivision employee or representative" includes, but is not limited to, any current or former state, county or municipal employee, officer, or commission or board member, and any state, county or municipal agency, institution, organization, contractor or subcontractor and any principal, officer, agent or employee thereof.

(e) Effective July 1, 2006, this section shall have no force or effect.

**§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.

**§11-10-5y. Disclosure of return information to Consolidated Public Retirement Board.**

(a) The Tax Commissioner shall, upon written request, disclose to designated employees authorized by the Consolidated Public Retirement Board created by article ten-d, chapter five of this code:

(1) Available return information from the master files of the Tax Division relating to the social security account number, address, filing status, marital status, amounts, nature and source of income and the number of dependents reported on any return filed by, or with respect to, any individual receiving a disability annuity; and

(2) Available state return information reflected on any state return filed by, or with respect to, any individual described in this subsection relating to the amount of and sources of the individual's gross income.

(b) The Tax Commissioner shall disclose return information under this section only for purposes of assisting the Consolidated Public Retirement Board in its efforts to ascertain whether individuals receiving disability retirement benefits under any of the retirement systems which it administers continue to be eligible to receive their disability retirement benefits.

(c) The Consolidated Public Retirement Board and its employees shall maintain the confidentiality of information received under this section, except that the information may be disclosed during an administrative process, hearing or appeal, or other action relating to whether an individual receiving disability retirement benefits under any of the retirement systems which the board administers continues to be eligible to receive his or her disability retirement benefits.

(d) The provisions of subsection (c), section five-d of this article are applicable to all employees, officers and agents of the Consolidated Public Retirement Board who disclose information received pursuant to this section that is otherwise confidential under any provision of this code for purposes other than those specified in this section.

**§11-10-5z. Electronic filing for certain persons.**

(a) (1) For tax years beginning on or after January 1, 2009, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than \$100,000 during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

(2) For tax years beginning on or after January 1, 2011, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than \$10,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(3) For tax years beginning on or after January 1, 2015:

(i) For returns that are required to be filed prior to January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than \$10,000 during the immediately preceding tax year shall file electronically all such returns for all taxes administered under this article.

(ii) For returns that are required to be filed on or after January 1, 2016, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than \$25,000 during the immediately preceding tax year shall file electronically all returns for all taxes administered under this article.

(iii) For returns that are required to be filed on or after January 1, 2019, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than \$50,000 during the immediately preceding tax year shall file electronically all returns for taxes administered under this article.

(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions, and rules that he or she determines necessary. All rules shall be promulgated pursuant to §29A-3-1 et seq. of this code.

**§11-10-6. Mathematical or clerical errors; collection of balance due on return without remittance.**

(a) Mathematical or clerical error. -- When it appears to the Tax Commissioner that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), or clerical error, the Tax Commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency or overpayment in tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay any such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the Tax Commissioner shall make an assessment of such deficiency in accordance with section seven and shall give the taxpayer written notice thereof.

(b) Collection of balance due. -- If a taxpayer files a mathematically correct return which reflects a balance due of any tax administered under this article, and if full payment thereof has not been made, the Tax Commissioner shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such fifteen-day period, the Tax Commissioner shall proceed under section eleven of this article to collect the amount due.

(c) Certain terms defined. -- For the purposes of this section:

(1) Mathematical or clerical error. -- The term "mathematical or clerical error" means:

(A) An error in addition, subtraction, multiplication or division shown on any return;

(B) An incorrect use of any table provided by the Tax Commissioner with respect to any return if such incorrect use is apparent from the existence of other information on the return;

(C) An entry on a return of an item which is inconsistent with another entry of the same or another item on such return;

(D) An omission of information which is required to be supplied on the return to substantiate an entry on the return; and

(E) An entry on a return of a deduction or credit in an amount which exceeds a statutory limit, if such limit is expressed:

(i) As a specified monetary amount, or

(ii) As a percentage, ratio, or fraction, and if the items entering into the application of such limit appear on such return.

(2) Return. -- The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto filed with respect to any tax administered under this

article.

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**§11-10-7. Assessment.**

(a) General. — If the Tax Commissioner believes that any tax administered under this article has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or fee, or has failed to make a return, or has made a return which is incomplete, deficient, or otherwise erroneous, he or she may proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

(b) Jeopardy assessments. — If the Tax Commissioner believes that the collection of any tax administered under this article will be jeopardized by delay, he or she shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made posts the required security and petitions for reassessment within 20 days after service of notice of the jeopardy assessment, such assessment shall become final: Provided, That upon written request of the taxpayer made within the 20-day period, showing reasonable cause therefor, the Tax Commissioner may grant an extension of time not to exceed 30 additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by remittance of the amount assessed or such security as the Tax Commissioner may consider necessary to ensure compliance with the applicable provisions of this chapter. If a petition for reassessment is timely filed, and the amount assessed has been remitted, or such other security posted, the provisions for hearing, determination, and appeal set forth in §11-10A-1 et seq. of this code shall then be applicable.

(c) Amendment of assessment. — The Tax Commissioner may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever he or she ascertains that such assessment is improper or incomplete in any material respect.

(d) Supplemental assessment. — The Tax Commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment whenever he or she ascertains that any assessment is imperfect or incomplete in any material respect.

(e) Address for notice of assessment. —

(1) General rule. — In the absence of notice to the Tax Commissioner under §11-10-5o of this code of the existence of a fiduciary relationship, notice of assessment, if sent by certified mail or registered mail to the taxpayer at his or her last known address, shall be sufficient even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation or other legal entity, has terminated its existence.

(2) Joint income tax return. — In the case of a joint income tax return filed by a husband and wife, such notice of assessment may be a single notice, except that if the Tax Commissioner has been notified by either spouse that separate residences have been established, then in lieu of a single notice, a duplicate original of the joint notice shall be sent by certified or

registered mail to each spouse at his or her last known address.

(3) Estate tax. — In the absence of notice to the Tax Commissioner of the existence of a fiduciary relationship, notice of assessment of a tax imposed by §11-11-1 et seq. of this code, if addressed in the name of the decedent or other person subject to liability and mailed to his or her last known address, by registered or certified mail, shall be sufficient for purposes of this article and §11-11-1 et seq. of this code.

(f) For purposes of this section, the term "taxpayer" includes any partnership or other pass-through entity that owes tax pursuant to §11-21A-1 et seq. of this code.

**§11-10-7a. Abatement.**

(a) General rule. -- The Tax Commissioner is authorized to abate the assessment of any tax or any liability in respect thereto which:

(1) Is void;

(2) Is assessed after the expiration of the period of limitation properly applicable thereto; or

(3) Is voidable: Provided, That no claim for abatement shall be filed by a taxpayer under this subdivision if the assessment has become final.

(b) Small tax balances. -- The Tax Commissioner is authorized to abate the unpaid portion of an assessment of any tax, or any liability in respect thereof, which has become final, if the Tax Commissioner determines under uniform rules promulgated by him or her that the administration and collection costs involved would not warrant collection of the amount due.

(c) Interest on abated penalties. -- The Tax Commissioner is authorized to abate any interest on a penalty assessed on a tax, when the penalty has been abated.

**§11-10-7b. Abatement of interest attributable to errors and by tax division.**

(a) In general. -- In the case of any interest due on:

(1) Any deficiency attributable, in whole or in part, to any error or delay determined by the Tax Commissioner to have been caused by an officer or employee of the Tax Division (acting in his or her official capacity) in performing a ministerial act; or

(2) Any payment of any tax (or fee) assessed under section seven of this article to the extent that any error or delay in such payment is determined by the Tax Commissioner to be attributable to an officer or employee of the Tax Division (acting in his or her official capacity) being erroneous or dilatory in performing a ministerial act, the Tax Commissioner may abate all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributable to the taxpayer (or feepayer) involved, and after the Tax Division has contacted the taxpayer (or feepayer) in writing with respect to such deficiency or payment.

(b) Interest abated with respect to erroneous refund check. -- The Tax Commissioner may abate the interest that accrued under section seventeen of this article on any erroneous refund until the date demand for repayment is made, unless the taxpayer (or a related party) has in any way caused such erroneous refund.

**§11-10-7c. Abatement of any penalty or addition to tax attributable to written advice by Tax Commissioner.**

(a) In general. -- The Tax Commissioner shall abate any portion of any penalty or addition to tax (or fee) attributable to erroneous advice furnished to the taxpayer (or feepayer) in writing by an officer or employee of the Tax Division, acting in such officer's or employee's official capacity.

(b) Limitations. -- Subsection (a) of this section shall apply only if the Tax Commissioner finds that all of the following conditions are satisfied:

- (1) The written advice was reasonably relied upon by the taxpayer (or feepayer) and was in response to a specific written request of the taxpayer (or feepayer); and
- (2) The portion of the penalty or addition to tax (or fee) did not result from a failure by the taxpayer (or feepayer) to provide adequate or accurate information.

(c) Any person seeking relief under this section shall file with the commissioner all of the following:

- (1) A copy of the person's written request to the commissioner and a copy of the commissioner's written advice;
- (2) A statement signed under penalty of perjury setting forth the facts on which the claim is based;
- (3) Any other information which the commissioner may require.

**§11-10-7d. Combining assessments.**

(a) The Tax Commissioner may, subsequent to any investigation authorized by subsection (a), section seven of this article that results in an assessment in each of two or more taxes administered pursuant to this article, combine those assessments into a combined single assessment. In order to complete any investigation, the Tax Commissioner may review and combine returns for the taxes that are the subject of the investigation.

(b) If the Tax Commissioner has combined two or more returns as authorized by subsection (a) of this section, the tax remitted shall be applied against taxes in the order provided in a rule promulgated by the Tax Commissioner under the authority of article three, chapter twenty-nine-a of this code.

(c) If the Tax Commissioner issues a combined single assessment as authorized in subsection (a) of this section, the limitations on assessment provided in section fifteen of this article shall apply separately to each tax liability included in the single assessment.

(d) If the Tax Commissioner issues a single assessment as authorized in subsection (a) of this section and the assessment becomes final pursuant to the provisions of section eight of this article, the Tax Commissioner is authorized to pursue collection of the tax resulting from the combined assessment as authorized by this article, including, but not limited to, sections eleven and thirteen of this article, and to record one lien, pursuant to section twelve of this article, that includes all unpaid amounts of all finalized tax liabilities included in that combined assessment.

**§11-10-8. Notice of assessment; petition for reassessment or payment of assessment within sixty days; finality of assessment; payment of final assessment; effective date.**

(a) Notice of assessment. -- The Tax Commissioner shall give the taxpayer written notice of any assessment or amended or supplemental assessment made pursuant to this article. The assessment or amended or supplemental assessment, as the case may be, shall become final and conclusive of the liability of the taxpayer and not subject to either administrative or judicial review under the provisions of sections nine or nine-a, and ten of this article, or under the provisions of sections ten or eleven, and nineteen of article ten-a of this chapter, unless the taxpayer to whom a notice of assessment or amended or supplemental assessment, is given, shall within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section seven of this article) either:

(1) Petition for reassessment. -- Personally or by certified mail, files with the Tax Commissioner a petition in writing, verified under oath by the taxpayer or his or her duly authorized agent, having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections: Provided, That for all assessments received after December 31, 2002, the taxpayer shall file the petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter; or

(2) Payment of assessment. -- Personally or by certified mail, remits to the Tax Commissioner the total amount of the assessment or amended or supplemental assessment, including the additions to tax and penalties as may have been assessed and the amount of interest due.

(b) Finality of assessment. -- The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in subdivision (2), subsection (a) of this section, within sixty days after service of notice of the assessment does not prohibit or otherwise bar the taxpayer from filing a claim for refund or credit under the provisions of section fourteen of this article within the time prescribed therein for the filing of a claim for refund or credit.

(c) Payment of assessment after petition filed. -- A taxpayer who has timely filed a petition for reassessment may, at any time prior to issuance of the administrative decision under section nine or nine-a of this article, or under sections ten or eleven, article ten-a of this chapter, pay under protest the amount of the assessment. Upon payment, the contested case shall thereafter be treated for all purposes as a petition for refund: Provided, That if payment is made after the administrative hearing under section nine or nine-a of this article or under section ten or eleven, article ten-a of this chapter, has commenced or concluded, a new hearing may not be held, but the record shall be properly amended to show that the amount assessed has been paid under protest by the taxpayer and that the petition for

reassessment previously filed under this section or under section nine, article ten-a of this chapter is now to be treated as a petition for refund filed under section fourteen of this article.

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**§11-10-9. Hearing procedure.**

(a) When a petition for reassessment provided for in section eight of this article, or a petition for refund or credit provided for in section fourteen of this article, is filed within the time prescribed for filing, or a hearing is requested pursuant to the provisions of any other article of this chapter which is administered under this article, the Tax Commissioner shall assign a time and place for a hearing upon the same and shall notify the petitioner of the hearing by written notice at least twenty days in advance thereof. The hearing shall be held within ninety days from the date of filing the petition or other written request for hearing unless continued by agreement of the parties or by the Tax Commissioner for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the Tax Commissioner or a hearing examiner designated by him or her. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.

After the hearing, the Tax Commissioner shall, within a reasonable time, give notice in writing of his or her decision. Unless an appeal from the decision of the Tax Commissioner rendered in any hearing is taken, pursuant to the provisions of section ten of this article, within sixty days after service of the notice, the Tax Commissioner's decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the state under the decision shall be due and payable on the day following the date upon which the decision becomes final. The amount, if any, due the taxpayer under the decision shall be promptly refunded, or the same may be credited pursuant to section fourteen of this article.

(b) All petitions which are on the Tax Commissioner's docket on December 31, 2002, for which no administrative hearing has been held, shall be transferred by the Tax Commissioner to the office of tax appeals no later than January 31, 2003; and thereafter, the petition shall, for all purposes except timeliness of filing, be treated as if it had been filed with the office of tax appeals.

(c) All petitions which are on the Tax Commissioner's docket on December 31, 2002, for which an administrative hearing has been held prior to that date, shall remain on the Tax Commissioner's docket and the Tax Commissioner shall issue an administrative decision no later than March 31, 2003.

**§11-10-9a. Small claims procedure; disputes involving \$10,000 or less.**

(a) In general. -- Notwithstanding the provisions of section nine of this article, if the amount in dispute in any petition for reassessment filed under section eight or in any petition for refund or credit filed under section fourteen does not exceed \$10,000 for any one taxable year, then, at the option of the taxpayer and concurred in by the Tax Commissioner before the hearing of the case, proceedings in the case shall be conducted under this section. The proceedings shall be conducted in an informal manner and in accordance with the rules of evidence and rules of procedure as the Tax Commissioner may prescribe. A decision, together with a brief summary of the reasons therefor shall be issued by the Tax Commissioner.

(1) All small claims petitions which are on the Tax Commissioner's docket on December 31, 2002, for which no administrative hearing has been held, shall be transferred by the Tax Commissioner to the office of tax appeals no later than January 31, 2003; and thereafter, the petition shall, for all purposes except timeliness of filing, be treated as if it had been filed with the office of tax appeals.

(2) All small claims petitions which are on the Tax Commissioner's docket on December 31, 2002, for which an administrative hearing has been held prior to that date, shall remain on the Tax Commissioner's docket and the Tax Commissioner shall issue an administrative decision no later than March 31, 2003.

(b) Finality of decision. -- A decision entered in any case in which proceedings are conducted under this section is not subject to review, administrative or judicial, and may not be treated as precedent for any other case.

(c) Discontinuance of proceedings. -- At any time before commencement of the hearing held under this section, the taxpayer may unilaterally withdraw its election made under subsection (a); and at any time before a decision is issued under this section, the taxpayer may request or the Tax Commissioner, on his or her own motion, may order that further proceedings under this section be discontinued because there are reasonable grounds for believing that the amount in dispute exceeds the amount described in subsection (a) of this section. Upon any discontinuance, or change of election, a hearing shall be held in the same manner as other cases to which section nine of this article applies.

(d) Amount of deficiency in dispute. -- For purposes of this section, the amount in dispute includes tax, additions to tax, additional amounts and penalties. It excludes interest.

**§11-10-10. Appeals.**

(a) Right of appeal. --

(1) A taxpayer may appeal the administrative decision of the Tax Commissioner issued under section nine or fourteen of this article, by taking an appeal to the circuit courts of this state within sixty days after being served with notice of the administrative decision.

(2) A taxpayer may appeal the administrative decision of the office of tax appeals in accordance with the provisions of section nineteen, article ten-a of this chapter.

(b) Venue. -- The appeal may be taken in the circuit court of any county:

(1) Wherein the activity taxed was engaged in; or

(2) Wherein the taxpayer resides; or

(3) Wherein the will of the decedent was probated or letters of administration granted; or

(4) To the circuit court of Kanawha County.

(c) Petition for appeal. -- The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a) of this section. The clerk of the circuit court shall, within ten days after date the petition is filed, serve the Tax Commissioner with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his or her duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for the objections.

(d) Appeal bond. -- If the appeal is of any assessment for additional taxes (except a jeopardy assessment for which security in the amount thereof was previously filed with the Tax Commissioner), then within ninety days after the petition for appeal is filed, or sooner if ordered by the circuit court, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the Tax Commissioner. Notwithstanding the foregoing and in lieu of the bond, the Tax Commissioner, in his or her discretion upon the terms as he or she may prescribe, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by section twelve of this article, or other indemnification, are adequate to secure performance of the orders of the court: Provided, That if the Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate to secure performance of the orders of the court, then the taxpayer may apply to the circuit court for the certification.

(e) Hearing of appeal. -- The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the Tax Commissioner. In the appeal a certified copy of the Tax Commissioner's notice of assessment or amended or supplemental assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of those articles of this chapter to which this article is applicable. The court shall render its decree thereon and a certified copy of the decree shall be filed by the clerk of the court with the Tax Commissioner who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the Tax Commissioner to the Supreme Court of Appeals of this state.

**§11-10-10a. Commissioner allowed to acquiesce or not acquiesce in decisions of office of tax appeals or circuit court.**

(a) The commissioner may state and periodically publish the Tax Division's acquiescence or nonacquiescence to indicate its position on an adverse decision of the office of tax appeals or a circuit court.

(b) Acquiescence in a decision means acceptance by the commissioner of the conclusion reached, but does not necessarily mean acceptance and approval of any or all of the reasons assigned by the office of tax appeals or circuit court for its conclusion.

(c) Nonacquiescence means that the commissioner does not accept one or more of the adverse conclusions reached by the office of tax appeals or the circuit court even though no appeal is taken from the decision. The decision is binding on the commissioner in the case not appealed but is not binding in any other case.

**§11-10-11. Collection of tax.**

(a) *General.* — The Tax Commissioner shall collect the taxes, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in §11-10-12 of this code, or by levy and distraint under §11-10-13 of this code.

(b) *Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.* —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code, shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) *Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.* — The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the Tax Commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) *Prerequisite to final settlement of contract with this state or political subdivision; penalty.* — All state, county, district, and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code against the contractor have been paid or provided for. If the transaction embodied in the contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then the payment shall also be withheld until receipt of a release from the county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section is subject to a civil penalty of \$1,000, recoverable as a debt in a civil action brought by the Tax Commissioner.

(e) *Limited effect of Tax Commissioner's certificates.* — The certificates of the Tax Commissioner provided in subsections (b), (c), and (d) of this section shall not bar subsequent investigations, assessments, refunds, and credits with respect to the taxpayer.

(f) *Payment when person sells out or quits business; liability of successor; lien.* —

(1) If any person subject to any tax administered under this article sells out his, her, or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and that person shall, within 30 days after selling out his, her, or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien upon the property of that person.

(2) The successor in business of any person who sells out his, her, or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties, and interest unpaid after expiration of the 30-day period allowed for payment: *Provided*, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties, and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties, and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) *Priority in distribution of estate or property in receivership.* — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person or entity, subject to §38-10C-1 *et seq.* of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article.

(h) *Injunction.* — If the taxpayer fails for a period of more than 60 days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the Tax Commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any other articles. No bond is required of the Tax Commissioner in any action instituted under this subsection.

(i) *Costs.* — In any proceeding under this section, upon judgment or decree for the Tax Commissioner, he or she shall be awarded his or her costs.

(j) *Refunds; credits; right to offset.* —

(1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the Tax Commissioner may reduce the amount of the refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this section.

(2) The Tax Commissioner may enter into agreements with the Internal Revenue Service that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax refunds against state tax liabilities; and establishing the amount of the offset fee per transaction which both agencies may charge each other: *Provided*, That offsets under subdivision (1) of this subsection shall occur prior to offsets under this subdivision. At the times moneys are received as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: *Provided, however*, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest, and penalties owed by the taxpayer to this state: *Provided further*, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the moneys retained from the taxpayer's state tax refund and then deposited in the special revolving fund which is hereby created and established in the State Treasury and designated as the Tax Offset Fee Administration Fund: *And provided further*, That the fees deposited in the Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

(k) *Spouse relieved of liability in certain cases.* —

(1) *In general.* — Under regulations prescribed by the Tax Commissioner, if:

(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.

(2) *Grossly erroneous items.* — For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income;  
and

(B) Any claim of a deduction, credit, or basis by a spouse in an amount for which there is no basis in fact or law.

(3) *Substantial understatement.* — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed \$500.

(4) Understatement must exceed specified percentage of spouse’s income.

(A) *Adjusted gross income of \$20,000 or less.* — If the spouse’s adjusted gross income for the readjustment year is \$20,000 or less, this subsection applies only if the liability described in subdivision (1) of this subsection is greater than 10 percent of the adjusted gross income.

(B) *Adjusted gross income of more than \$20,000.* — If the spouse’s adjusted gross income for the readjustment year is more than \$20,000, paragraph (A) of this subdivision is applied by substituting “25 percent” for “10 percent”.

(C) *Readjustment year.* — For purposes of this subdivision, the term “readjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) *Computation of spouse’s adjusted gross income.* — If the spouse is married to another spouse at the close of the readjustment year, the spouse’s adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) *Exception for omissions from gross income.* — This subdivision shall not apply to any liability attributable to the omission of an item from gross income.

(5) *Adjusted gross income.* — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under §11-21-1 *et seq.* of this code.

**§11-10-11a. Administration of special district excise tax; commission authorized.**

(a) Any municipality or county commission which, pursuant to section twelve, article twenty-two, chapter seven of this code, or section twelve, article thirty-eight, chapter eight of this code imposes a special district excise tax shall, by express provision in the order or ordinance imposing that tax, authorize the State Tax Commissioner to administer, assess, collect and enforce that tax on behalf of and as its agent.

(1) The county commission or municipality shall make such authorization by the adoption of a provision in its order or ordinance levying a special district excise tax stating its purpose and referring to this section and providing that the order or ordinance shall be effective on the first day of a month at least sixty days after its adoption.

(2) A certified copy of the order or ordinance shall be forwarded to the State Auditor, the State Treasurer and the Tax Commissioner so that it will be received within five days after its adoption or enactment.

(b) Any special district excise tax administered under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the Tax Commissioner under this section shall be paid into the State Treasury to the credit of each county commission's subaccount in the economic opportunity development district fund created pursuant to section nine, article twenty-two, chapter seven of this code, or to the credit of each municipality's subaccount in the economic opportunity development district fund created pursuant to section nine, article thirty-eight, chapter eight of this code, for the particular economic opportunity development district. The special district excise tax moneys shall be credited to the subaccount of each particular county commission or municipality levying a special district excise tax being administered under this section. The credit shall be made to the subaccount of the county commission or municipality for the economic opportunity development district in which the taxable sales were made and taxable services rendered as shown by the records of the Tax Commissioner and certified by him or her monthly to the State Treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the Tax Commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the State Treasury in any month for the preceding reporting period, the district board or the county commission or municipality imposing the tax may issue a requisition to the State Auditor requesting issuance of a state warrant for the proper amount in favor of each county commission or municipality entitled to the monthly remittance of its special district excise tax moneys.

(1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the county commission or the municipality and not previously remitted during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the State Treasury, as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.

**§11-10-11b. Fund creation; authorization for expenditure.**

Amounts deducted and retained by the Tax Commissioner under subsection (e), section eleven-a of this article shall be deposited by the Tax Commissioner in the special revolving fund which is hereby created and established in the state Treasury and designated as the "special district excise tax administration fund." Amounts deposited in the special district excise tax administration fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

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**§11-10-11c. State administration of local sales and use taxes and excise taxes; jurisdiction and standing before the office of tax appeals; rule-making authority.**

(a) The Tax Commissioner has exclusive responsibility for administering, collecting and enforcing all local sales and use taxes and excise taxes imposed pursuant to article twenty-two, chapter seven of this code, section five-a, article one, chapter eight of this code, article thirteen-c, chapter eight of this code and article thirty-eight, chapter eight of this code.

(b) Pursuant to, and limited by, the provisions of section eight, article ten-a of this chapter, the Office of Tax Appeals has exclusive and original jurisdiction to hear disputes arising from any local sales and use taxes and excise taxes for which the Tax Commissioner has exclusive administration, enforcement and collection responsibility. No municipality or county has standing before the Office of Tax Appeals in any dispute arising under any local sales and use tax and excise tax upon which the Tax Commissioner has exclusive responsibility for administration, enforcement and collection.

(c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner may assess a fee, to be established by legislative rule pursuant to the provisions of article three, chapter twenty nine-a of this code, to be retained from collections authorized by section five-a, article one, chapter eight of this code, and section six, article thirteen-c, chapter eight of this code: Provided, That the fee may not exceed five percent of such collections in total including any fee otherwise authorized by this code or any duly enacted ordinance.

(d) Establishment of special revenue account.

(1) There is created in the State Treasury a special revenue revolving fund account known as the "Local Sales Tax and Excise Tax Administration Fund". Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code: Provided, That for the fiscal year ending June 30, 2014, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. The fund shall consist of:

(A) Any funds collected pursuant to section (c) of this section; and

(B) Any funds received on and after July 1, 2013, from fees retained by the Tax Commissioner pursuant to section six, article thirteen-c, chapter eight of this code; and

(C) Amounts deducted and retained by the Tax Commissioner under subsection (e), section eleven-a of this article; and

(D) Any future funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and

(E) Any accrued interest or other return on the moneys in the fund.

(2) On July 1, 2013, all moneys in the Tax Department "Municipal Sales and Use Tax Operations Fund" established under section six, article thirteen-c, chapter eight of this code shall be transferred to the Local Sales Tax and Excise Tax Administration Fund established in this section.

(3) On July 1, 2013, all moneys in the "Special District Excise Tax Administration Fund" established under section eleven-b of this article shall be transferred to the Local Sales Tax and Excise Tax Administration Fund established in this section.

(4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may be expended by the Tax Commissioner for the general administration, collection and enforcement of all local sales and use taxes and excise taxes imposed pursuant to article twenty-two, chapter seven of this code, section five-a, article one, chapter eight of this code, article thirteen-c, chapter eight of this code and article thirty-eight, chapter eight of this code.

(e) Notwithstanding the provisions of section eleven-b of this article, The Tax Commissioner may prescribe by rule the schedule and manner for deposits of moneys into the Local Sales Tax and Excise Tax Administration Fund and any other administrative and procedural requirements as may be useful or necessary for the management and handling of the fund.

(f) Effective Date - The provisions of this section enacted in 2013 are effective on and after July 1, 2013.

**§11-10-12. Liens, release; subordination; foreclosure; withdrawal.**

(a) General. — Any tax, additions to tax, penalties or interest due and payable under this article or any of the other articles of this chapter to which this article is applicable is a debt due this state. It is a personal obligation of the taxpayer and is a lien upon the real and personal property of the taxpayer.

(b) Duration of lien. — The lien created by this section continues until the liability for the tax, additions to tax, penalties and interest is satisfied or upon the expiration of ten years from the date the tax, additions to tax, penalties and interest are due and payable under section eight of this article or the date the tax return is filed, whichever is later.

(c) Recordation. — The lien created by this section is subject to the restrictions and conditions embodied in article ten-c, chapter thirty-eight of this code and any amendment made or which may hereafter be made thereto: Provided, That the notice of lien shall indicate the date the tax, additions to tax, penalties and interest are due and payable under section eight of this article or the date the tax return was filed and the lien expiration date.

(d) Release or subordination. — The Tax Commissioner, pursuant to rules prescribed by him or her, may issue his or her certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He or she shall issue his or her certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and the recordation is a release and full discharge of the lien. The Tax Commissioner may issue his or her certificate of release of the lien as to all or any part of the property subject to the lien, or may subordinate the lien to any other lien or interest, but only if there is paid to the state an amount not less than the value of the interest of the state in the property, or if the interest of the state in the property has no value.

(e) Foreclosure. — The Tax Commissioner may enforce any lien created and recorded under this section, against any property subject to the lien by civil action in the circuit court of the county wherein the property is located, in order to subject the property to the payment of the tax secured by the lien. All persons having liens upon or having any interest in the property shall be made parties to the action. The court may appoint a receiver or commissioner who shall ascertain and report all liens, claims and interests in and upon the property, the validity, amount and priority of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved therein, shall determine the validity, amount and priorities of all liens, claims and interests in and upon the property and shall decree a sale of the property by the sheriff or any commissioner to whom the action is referred, and shall decree distribution of the proceeds of the sale according to the findings of the court in respect to the interests of the parties.

(f) Discharge of lien. — A sale of property against which the state has a lien under this

section, made pursuant to an instrument creating a lien on the property or made pursuant to a statutory lien on the property, or made pursuant to a judicial order to enforce any judgment in any civil action, shall be made subject to and without disturbing the state tax lien if the state tax lien was recorded more than thirty days before the sale, unless:

- (1) The Tax Commissioner is made a party to the civil action;
- (2) The Tax Commissioner is given notice of the sale in writing not less than fifteen days prior to sale; or
- (3) The Tax Commissioner consents to the sale. The notice shall contain the name of the owner of the property and the Social Security number or federal employer identification number of the owner.

(g) Withdrawal of lien. —

(1) The Tax Commissioner or the Tax Commissioner's designee may withdraw a tax lien upon making one or more of the following determinations:

- (A) The lien was recorded prematurely, inadvertently or otherwise erroneously; or
- (B) The taxpayer voluntarily and through due diligence paid the lien, fulfilled a payment plan agreement, fulfilled the terms of an offer in compromise, timely provided supporting documentation or paid the lien in good faith.

(2) A withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to the taxpayer and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee.

(h) Release of lien. — Subject to such rules as the Tax Commissioner may prescribe, pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall issue a certificate of release of any lien imposed with respect to any tax or fee administered under this article not later than sixty days after the day on which the Tax Commissioner finds that the liability for the amount assessed, together with all interest and additions to tax in respect thereof, has been fully satisfied: Provided, That subject to such rules as the Tax Commissioner may prescribe pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall withdraw, release or otherwise terminate any lien imposed with respect to any tax or fee administered under this article, upon the determining that the lien is unenforceable, or in accordance with such other criteria as the Tax Commissioner may prescribe pursuant to rule.

**§11-10-13. Levy and distraint.**

(a) Authority of Tax Commissioner. -- If any tax administered under this article is shown to be due on a return, it is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the Tax Commissioner and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, then, if any person liable to pay any tax administered under this article neglects or refuses to pay the same within fifteen days after notice and demand, it shall be lawful for the Tax Commissioner (or his delegate) to collect such tax (and such further sum as is sufficient to cover the expense of the levy) by levy upon all property and rights to property belonging to such person or on which there is a lien provided in this article, or any article administered under this article, for payment of the tax. If the Tax Commissioner makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be given by the Tax Commissioner (or his delegate) and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the fifteen-day period provided in this section.

(b) "Levy" defined. -- The term "levy" as used in this section includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Tax Commissioner, or his delegate, may levy upon property or rights to property, he may seize and sell such property or rights to property, whether such property be real or personal, tangible or intangible.

(c) Successive seizures. -- Whenever any property or a right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the State of West Virginia for which levy is made, the Tax Commissioner may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him together with all expenses, is fully paid.

(d) Distress warrant. -- The Tax Commissioner may issue a distress warrant to the sheriff of any county of this state, or to any officer or employee of the state Tax Department, commanding him to levy upon and sell any such property or rights to property subject to levy in accordance with the provisions of this article. A distress warrant shall be executed within sixty days from the date the warrant was issued. The sheriff shall return the warrant and any money collected to the Tax Commissioner within sixty-five days from the date the warrant was issued. The provisions of articles four, five and six, chapter thirty-eight of this code shall not apply to the issuance or execution of any distress warrant issued under this subsection.

(e) Requirement of notice before levy.

(1) In general. -- Levy may be made under subsection (a) upon the salary or wages or other property or rights to property of any person with respect to any unpaid tax only after the Tax Commissioner has notified such person in writing of his intention to make such levy.

(2) Ten-day requirement. -- The notice required under paragraph (1) shall be given in person, or left at the dwelling or usual place of business of such person, or sent by certified mail to such person's last known address, no less than ten days prior to the day of levy: Provided, That no notice need be given if the Tax Commissioner has made a finding under the last sentence of subsection (a) that collection of the tax is in jeopardy.

(3) Continuing levy on salary and wages. -- The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the Tax Commissioner shall promptly release such levy and notify the person upon whom such levy was made that such levy has been released.

**§11-10-13a. Property exempt from levy.**

(a) Enumeration. -- There shall be exempt from levy:

(1) Wearing apparel and school books. -- Items of wearing apparel and school books that are necessary for the taxpayer or for members of his or her family.

(2) Fuel, provisions, furniture and personal effects. -- If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in his household and of the arms for personal use, livestock and poultry of the taxpayer, as does not exceed \$1,500 in value; if the taxpayer is an individual who is not the head of a household, this exemption shall not exceed \$1,000.

(3) Books and tools of a trade, business or profession. -- So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$1,000 in value.

(4) Unemployment benefits. -- Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of this state, or any other state.

(5) Undelivered mail. -- Mail, addressed to any person, which has not been delivered to the addressee.

(6) Annuity and pension payments. -- Annuity or pension payments under any pension or retirement plan, including social security payments.

(7) Workers' compensation. -- Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of this state or any other state.

(8) Judgments for support of minor children. -- If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his other minor children, so much of his or her salary, wages or other income as is necessary to comply with such judgment.

(9) Public assistance. -- Any amount payable to any person from a public assistance or relief fund created under the law of the United States or of this state or of any other state.

(10) Minimum exemption for wages, salary and other income. -- Any amount payable to or receivable by an individual as wages or salary for services provided by an employee to his or her employer, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him or her during such period does not exceed the applicable exempt amount determined under subsection (d).

(11) Homestead. -- If the taxpayer owns a homestead located in this state, the first \$5,000

thereof shall be exempt from levy.

(b) Appraisal. -- The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the office making the seizure, the Tax Commissioner shall summon three disinterested individuals who shall make the valuation.

(c) No other property exempt. -- Notwithstanding any other law of this state, no property or rights to property shall be exempt from levy other than property specifically made exempt by subsection (a).

(d) Exempt amount of wages, salary or other income.

(1) In the case of an individual who is paid or receives all of his wages, salary and other income on a weekly basis, the amount of the wages, salary and other income payable to or receivable by the person during any week which is exempt from levy under paragraph (1), subsection (a) shall be:

(A) Thirty times the state minimum wage per hour, plus

(B) Twenty-five dollars for each additional dependent of the taxpayer.

**§11-10-13b. Surrender of property subject to levy.**

(a) Requirement. -- Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Tax Commissioner, surrender such property or rights (or discharge such obligation) to the Tax Commissioner, except such part of the property or rights as is, at the time of such demand, subject to any prior attachment, execution or levy.

(b) Enforcement of levy.

(1) Extent of personal liability.

Any person in possession of or obligated with respect to property subject to levy upon which levy has been made, who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Tax Commissioner, shall be personally liable to the state in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at an annual rate established under section seventeen-a of this article, from the date of the levy. Any amount (other than costs) received under this paragraph shall be credited against the liability for the collection of which such levy was made.

(2) Penalty for violation. -- In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender the same without reasonable cause, such person shall be liable for a money penalty equal to fifty percent of the amount recovered under paragraph (1). No part of this penalty shall be credited against the tax liability for the collection of which such levy was made.

(c) Effect of honoring levy. -- Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which levy has been made, who upon demand by the Tax Commissioner, surrenders such property or rights to property (or discharges such obligation) to the Tax Commissioner, or who pays a liability under subsection (b)(1) shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

(d) "Person" defined. -- The term "person" as used in subsection (a) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to surrender the property or rights to property or to discharge the obligation.

**§11-10-13c. Sale of seized property.**

(a) Notice of seizure. -- As soon as practicable after seizure of property, notice in writing shall be given by the Tax Commissioner to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the county where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such county, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale. -- The Tax Commissioner may sell any property seized under section thirteen of this article. As soon as practicable after the seizure of the property, the Tax Commissioner shall give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notice of sale to be published as a Class II legal advertisement in some newspaper published or generally circulated within the county wherein such seizure is made, or the county where the property is located, the last date of publication being not less than five days prior to sale. This notice shall identify the property to be sold, and the date, time, place, manner and conditions of the sale thereof, all of which shall be at the discretion of the Tax Commissioner. The sale shall be conducted by public auction, or by public sale under sealed bids. Before the sale, the Tax Commissioner may determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale, the amount of the minimum price, the property shall be declared to be purchased at such price for the State of West Virginia; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Tax Commissioner shall take into account the expense of making the levy and sale.

(c) Sale of indivisible property. -- If any property liable to levy is not divisible, so as to enable the Tax Commissioner by sale of a part thereof to raise the whole amount of the tax and expense of making the levy and sale, the whole of such property shall be sold. However, where the property sold is coowned or jointly-owned by the taxpayer and an innocent third party, the proceeds of sale shall be divided, based on the respective interests of the persons owning the property immediately prior to the levy and sale, and the proceeds attributable to the interest of the innocent owner or owners shall be distributed to them: Provided, That where the property to be sold is so coowned or jointly-owned by an innocent third party, having no delinquent tax liability attempted to be collected under such levy and sale, such innocent party may petition the circuit court of the county in which the property is located for relief, including postponement of the sale, in order that the court can determine if the property can be partitioned, so as to avoid sale of the innocent party's portion or grant and afford other relief by the court protective of the rights and interests of such innocent party.

**§11-10-13d. Sale of perishable goods.**

If the Tax Commissioner determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and:

(a) Return to owner. -- If the owner of the property can be readily found, the Tax Commissioner shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner either:

(1) Pays to the Tax Commissioner an amount equal to the appraised value; or

(2) Gives bond in such form, with such sureties, and in such amount as the Tax Commissioner shall prescribe, to pay the appraised amount at such time as the Tax Commissioner determines to be appropriate under the circumstances.

(b) Immediate sale. -- If the owner does not pay such amount or furnish such bond in accordance with this subsection, the Tax Commissioner shall, as soon as practicable, make public sale of the property in accordance with such regulations as may be prescribed by the Tax Commissioner.

**§11-10-13e. Redemption of property.**

(a) Before sale. -- Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Tax Commissioner at any time prior to the sale thereof, and upon such payment, the Tax Commissioner shall restore such property to him and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of real estate after sale.

(1) Period. -- The owners of any real property sold as provided in section thirteen-c, their heirs, executors or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one hundred eighty days after the sale thereof.

(2) Price. -- Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Tax Commissioner, for the use of the purchaser, his heirs or assigns, the amount paid by such purchaser and interest thereon at the rate specified in section seventeen-a, from the date the purchaser paid the purchase price to the date the property is redeemed.

(c) Record. -- When any lands sold are redeemed as provided in this section, the Tax Commissioner shall cause entry of the fact to be made upon the record mentioned in section thirteen-h and such entry shall be evidence of such redemption.

(d) Subrogation to state lien. -- Any person redeeming the interest of another shall be subrogated to the lien of the state on such interest. Such person shall lose his right to this lien, however, unless within thirty days after receiving the certificate of sale of personal property or the Tax Commissioner's deed of real property, he shall file with the clerk of the county in which the real property is located or of the county in which the personal property is located or where the delinquent taxpayer resides or has his business location, or if neither be in this state, the clerk of Kanawha County, his claim against the delinquent taxpayer and a copy of the certificate of sale of personal property or deed to real property.

**§11-10-13f. Certificate of sale; deed to real property; notice and access to recover personal property; abandonment and removal of personal property.**

(a) Certificate of sale. C In the case of property sold as provided in section thirteen-c the Tax Commissioner shall provide to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser and the price paid therefor.

(b) Deed to real property. C In the case of any real property sold as provided in section thirteen-c and not redeemed in the manner and within the time provided in section thirteen-e, the Tax Commissioner shall execute, in accordance with the laws of this state pertaining to sales of real property under execution, to the purchaser of that real property at the sale, upon his or her surrender of the certificate of sale, a deed to the real property so purchased by him or her reciting the facts set forth in the certificate.

(c) Real property purchased by the state. C If real property is declared purchased by the State of West Virginia at a sale pursuant to section thirteen-c, the Tax Commissioner shall, at the proper time, execute a deed therefor, and without delay cause the deed to be duly recorded in the office of the clerk of the county in which the real property is located.

(d) Removal of personal property. C Following the execution of a deed to real property pursuant to this section, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides notice, pursuant to this subsection, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at their usual place of business or their usual place of abode or last known address. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person's mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of

the real property may dispose of the remaining personal property in his or her discretion.  
The notice required by this section may not be waived before the property is vacated.

WV Legislature

**§11-10-13g. Legal effect of certificate of sale of personal property and deed of real property.**

(A) Certificate of sale of property other than real property. -- In all cases of sale pursuant to section thirteen-c of property (other than real property), the certificate of such sale:

(1) As evidence. -- Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances. -- Shall transfer to the purchaser all right, title and interest of the party delinquent in and to the property sold; and

(3) As authority for transfer of corporate stock. -- If such property consists of stocks, shall be notice, when received, to any corporation, company or association of such transfer, and shall be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As receipts. -- If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As authority for transfer of title to motor vehicle. -- If such property consists of a motor vehicle, shall be notice, when title to received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle has been transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) Deed of real property. -- In the case of the sale of real property, pursuant to section thirteen-c;

(1) Deed as evidence. -- The deed of sale given pursuant to section thirteen-c shall be prima facie evidence of the facts therein stated; and

(2) Deed as conveyance of title. -- If the proceedings of the Tax Commissioner as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the rights, title and interest the party delinquent had in and to the real property thus sold at the time the lien of the State of West Virginia attached thereto.

(c) Effect of junior encumbrances. -- A certificate of sale of personal property given or a deed to real property executed pursuant to section thirteen-f shall discharge such property from all liens, encumbrances and titles over which the lien of the State of West Virginia with respect to which the levy was made had priority.

**§11-10-13h. Records of sale.**

(a) Requirement. -- The Tax Commissioner shall, for each county, keep a record of all sales of real property under section thirteen-c and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers and the date of the deed.

(b) Copy as evidence. -- A copy of such record, or any part thereof, certified by the Tax Commissioner shall be evidence in any court of this state of the truth of the facts therein stated.

**§11-10-13i. Expense of levy and sale.**

The Tax Commissioner shall determine the expenses to be allowed in all cases of levy and sale under this article.

WV Legislature

**§11-10-13j. Application of proceeds of levy.**

(a) Collection of liability. -- Any money realized from a levy shall be applied as follows:

(1) Expense of levy and sale. -- First, against the expenses of the proceedings;

(2) Liability of delinquent taxpayer. -- The amount, if any, remaining after applying paragraph (1) shall then be applied against the liability in respect of which the levy was made or the sale conducted. The amount, if any, remaining shall then be applied against any other delinquent tax liability of the taxpayer for which levy may be made under section thirteen.

(b) Surplus proceeds. -- Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Tax Commissioner to the person or persons legally entitled thereto.

**§11-10-13k. Authority to release levy and return property.**

(a) Release of levy. -- It shall be lawful for the Tax Commissioner, under regulations prescribed by him to release the levy upon all or part of the property or rights to property levied upon where the Tax Commissioner determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent a subsequent levy.

(b) Return of property. -- If the Tax Commissioner determines that property has been wrongfully levied upon, it shall be lawful for the Tax Commissioner to return:

(1) The specific property levied upon;

(2) An amount of money equal to the amount of money levied upon; or

(3) An amount of money equal to the amount of money received by the State of West Virginia from a sale of such property. Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of nine months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the State of West Virginia at a sale pursuant to section thirteen-c (relating to manner and conditions to sale), the State of West Virginia shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the State of West Virginia from the resale of such property.

(c) The Tax Commissioner shall, upon request, make public the names and persons in whose favor a release of levy or return of property has been made in subsections (a) and (b).

(d) Interest. -- Interest shall be allowed and paid at an annual rate established under section seventeen-a:

(1) In a case described in subsection (b)(2), from the date the Tax Commissioner receives the money to a date (to be determined by the Tax Commissioner) preceding the date of return by not more than thirty days; or

(2) In a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the Tax Commissioner) preceding the date of return by not more than thirty days.

**§11-10-14. Overpayments; credits; refunds and limitations.**

(a) Refunds or credits of overpayments. — In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under §11-10-17 of this code.

(b) Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax. — Any person who seeks a refund or credit of gasoline and special fuel excise taxes under §11-14-10, §11-14-11, §11-14-12, §11-14A-9, or §11-14A-11 of this code, or of motor fuel excise tax under §11-14C-9 of this code shall file his or her claim for refund or credit in accordance with the provisions of the applicable sections. The 90-day time period for determination of claims for refund or credit provided in subsection (d) of this section does not apply to these claims for refund or credit: Provided, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code are subject to the 90-day time period provided in subsection (d) of this section: Provided, however, That claims for refund or credit of the motor fuel excise tax under §11-14C-9 of this code made by the United States government or unit or agency thereof, any municipal government or any agency thereof, or any county board of education made pursuant to §11-14C-9(c)(1), (2), (3), (4), (5), and (6) of this code will be subject to a 30-day time period.

(c) Claims for refund or credit. — No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom an assessment or administrative decision has become final is not entitled to file a claim for refund or credit with the Tax Commissioner as prescribed herein. The Tax Commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his or her determination.

(d) Petition for refund or credit; hearing. —

(1) If the taxpayer is not satisfied with the Tax Commissioner's determination of taxpayer's claim for refund or credit, or if the Tax Commissioner has not determined the taxpayer's claim within 90 days after the claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, after the filing thereof, the taxpayer may file, with the Tax Commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than 60 days after the taxpayer is served with notice of denial of taxpayer's claim: Provided, however, That after December 31, 2002, the taxpayer shall file the petition with the Office of Tax Appeals in accordance with §11-10A-9 of this code.

(2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer,

or by taxpayer's duly authorized agent having knowledge of the facts, and set forth with particularity the items of the determination objected to, together with the reasons for the objections.

(3) When a petition for refund or credit is properly filed, the procedures for hearing and for decision applicable when a petition for reassessment is timely filed shall be followed.

(e) Appeal. — An appeal from the Office of Tax Appeals' administrative decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that provided for judicial review of an administrative decision on a petition for reassessment, but no bond is required of the taxpayer. An appeal from the administrative decision of the Office of Tax Appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken as provided in §11-10A-19 of this code.

(f) Decision of the court. — Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.

(g) Refund made or credit established. — The Tax Commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The Auditor shall issue his or her warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid: Provided, That refunds of personal income tax may also be paid out of the fund established pursuant to §11-21-93 of this code.

(h) Forms for claim for refund or a credit; where return constitutes claim. — The Tax Commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by §11-21-1 et seq., §11-21A-1 et seq., §11-23-1 et seq., or §11-24-1 et seq. of this code, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim for refund or credit.

(i) Remedy exclusive. — The procedure provided by this section constitutes the sole method of obtaining any refund, credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article is in lieu of any other remedy, including the Uniform Declaratory Judgments Act embodied in §55-13-1 et seq. of this code, and §11-1-2a of this code.

(j) Applicability of this section. — The provisions of this section apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) Erroneous refund or credit. — If the Tax Commissioner believes that an erroneous refund

has been made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment within the period prescribed in §11-10-15 of this code or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within two years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(l) Limitation on claims for refund or credit. —

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax (or fee) was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) Extensions of time for filing claim by agreement. — The Tax Commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if an agreement is made under §11-10-15 of this code extending the time period in which an assessment of tax can be made, then the period for filing a claim for refund or credit for overpayment of the same tax made during the periods subject to assessment under the extension agreement are also extended for the period of the extension agreement plus 90 days.

(4) Overpayment of federal tax. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income or estate tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code may not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

(5) Tax paid to the wrong state. — Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, when an individual, or the fiduciary of an estate, has in good faith erroneously paid personal income tax, estate tax or sales tax, to this state on income or a

transaction which was lawfully taxable by another state and, therefore, not taxable by this state, and no dispute exists as to the jurisdiction to which the tax should have been paid, then the time period for filing a claim for refund, or credit, for the tax erroneously paid to this state does not expire until 90 days after the tax is lawfully paid to the other state.

(6) Exception for gasoline and special fuel excise tax, motor fuel excise tax and motor carrier road tax. — This subsection does not apply to refunds or credits of gasoline and special fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under §11-14-1 et seq., §11-14A-1 et seq., or §11-14C-1 et seq. of this code.

**§11-10-14a. Tax refund check-off programs.**

(a) Except as otherwise provided in this section, or in another section of this code enacted after June 30, 1991, all voluntary tax refund check-off programs expire and do not apply to any personal income tax returns required to be filed after June 30, 1991: *Provided*, That if any such program has an earlier expiration date specifically provided by law, the earlier expiration date applies.

(b) The Tax Commissioner shall cause each West Virginia personal income tax return form to contain a provision by which a taxpayer, and his or her spouse if a joint return, may donate a portion or all of his or her tax refund to the West Virginia Department of Veterans Assistance for purposes of providing nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home. The total amount of donations received under this subsection shall be deposited in the State Treasury to the credit of the Department of Veterans Assistance to be used exclusively for purposes of providing nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home.

(c) The Tax Commissioner shall cause each West Virginia personal income tax return form to contain a provision by which a taxpayer, and his or her spouse if a joint return, may donate a portion or all of his or her tax refund to the Donel C. Kinnard Memorial State Veterans Cemetery for purposes of operating and maintaining the cemetery. The total amount of donations received under this subsection shall be deposited in the State Treasury to the credit of the Department of Military Affairs and Public Safety to be used exclusively for purposes of operating and maintaining the Donel C. Kinnard Memorial State Veterans Cemetery.

**§11-10-14b. Monetary remedies for overpayments due to unconstitutionality.**

(a) Legislative findings and purpose. -- Taxpayers who successfully challenge the Constitutionality of state taxes may be entitled to retroactive monetary relief for the amount of their overpayments. Because there may be many of such taxpayers and the period of retroactivity may be extensive, the amount of monetary relief owed to such taxpayers may represent a considerable and unpredictable risk to the fiscal integrity and stability of this state. This section provides the Tax Commissioner with greater flexibility and discretion in the manner in which such relief may be provided.

(b) Legislative intent and rules of construction.

(1) Legislative intent. -- It is the intent of the Legislature that this section shall be construed to preserve the fiscal integrity and stability of the State of West Virginia and to provide appropriate relief to the extent required by this section and the state and federal Constitutions. The provisions of section fourteen of this article shall remain in full force and effect with regard to overpayments of tax resulting from any reason including unconstitutionality.

(2) Rules of construction.

(A) The remedies provided by this section and section fourteen of this article are exclusive and shall be in lieu of any and all remedies provided at common law or by other statutes.

(B) Because all legislative enactments are presumptively Constitutional and because the Tax Commissioner is without authority to determine the Constitutionality of tax laws, other than through the courts, no cause of action shall exist against said Tax Commissioner, in his or her individual capacity, for damages, attorney's fees or court costs incurred in litigating the Constitutionality of any tax law administered under this article which is subsequently determined to be unconstitutional.

(C) A holding of retroactivity shall not be deemed to override any statutes of limitation which have run, or to require relief for any cases which are res judicata.

(c) Criteria for retroactive monetary relief. -- No person may be granted relief based on a claim of unconstitutionality, unless the decision that the tax or its application is unconstitutional also mandates retroactive monetary relief and is a final decision of a court of competent jurisdiction of this state or a federal court having appropriate jurisdiction. A final decision is one for which the availability of an appeal has been exhausted, and the time for filing a petition has elapsed or the petition has been finally denied.

(d) Amount of relief; interest. -- The amount of monetary relief shall be comprised solely of the amount of overpayment, together with interest, and shall not include damages of any kind, court costs, or attorney's fees except when ordered by a court of competent jurisdiction. Interest shall be paid as provided by section seventeen of this article.

(e) Type and manner of providing relief. -- In addition to the powers already provided in this article, the Tax Commissioner may, in his or her discretion and in accordance with guidelines published by him or her in the state Register, provide retroactive monetary relief by any one or combination of the following remedies:

(1) Refunds. -- The total amount of any refund to be paid to a taxpayer may be paid either in one lump sum or in periodic installments. Installment payments shall be paid in full not later than three years from the date of the final decision of entitlement to retroactive monetary relief: Provided, That the periodic installment method for payment may only be used when the total amount of any refund to an individual taxpayer exceeds \$1,000 or the aggregate amount of all refunds resulting from a final decision of unconstitutionality of a particular tax is estimated to be more than \$5 million.

(2) Credits. -- With the taxpayer's consent, the Tax Commissioner may issue an overpayment credit for tax.

(f) Finality of relief. -- The issuance of refunds or credits shall constitute complete and final settlement of all entitlements based on the claim or claims for which such refunds or credits were made.

**§11-10-14c. Prompt payment of refunds of personal income taxes.**

(a) General rule. -- The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-one of this chapter shall be refunded to the taxpayer within ninety days after such a claim for refund is filed with the Tax Commissioner. If the fund is not made to a taxpayer within the ninety days, the Tax Commissioner shall pay interest, at the rate specified in section seventeen-a of this article, for the period commencing with the date the claim for refund was received by the Tax Commissioner until the date the state warrant for the refund amount is issued, notwithstanding any provisions of section seventeen of this article to the contrary.

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

(1) A claim for refund is "filed with the Tax Commissioner" on the date it is physically received by the state Tax Division.

(2) A "lawful, mathematically correct, uncontested claim for refund" is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by any necessary documentation; and appears on its face to be correct.

(c) The payment of a claim for refund under this section shall not bar the Tax Commissioner from later issuing an assessment to recover any amount erroneously refunded, plus statutory interest and any applicable additions to tax, within two years after the date the refund was made: Provided, That if the refund or any part thereof was obtained by fraud, the assessment may be made at any time.

(d) This section shall apply only to claims for refund of personal income taxes filed after January 1, 1997.

**§11-10-14d. Prompt payment of refunds of corporation net income taxes.**

(a) General rule. -- The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-four of this chapter shall be refunded to the taxpayer within six months after a claim for refund is filed with the Tax Commissioner. If the refund is not made to a taxpayer within this period, the Tax Commissioner shall pay interest, at the rate specified in section seventeen-a of this article, for the period commencing with the date the claim for refund was received by the Tax Commissioner until the date the state warrant for the refund amount is issued, notwithstanding any provisions of section seventeen of this article to the contrary.

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

(1) A claim for refund is "filed with the Tax Commissioner" on the date it is physically received by the state Tax Division.

(2) A "lawful, mathematically correct, uncontested claim for refund" is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by any necessary documentation; and appears on its face to be correct.

(c) The payment of a claim for refund under this section shall not bar the Tax Commissioner from later issuing an assessment to recover any amount erroneously refunded, plus statutory interest and any applicable additions to tax, within two years after the date the refund was made: Provided, That if the refund or any part thereof was obtained by fraud, the assessment may be made at any time.

(d) This section shall apply only to claims for refund of corporation net income taxes filed after January 1, 1997.

**§11-10-15. Limitations on assessment.**

(a) General rule. — The amount of any tax, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing): Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return was filed, the assessment may be made at any time: Provided, however, That if a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's state or federal income tax return, an assessment may be made at any time not later than six years after the due date of the return required under §11-21-1 et seq., or §11-24-1 et seq., or §11-21A-1 et seq. of this code for the same taxable year or after such return was filed, or not later than three years after an amended return is filed, whichever is later.

(b) Time return deemed filed. —

(1) Early return. — For purposes of this section, a return filed before the last day prescribed by law, or by rules promulgated by the Tax Commissioner for filing thereof, shall be considered as filed on such last date;

(2) Returns executed by Tax Commissioner. — The execution of a return by the Tax Commissioner pursuant to the authority conferred by §11-10-5c of this code shall not start the running of the period of limitations on assessment and collection.

(c) Exceptions. — Notwithstanding subsection (a) of this section:

(1) Extension by agreement. — The Tax Commissioner and the taxpayer may enter into written agreements to extend the period within which the Tax Commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon;

(2) Deficiency in federal tax. — Notwithstanding subsection (a) of this section, in the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation, upon assessment of a deficiency reflecting such final determinations in the taxes imposed by §11-21-1 et seq., §11-21A-1 et seq., and §11-24-1 et seq. of this code, may not expire until 90 days after the Tax Commissioner is advised of the determination by the taxpayer as provided in §11-21-59 and §11-24-20 of this code, or until the period of limitations upon assessment provided in subsection (a) of this section has expired, whichever expires the later, and regardless of the tax year of the deficiency;

(3) Special rule for certain amended returns. — Where, within the 60-day period ending on

the day on which the time prescribed in this section for the assessment of any tax for any taxable year would otherwise expire, the Tax Commissioner receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Tax Commissioner receives such document;

(4) Net operating loss or capital loss carrybacks. — In the case of a deficiency attributable the application by the taxpayer of a net operating loss carryback or a capital loss carryback (including that attributable to a mathematical or clerical error in application of the loss carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed;

(5) Certain credit carrybacks. — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term "credit carryback" means any carryback allowed under §5E-1-8 of this code;

(6) Overpayment of tax credited against payment of another tax. — In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered under this article, the period of limitation upon assessment of a deficiency in the payment of such other tax due to the overstating of the allowable credit, may not expire until 90 days after the Tax Commissioner receives written notice from the taxpayer advising the Tax Commissioner of the final determination reducing the taxpayer's liability for a tax allowed as a credit against a tax administered under this article, or until the period of limitations upon assessment provided in subsection (a) of this section has expired, whichever expires the later, and regardless of the tax year of the deficiency.

(d) Cases under bankruptcy code. — The running of limitations provided in subsection (a) of this section, on the making of assessments, or provided in §11-10-16 of this code, on collection, shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Tax Commissioner is prohibited by reason of such case from making the assessment or from collecting the tax and:

(1) For assessment, 60 days thereafter; and

(2) For collection, six months thereafter.

**§11-10-16. Limitations on collection.**

(a) Where assessment is issued. — Every proceeding instituted by the Tax Commissioner for the collection of the amount found to be due under an assessment which has become final of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether the proceeding is instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalty or interest, shall be brought or commenced within 10 years after the date on which such assessment has become final.

(b) Where assessment is not issued. — Every proceeding instituted by the Tax Commissioner for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of any tax, additions to tax, penalties, or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether the proceeding is instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within 10 years after the date on which the taxpayer filed the annual return required to be filed by any of the articles of this code to which §11-10-1 et seq. of this code is applicable and, if no annual return is required, such 10-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.

(c) Extension of time for institutions of collection proceedings by agreement. — The Tax Commissioner and the taxpayer may enter into written agreement to extend the period within which the Tax Commissioner may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this code to which this article is applicable. This period may not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

An extension of a tax lien, including an extension agreed to in writing by the taxpayer and the Tax Commissioner, beyond 10 years is not effective under the provisions of this section unless the extension is docketed by the Tax Commissioner in the office of the county commission as is required under §38-10C-1 et seq. of this code for docketing tax liens.

**§11-10-17. Interest.**

(a) Underpayments. -- If any amount of a tax administered under this article is not paid on or before the last date prescribed for payment, interest on the amount at the rate of eight percent per annum shall be paid for the period from the last date to the date paid: Provided, That on and after July 1, 1986, interest on underpayments shall be paid at the annual rate established under section seventeen-a of this article, from the period beginning on July 1, or from the last day prescribed for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose: Provided, however, That on and after July 1, 2002, interest on underpayments shall be paid at an annual rate of one and one-half percent above the annual rate established under section seventeen-a of this article, from the period beginning on July 1, or from the last day prescribed for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose. For purposes of this subsection, the last date prescribed for payment shall be the due date of the return and shall be determined without regard to any extension of time for payment.

(b) Last date for payment not otherwise prescribed. -- In the case of taxes payable by stamp or other indicia of tax payment and in all other cases in which the last day for payment is not otherwise prescribed, the last date for payment shall be considered to be the date the liability for tax arises and in no event shall be later than the date notice and demand for payment of the tax is made by the Tax Commissioner.

(c) Erroneous refund or credit. -- If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on the amount refunded or credited at the annual rate established under section seventeen-a of this article, shall be paid by the claimant from the date the refund was made or the credit was taken to the date the amount is recovered.

(d) Overpayments. -- Interest shall be allowed and paid at the annual rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of each tax administered under this article except the taxes imposed by articles twelve, fourteen and fourteen-a of this chapter: Provided, That on and after July 1, 1986, interest on overpayments shall be paid at the annual rate established under section seventeen-a of this article, from July 1, or the date the claim for refund or credit is filed, whichever is the later, regardless of when the tax was paid. The interest shall be allowed and paid for the period commencing with the date of the filing by the taxpayer of a claim for refund or credit with the Tax Commissioner and ending with the date of a final administrative or judicial determination of overpayment. The Tax Commissioner shall, within thirty days after the determination of entitlement to refund, issue his or her requisition or establish a credit as requested by the taxpayer. Whenever the Tax Commissioner fails or refuses to issue any requisition or establish the credit within said thirty-day period, the interest provided herein shall commence to accrue until performance by the Tax Commissioner. The acceptance of the refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(e) Applicable rules. -- For purposes of this section:

(1) No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed. -- In the event of the overpayment of any tax administered under this article, except the tax imposed by articles twenty-one and twenty-four of this chapter, where the Tax Commissioner issues his or her requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(2) No interest payable where personal income tax and corporation net income tax refunded or credited within six months after claim for refund or credit is filed. -- In the event of the overpayment of the tax imposed by articles twenty-one and twenty-four of this chapter, where the Tax Commissioner issues his or her requisition or establishes a credit as requested by the taxpayer within six months after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(3) Interest treated as tax. -- Interest prescribed under this section on any tax shall be collected and paid in the same manner as taxes.

(4) No interest on interest. -- No interest under this section shall be imposed on the interest provided by this section prior to July 1, 1986.

(5) Interest on penalties or additions to tax. -- Interest shall be imposed under subsection (a) of this section on any assessable penalty or additions to tax only if the penalty or additions to tax is not paid within fifteen days from the date of notice and demand therefor, and in that case, interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(6) Payments made within fifteen days after notice and demand. -- If notice and demand is made for payment of any amount, and if the amount is paid within fifteen days after the date of the notice and demand, interest under this section on the amount so paid may not be imposed for the period after the date of the notice and demand.

(7) Limitation on collection. -- Interest prescribed under this section on any tax may be collected at any time during the period within which the tax to which the interest relates may be collected.

(8) Exception as to estimated tax. -- This section does not apply to any failure to pay any estimated tax required to be paid under articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three or twenty-four of this chapter.

**§11-10-17a. Determination of rate of interest.**

(a) In general. -- The annual rate of interest established under this section shall be such adjusted rate as is established by the Tax Commissioner under subsections (b) and (c) : Provided, That for taxable years beginning prior to January 1, 2017, such annual rate shall not be less than eight percent per annum.

(b) Adjustments of interest rate prior to January 1, 2017.

(1) Establishment of adjusted rate. -- If the adjusted prime rate charged by banks (rounded to the nearest full percent):

(A) During the six-month period ending on September 30, of any calendar year; or

(B) During the six-month period ending on the thirty-first day of March of any calendar year, differs from the interest rate in effect under this section on either such date, respectively, then the Tax Commissioner shall establish, within fifteen days after the close of the applicable six-month period, an adjusted rate of interest equal to such adjusted prime rate.

(2) Effective date of adjustment. -- Any such adjusted rate of interest established under paragraph (1) shall become effective:

(A) On January 1, of the succeeding year in the case of an adjustment attributable to paragraph (1)(A) above; and on

(B) The first day of July of the same year in the case of an adjustment attributable to paragraph (1)(B).

(c) Adjustment of interest rate after December 31, 2016. -- Each year, the Tax Commissioner shall fix the adjusted rate to equal the adjusted prime rate charged by banks (rounded to the nearest hundredth of a percent) plus three percentage points per annum as of the first business day of December, for which an adjusted prime rate is determined, in the preceding year and it shall be effective January 1.

(d) Definition of "adjusted prime rate." -- For purposes of subsections (b) and (c), the term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of Governors of the Federal Reserve System.

(e) Application of change in interest rate.

(1) To deficiencies. -- The interest rate in effect at the time of assessment or when the payment of delinquent tax is made shall not be applied retroactively to the date the tax was due. Interest on moneys owed by the taxpayer shall be the sum of the interest amounts calculated for each year or part thereof from the date prescribed for payment (determined without regard to any extensions) to the date the payment is made using the interest rate in

effect for each respective year or part thereof.

(2) To overpayments. -- The interest rate in effect at the time an overpayment of tax is refunded, or a credit therefor is established, by the Tax Commissioner, shall not be applied retroactively to the date the claim for refund or credit was filed with the Tax Commissioner. Interest on moneys owed to taxpayers shall be the sum of the interest amounts calculated for each year or part thereof from date the claim for refund or credit was filed with the Tax Commissioner until date the refund is paid or credit therefor is established (such dates determined as provided in section seventeen) using the interest rate in effect for each respective year or part thereof.

**§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 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 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.

**§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:

(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

required installments: percentage is:

1<sup>st</sup> 22.5

2<sup>nd</sup> 45

3<sup>rd</sup> 67.5

4<sup>th</sup> 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 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:

(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 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.

**§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.

(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.

**§11-10-18c. Failure to file partnership return or report.**

(a) General rule. — In addition to the additions to tax imposed by §11-10-18 of this code (relating to failure to file return, supply information, or pay tax), if any partnership required to file a return under §11-21A-3 of this code, or a partnership adjustment report under §11-21A-3 of this code for any taxable year:

(1) Fails to file such return or report at the time prescribed therefor (determined with regard to any extension of time for filing); or

(2) Files a return or report which fails to show the information required under §11-21A-3 of this code, the partnership shall be liable for a penalty determined under §11-10-18c(b) of this code for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month. — For purposes of §11-10-18c(a) of this code, the amount determined under §11-10-18c(b) of this code for any month is the product of:

(1) \$195, multiplied by

(2) The number of persons who were partners in the partnership during any part of the taxable year.

(c) Assessment of penalty. — The penalty imposed by §11-10-18c(a) of this code shall be assessed against the partnership.

(d) Deficiency procedures not to apply. — The deficiency procedures set forth in §11-10A-1 et seq. of this code may not apply in respect of the assessment or collection of any penalty imposed by §11-10-18c(a) of this code.

(e) Adjustment for inflation. —

(1) In general. — In the case of any return required to be filed in a calendar year beginning after 2017, the \$195 amount under 11-10-18c(b)(1) of this section shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under IRC §1(f)(3) determined by substituting "calendar year 2017" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(2) Rounding. — If any amount adjusted under §11-10-18c(e)(1) of this code is not a multiple of \$5, such amount shall be rounded to the next lowest multiple of \$5.

(f) Effective date. — This section enacted in 2019 shall apply to taxable years beginning on and after January 1, 2018.

**§11-10-19. Penalties.**

(a) Failure to collect, account for, and pay over tax, or attempt to defeat or evade tax. -- Any person required to collect, account for and pay over any tax administered under this article, who willfully fails truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over. No additions to tax shall be imposed under section eighteen for any offense to which this subsection is applicable.

(b) Fraudulent statement or failure to furnish statement to employees. -- Any person required under the provisions of section seventy-two, article twenty-one of this chapter to furnish a statement to an employee, who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by said section, or regulations prescribed thereunder, shall for each such failure be subject to a money penalty of \$50.

(c) Fraudulent claim for refund or credit. -- In the case of the filing of a false or fraudulent claim for refund or credit with the intent to defraud this state, there shall be added to such amount erroneously refunded or credited a penalty equal to fifty percent thereof. No additions to tax shall be imposed under section eighteen for any offense to which this subsection is applicable. The burden of proving fraud or intent to defraud shall be upon the Tax Commissioner.

(d) Collection of penalty. -- Any money penalty may be collected in the same way as the tax imposed by this article.

**§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 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.

**§11-10-20. Effective date; transition rules.**

(a) The provisions of this article shall take effect on July 1, 1978, except to the extent modified in this section.

(b) The provisions of sections one through fourteen shall apply on and after the effective date of this article irrespective of when the tax liability arose: Provided, That when the assessment has been made prior to the effective date of this article, the rights and duties of the taxpayer and the State of West Virginia shall be determined with regard to the assessment, hearing and appeals therefrom by the laws of the State of West Virginia as they existed prior to the effective date hereof, which laws shall be preserved and continued with respect to such assessment, hearing and appeals as fully and completely as if set forth in extenso herein.

(c) The provisions of sections fifteen through nineteen shall apply only with respect to taxes imposed for periods ending on or after the effective date of this article. Tax liabilities, if any, arising prior to the effective date of this article shall, with respect to additions to tax, penalties and interest, be determined, administered and assessed as if this act and the sections and articles it amends and reenacts or repeals had not been amended and reenacted or repealed, and the rights and duties of the taxpayers and the State of West Virginia shall be fully and completely preserved.

(d) Notwithstanding subsection (c) above, the provisions of sections sixteen, seventeen, eighteen and nineteen of this article may apply to tax liabilities arising during any period prior to the effective date of this article if (1) the Tax Commissioner has not issued an assessment with respect to such prior period, or (2) the Tax Commissioner has issued such assessment which is or may be the subject of a petition for reassessment and his decision thereon has not been issued as of the effective date of this article, and the taxpayer elects to have all of the provisions of sections sixteen, seventeen, eighteen and nineteen of this article apply as fully as if the same had been in effect at the time the tax liability arose. Such election shall be made within sixty days after assessment or within sixty days after the effective date of this article, whichever last occurs. No election under this subsection shall serve to shorten the statute of limitations upon assessments otherwise applying to tax liabilities arising prior to the effective date of this article.

**§11-10-21. Severability.**

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

WV Legislature

**§11-10-22. Information returns and due date thereof.**

(a) Information returns required. -- The Tax Commissioner shall develop a representative statistical sample of persons who have business registration certificates under article twelve of this chapter. This sample shall be broad enough to reasonably predict revenues and to project how the recommendations of the Governor's commission on fair taxation would impact different classifications of businesses, as well as the various forms of doing business in which those business activities are conducted. Persons included in the sample shall file an information return reporting information for the calendar year ending December 31, 1999, and for the calendar year ending December 31, 2000. When a business files its federal tax returns on a fiscal year basis, the business include in its information return information for its fiscal years ending within the calendar years 1999 and 2000, respectively, except as otherwise prescribed in the rule promulgated pursuant to subsection (d) of this section.

(b) Due date. -- Information returns shall be due on the day the federal tax return or federal informational return is due during calendar year 2001, determined by including any extension of time to file the return. This information return shall be filed with the business's West Virginia form 112, 112S, 120, 141, or, in the case of a sole proprietor, form 140. When the business is not required to file any of these West Virginia forms, the information return shall be filed as a separate document on or before the fifteenth day of the fifth month following the close of its year for tax accounting or financial accounting purposes ending December 31, 1999, or ending within calendar year 2000 but prior to December 31, 2000, unless the Tax Commissioner grants an extension of time to file the information return. Information returns shall be filed in the form and pursuant to instructions prescribed by the Tax Commissioner. These returns shall require information as if the recommendations of the Governor's commission on fair taxation were in effect for the period covered by each information return.

(c) Notification. -- On or before July 1, 2000, the Tax Commissioner shall notify each person selected to be a member of the statistical sample of the selection, and advise the person of the process by which the person will be receiving forms and instructions for filing an informational return after authorization of the same pursuant to subsection (d) of this section.

(d) Legislative rules. --

(1) The Tax Commissioner shall propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code. Notwithstanding any provision of article three, chapter twenty-nine-a of this code to the contrary, the Tax Commissioner shall submit finally approved proposed rules, including amendments, to the legislative rule-making and review committee on or before August 31, 2000.

(2) The proposed rules shall include the actual content of information return to be completed and filed by each person selected to be a member of the statistical sample, as well as the actual content of the instructions to be used by the person to complete the information

return, proposed by the Tax Commissioner. The information required to be provided in the information return shall be, to the extent possible, only information that can be obtained by a selected member of the statistical sample from other tax or regulatory filings made by the selected member.

(3) The proposed rules shall, for the review of the Legislature, separately identify any additional information not obtainable from the filings described in subdivision (2) of this subsection that can be obtained from a selected member of the statistical sample, in the least expensive and intrusive manner for the selected person, that the Tax Commissioner determines is necessary for an adequate state fiscal analysis of the impact of the recommendations of the Governor's commission on fair taxation.

(4) The proposed rules shall, for the review of the Legislature, separately identify any additional information not obtainable from the filings described in subdivision (2) of this subsection that can be obtained from a selected member of the statistical sample, in the least expensive and intrusive manner for the selected person, that the Tax Commissioner determines is necessary for an adequate state economic analysis of the impact of the recommendations of the Governor's commission on fair taxation.

(e) Incentive to file. -- To encourage the filing of complete and accurate information returns, the Tax Commissioner shall allow a \$200 tax credit for each required information return that is filed electronically, within the meaning of article five, chapter thirty-nine of this code, and a credit of \$150 for each such paper return filed. This credit shall be claimed against the person's liability for tax under article twenty-three of this chapter. Unused credit may be claimed against the person's liability for income tax under article twenty-one or twenty-four of this chapter for the tax year of the person in which the information return is filed. Alternatively, the Tax Commissioner may refund the amount of this credit to any person required to file information returns under this section.

(f) Civil money penalty. -- Any person required to file an information return under this section who fails to file the return timely, determined with regard to any authorized extension of time for filing, or who files a return that is materially incorrect or incomplete shall pay a money penalty of \$1,000 for each return that is not filed timely or that is filed timely but is materially inaccurate or incomplete. The Tax Commissioner is authorized to waive this penalty. This penalty shall be collected in the same manner as the penalties imposed by section nineteen of this article are collected.

(g) Confidentiality. --

(1) Information returns and information return information filed under this section shall be treated as returns and return information under the provisions of section five-d of this article. Such returns and return information shall be open to inspection by or disclosure to officers and employees of the Department of Tax and Revenue whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and

conducting related activities.

(2) Persons authorized to receive information under this subdivision shall be treated as officers and employees of the state under the provisions of section five-d of this article. Inspection or disclosure of information returns and information return information shall also be permitted pursuant to a contract between the proper officer of this state and a university in this state when the purpose of the disclosure is to prepare economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities regarding the recommendations of the Governor's commission on fair taxation.

(3) Except as otherwise provided in this section, no person who receives an information return or information return information under this section shall disclose the return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

**§11-10-23. Alternative dispute resolution of tax disputes.**

On or before December 31, 2002, the Tax Commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which adopt and implement alternative dispute resolution mechanisms which offer taxpayers voluntary and cost-effective methods of resolving tax disputes in order to encourage voluntary settlements and minimize the number of disputes that require litigation to resolve the controversy.

**§11-10-24. Commissioner to review taxpayer problem resolution procedures; report to Legislature.**

The commissioner shall review the procedures utilized to resolve taxpayer complaints and problems to determine whether taxpayer complaints and problems are being remedied promptly and to assure that taxpayer rights are safeguarded and protected during tax determination and collection processes. The commissioner shall, on or before October 1, 2004, report the findings of the review to the Joint Committee on Government and Finance with recommendations on the need for legislation to implement a taxpayer resolution program.

**§11-10-25. Taxpayer must show tax exemption applies; presumption.**

(a) The burden of proving that a tax exemption applies to any tax administered by the Tax Commissioner shall be upon the taxpayer. Tax exemptions administered by the Tax Commissioner shall be strictly construed against the taxpayer and for the payment of any applicable tax.

(b) To prevent evasion, it is presumed that a tax exemption does not apply until the contrary is clearly established by a preponderance of the evidence.

**§11-10-26. Adjustment for correction of erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.**

(a)(1) An erroneous distribution, transfer, allocation, overpayment or underpayment dedicated, distributed or directed by the state or an instrumentality of the state to a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of the state, under the provisions of this code administered under this article, or under the provisions of article twenty-two, twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine of this code, or any other provision of this code, or any combination thereof, caused by clerical error or mistake, or a computational, informational or other mistake or error, may be corrected by an adjustment to a distribution, transfer, allocation or payment to the subdivision, entity, agency, instrumentality or fund and by transfer of moneys from the subdivision, entity, agency, instrumentality or fund until the amount of the erroneous distribution, transfer, allocation, overpayment or underpayment has been corrected: Provided, That no correction or adjustment may be made for an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys that is first discovered by the distributor or the distributee more than three years after the date on which the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys was made, and no action lies for collection, correction or remediation of the late discovered erroneous distribution, transfer, allocation, overpayment or underpayment of the moneys.

(2) A distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been made on the date when the moneys related thereto are under the actual, substantive control of the transferee, and subject to expenditure, disbursement, consumption or disposition by the transferee.

(3) An erroneous distribution, transfer, allocation, overpayment or underpayment of moneys is deemed to have been discovered on the date when the distributor or the distributee or any employee, officer, agent or representative of the distributor or distributee has actual substantive knowledge of the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(b) An agency, governmental subdivision or instrumentality of this state is not subject to a fine, penalty, assessment or imposition as a result of, or attributable to, an erroneous distribution, transfer, allocation, overpayment or underpayment of moneys.

(c) The provisions of subsection (a) of this section shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement which was in operation on the effective date of this section, to correct or adjust an erroneous distribution, transfer, allocation, overpayment or underpayment, between (1) this state or an instrumentality of this state and (2) a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of this state.

**§11-10-27. Administrative fees.**

(a) Administrative fee for the collection of money for other state departments, divisions, agencies and institutions.

(1) The Tax Commissioner may retain one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto, collected by the Tax Division of the Department of Revenue that are to be deposited into any of the following special revenue funds: The Special Reclamation Fund, the Special Reclamation Water Trust Fund, the Mining and Reclamation Operations Fund, the Solid Waste Reclamation and Environmental Response Fund, the Solid Waste Enforcement Fund, the Solid Waste Management Board Reserve Fund, the Recycling Assistance Fund, the Closure Cost Assistance Fund, the Solid Waste Planning Fund, the Hazardous Waste Emergency Response Fund, the Law-Enforcement Fund, the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund, the Waste Coal-Producing Counties Fund, the Coalbed Methane Gas Distribution Fund, the Eligible Acute Care Provider Enhancement Account, the West Virginia Affordable Housing Trust Fund, the special revenue account in the State Treasury to be appropriated by the Legislature for the purposes of the Division of Forestry and the special medical school fund in the State Treasury to be used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing. For all taxes collected by the Tax Division of the Department of Revenue that are to be deposited into any other special revenue funds, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto. Notwithstanding any provision of this code to the contrary, on and after July 1, 2022, any fee collected by or dedicated to the Office of the Tax Commissioner for the collection, distribution, or administration of a specified tax or fee, shall be deposited into the "Tax Administration Services Fund" specified in this section, and shall be used for the purposes and in the manner specified in this section. The amount retained by the Tax Commissioner is a fee for the services provided by the Tax Division in the administration, distribution or collection, or any combination thereof, of those taxes and fees.

(2) (A) Notwithstanding any provision of this code to the contrary, effective July 1, 2022, and thereafter, all amounts required to be deposited into the following funds prior to the amendment of this section during the 2022 regular legislative session shall, in lieu thereof, be deposited into the "Tax Administrative Services Fund" specified in this section and shall be used for the purposes and in the manner specified in this section. All moneys currently contained in the following funds, as of July 1, 2022, shall be transferred to the "Tax Administrative Service Fund":

(i) The "Motor Fuel General Tax Administrative Fund" created pursuant to §11-14C-47 of this code;

(ii) The "Oil and Gas County Revenue Fund Administration Fund" created pursuant to §11-13A-5a of this code;

- (iii) The "Additional Tax Administration Fund" created pursuant to §11-13A-6 of this code;
- (iv) The "Special Audit and Investigative Unit Fund" created pursuant to §11-9-2a of this code;
- (v) The "Medicaid State Share Administration Fund" created pursuant to §11-27-32 of this code;
- (vi) The "Cemetery Company Registration Fund" created pursuant to §35-5B-2 of this code;
- (vii) The "Telemarketer Registration Fund" created pursuant to §46A-6F-303 of this code;
- (viii) The "Local Sales Tax and Excise Tax Administration Fund" created pursuant to §11-10-11c of this code;
- (ix) The "Wine Tax Administration Fund" created pursuant to §60-8-24 of this code;
- (x) The "Tax Offset Fee Administration Fund" created pursuant to §11-10-11 of this code;
- (xi) The "Municipal Fines and Fees Collection Fund" created pursuant to the previous provisions of §8-10-2b of this code; and
- (xii) The "Magistrate Fines and Fees Collection Fund" created pursuant to §50-3-2c of this code.

(B) The amount of any statutory authorized fee listed in paragraph (A) of this subdivision shall be the amount provided in the authorizing statute: *Provided*, That, notwithstanding any provision of this code to the contrary, the fee authorized by §11-10-11c(c) of this code shall be one percent of collections.

(b) Administrative fee for the collection, administration and distribution of money for local or municipal government, any other governmental subdivision or other public entity or public corporation, where a fee is not otherwise provided for elsewhere in this code.

For all taxes or fees collected by the Tax Division of the Department of Revenue on behalf of any local, county or municipal government, or any other governmental subdivision or public entity or public corporation, including, but not limited to, sanitary districts, water districts and solid waste authorities, the Tax Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one percent of any interest, additions to tax and penalties related thereto: *Provided*, That the Legislature has not expressly and specifically authorized a fee in a provision of this code other than this section, to be collected by, retained by or dedicated to, the Tax Commissioner for the collection, distribution or administration of a specified tax or fee. For purposes of this section the term "taxes and fees" includes any interest, additions to tax and penalties relating to any taxes or fees.

(c) Transaction fees imposed by the Enterprise Resource Planning System may be recovered

by the Tax Division of the Department of Revenue.

If the Tax Division of the Department of Revenue incurs a fee imposed by the Enterprise Resource Planning System, which is developed, implemented and managed by the West Virginia Enterprise Resource Planning Board §12-6D-1 *et seq.* of this code, relating to a transaction of any entity or person with the Tax Division of the Department of Revenue, then the Tax Commissioner may charge that entity or person a fee in the amount that the Tax Division of the Department of Revenue incurred or will incur relating to that transaction.

(d) Fees collected under this section shall be retained in a revolving fund for the use of the Tax Division of the Department of Revenue.

Any fees collected or retained under subsections (a), (b) and (c) of this section shall be held in a revolving fund for the use of the Tax Division of the Department of Revenue for general tax administration, which fund is hereby created in the State Treasury and designated the "Tax Administration Services Fund". Expenditures from the fund are authorized from collections. Moneys remaining in such fund on the last day of the fiscal year shall carry over and remain in the fund in the next succeeding fiscal year for use by the Tax Division of the Department of Revenue.

(e) Fee increases. - Any state agency may increase any administrative fee that the agency is authorized to impose by West Virginia statute or West Virginia rule by proposing a legislative rule, for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, imposing the increase: *Provided*, That no such increase shall be made within three years of the initial imposition of the fee or within three years of the most recent revision of a statute or rule that increases or decreases the fee.

(f) Effective date. - The provisions of this section, as enacted in 2015, become effective January 1, 2016. The provisions of this section, as enacted in 2022, become effective January 1, 2022.

**§11-10-28. Efficiency in Tax Division reporting.**

(a) The Legislature recognizes that certain statutory requirements for legislative reports have become redundant, inefficient, and no longer serve the purpose for which they were originally intended; the continuing requirement for numerous legislative reports imposes unnecessary burdens on both state agencies and legislative bodies, diverting valuable resources away from core functions; many of these reports are rarely used by lawmakers in the legislative process, fail to result in actionable policy changes, and contribute to the growing backlog of unreviewed and underutilized documents; the requirement to produce these reports has proven to be a wasteful expenditure of time, taxpayer funds, and personnel, without producing a tangible benefit to the legislative decision-making process or the public; and the Legislature has a responsibility to ensure that state government operates in the most effective, efficient, and transparent manner possible, and should focus on legislative activities and reports that directly support policymaking and serve the public interest. Therefore, the Legislature finds that the repeal of certain code sections related to unnecessary legislative reports will reduce administrative burdens, improve the allocation of state resources, and increase the efficiency of legislative functions, ultimately promoting a more streamlined and responsive government.

(b) Requirements in the following sections of this code for the Tax Commissioner to submit reports, publish information, or provide notice shall not apply for any period on or after January 1, 2025:

- (1) The report on certified capital additions provided for in §11-6F-4;
- (2) The report of the Criminal Investigation Division pursuant to §11-9-2a;
- (3) The reports relating to certain confidential taxpayer information provided for in §11-10-5s(b);
- (4) The report relating to the automated tax administration system pursuant to §11-10C-4;
- (5) The report related to the Business Investment and Jobs Expansion Tax Credit provided for in §11-13C-7a;
- (6) The Economic Opportunity Tax Credit Review and Accountability report required by §11-13Q-20;
- (7) The Manufacturing Investment Tax Credit Review and Accountability report required by §11-13S-10;
- (8) The High Growth Business Investment Tax Credit Review and Accountability report required by §11-13U-8;
- (9) The Manufacturing Property Tax Adjustment Credit report required by §11-13Y-8;

(10) The Commercial Patent Incentives Tax Credit Review and Accountability report required by §11-13AA-9;

(11) The Mine Safety Technology Tax Credit Review and Accountability report required by §11-13BB-11;

(12) The Farm to Food Bank Tax Credit report required by §11-13DD-6;

(13) The Coal Severance Tax Rebate report required by §11-13EE-13;

(14) The Tax Credit for Donation or Sale of a Vehicle Tax Credit Review report required by §11-13FF-6;

(15) The Natural Gas Manufacturing Investment Tax Credit Review and Accountability report required by §11-13GG-15;

(16) The West Virginia Natural Gas Liquids Property Tax Adjustment Tax Credit report required by §11-13HH-8;

(17) The West Virginia Volunteer Firefighter Tax Credit Review report required by §11-13JJ-6;

(18) The West Virginia Tax Credit for Federal Excise Tax Credit Review and Accountability report required by §11-13KK-12; and

(19) The West Virginia Property Tax Adjustment Act Annual report required by §11-13MM-7;

(c) Nothing in this section shall prohibit the Tax Commissioner from providing information and reporting as a part of the biennial report required to be filed by §11-1-4, the tax expenditure reports required to be filed under §11-10-5s, or otherwise as is deemed useful or necessary.