WEST VIRGINIA CODE CHAPTER 11 ARTICLE 10B

WV Legislature

§11-10B-1. Legislative intent.

It is the intent of the Legislature in enacting the tax penalty and additions to tax amnesty program, as provided by this article, to improve compliance with this state's tax laws and to accelerate and increase collections of certain taxes currently owed to this state. The Legislature finds and declares that a public purpose is served by the waiver of tax penalties, additions to tax and criminal prosecution in return for the immediate reporting and payment of previously underreported, nonreported, unpaid or underpaid tax liabilities which accrued prior to or are delinquent as of January 1, 1986. The benefits gained by this program include, among other things, accelerated receipt of certain currently owed taxes, permanently bringing into the tax system taxpayers who have been evading tax and providing an opportunity for taxpayers to clear their records and satisfy tax obligations. It is further the intent of the Legislature in enacting this article that the tax penalty and additions to tax amnesty program be a one-time occurrence which shall not be repeated in the future, since taxpayers' expectations of future amnesty programs could have a counterproductive effect on compliance today.

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§11-10B-2. Definitions.

(a) General rule. -- Terms used in this article shall have the meaning ascribed to them in section four, article ten of this chapter, unless the context in which the term is used in the article clearly requires a different meaning, or the term is defined in subsection (b) of this section.

(b) Terms defined. -- For purposes of this article, the term:

(1) "Additions to tax" shall mean that amount imposed by section eighteen, or eighteen-a, article ten of this chapter, for failure to file a return or pay tax due, or for negligence or intentional disregard of rules and regulations of the Tax Commissioner, for filing a false or fraudulent return, or for failure to pay estimated tax, and includes "additions to tax" imposed by articles fourteen, fourteen-a, seventeen, nineteen, twenty-one and twenty-four of this chapter, as in effect on June 30, 1978, and preserved in section twenty, article ten of this chapter, for periods ending on or before that date;

(2) "Applicant" shall mean any person who timely files an application for amnesty under this article;

(3) "Penalty" shall mean and include additions to tax, penalties imposed by section nineteen, article ten of this chapter, penalties imposed by articles eleven, twelve, thirteen, fourteen, fourteen-a, fifteen, fifteen-a, seventeen, nineteen, twenty-one or twenty-four of this chapter, as such articles are presently written or as in effect on June 30, 1978, and preserved in section twenty, article ten of this chapter, for periods ending on or before that date;

(4) "Specified tax" shall mean the tax or taxes and the periods thereof for which the taxpayer applies for amnesty under this article.

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§11-10B-3. Development and administration of program, implementation of article.

The Tax Commissioner shall develop and administer the tax penalty and additions to tax amnesty program as provided in this article, and shall develop and issue such forms, instructions, regulations and guidelines as he deems to be necessary, and take any other action needed to implement this article.

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§11-10B-4. Duration and application of program.

The Tax Commissioner shall establish a three-month tax penalty and additions to tax amnesty program to be conducted during the calendar year, 1986. The program shall apply to payments and returns required pursuant to any tax specified in section three, article ten of this chapter, but only if the obligation for payment or filing of a return, or both, arose prior to, is delinquent as of, or is due and payable as of January 1, 1986.

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§11-10B-5. Waiver of penalties; criminal immunity; exceptions and limitations.

(a) For any taxpayer who meets the requirements of section six below, and except as otherwise specifically provided in this article.

(1) The Tax Commissioner shall waive all penalties, as defined in section two of this article, and all additions to tax, as defined in said section two, for the taxes for which tax penalty and additions to tax amnesty is granted, which are owed as a result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities; and

(2) No criminal action may be brought against the taxpayer for the default for which tax penalty and additions to tax amnesty is granted.

(b) This section does not apply to nonpayment, underpayment, nonreporting, misreporting or underreporting of tax liabilities for which amnesty is sought if, as of the date the taxpayers' application for amnesty is filed:

(1) The taxpayer is the subject of a criminal investigation by any agency of this state; or

(2) An administrative proceeding, or a civil or criminal court proceeding has been initiated or is pending in any administrative agency or court of this state or of the United States for nonpayment, delinquency, fraud or other event of noncompliance in relation to any of the specified taxes. An administrative or civil proceeding shall not be deemed to be pending if the taxpayer withdraws with prejudice from the proceeding prior to the granting of amnesty, pays in full the outstanding tax liability plus the accrued interest thereon and otherwise cures any default which is the subject of such proceeding.

(c) No refund or credit may be granted for any penalty or addition to tax paid prior to the time the taxpayer files his application for tax penalty and additions to tax amnesty pursuant to section six below. Additionally, no refund or credit shall be granted for any specified taxes plus interest paid under this program unless the Tax Commissioner, on his own motion, redetermines the amount of tax and accrued interest thereon.

(d) The taxpayer shall not be eligible for amnesty for any tax liability if the taxpayer has other tax liabilities outstanding for a tax listed in section three, article ten of this chapter, for which he has not applied for amnesty.

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§11-10B-6. Application for amnesty; requirements; deficiency assessment.

(a) The provisions of this article apply to any taxpayer who, on or after the date of commencement of the tax penalty and additions to tax amnesty program and on or before the termination date designated by the Tax Commissioner, files an application for tax penalty and additions to tax amnesty on or before the last day of the third calendar month of the amnesty program and does the following:

(1) Voluntarily completes, signs and files amended tax returns to report transactions and other material matters not included on original returns and pays in full all additional taxes and interest shown to be due thereon;

(2) Voluntarily completes, signs and files all delinquent tax returns and pays in full all taxes and interest shown to be due thereon;

(3) Voluntarily completes, signs and files amended tax returns to correct all incorrect, deficient or incomplete original returns and pays in full all taxes and interest shown to be due thereon; and

(4) Voluntarily pays in full all previously assessed tax liabilities and other taxes legally collectible under section eleven, article ten of this chapter, and interest due thereon.

(b) Except as provided in subsection (d) below, all taxes for which tax penalty and additions to tax amnesty is sought plus accrued interest shall be paid not later than last day of the month succeeding the termination of the amnesty program. Interest on the amount of tax due shall be calculated at the rate prescribed in article ten of this chapter, which continues to accrue until the tax liability is paid.

(c) Payments made by the taxpayer under this tax penalty and additions to tax amnesty program shall be in money, United States currency or by certified check, cashier's check or post office money order, payable to the Tax Commissioner of this state.

(d) The Tax Commissioner may, at his discretion and upon such terms and conditions as he may prescribe, enter into an installment payment agreement with the taxpayer, such installment payment agreement to be in lieu of the full immediate payment required by subsection (b) of this section. Any such agreement shall include interest on the outstanding amount due. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties and additions to tax under this amnesty program null and void, unless the Tax Commissioner determines that the failure was due to reasonable cause, and, in the event of such unexcused noncompliance with the terms of the installment payment agreement, the total amount of tax, interest and all additions to tax and penalties shall be immediately due and payable.

(e) If, subsequent to termination of the tax penalty and additions to tax amnesty program, the Tax Commissioner determines there was a defect in the amnesty application or in the

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materials submitted in support of the amnesty application and subsequently issues a deficiency assessment upon a return or amended return filed pursuant to subsection (a) of this section, the Tax Commissioner has the authority to impose applicable penalties and additions to tax and to pursue any criminal prosecution as may ordinarily be brought with respect to such defect as if no amnesty had been granted the taxpayer.

(f) The Tax Commissioner may review all cases in which amnesty has been granted and may on the basis of mistake of fact, fraud or misrepresentation rescind the grant of amnesty, or in lieu thereof, appropriate review of the grant of amnesty may be obtained by proceeding under article nine or ten (or both) of this chapter. Any taxpayer who files a false or fraudulent return or amended return, or attempts in any manner to defeat or evade payment of a tax under this amnesty program, shall be subject to applicable civil penalties and criminal prosecution.

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§11-10B-7. Publicity efforts.

The Tax Commissioner shall cause the tax penalty and additions to tax amnesty program to be adequately publicized so as to maximize public awareness of and participation in the program.

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§11-10B-8. Disposition of revenue collected.

From the revenue collected under this tax penalty and additions tax amnesty program, $4,000,000 of revenue collected, the disposition of which is not otherwise dedicated by Constitutional provision or prior statutory enactment, shall be paid by the Tax Commissioner into a special "disaster recovery fund," which is hereby created in the State Treasurer's office to be used as appropriated by the Legislature for the recovery of losses occurring in the November, 1985 flood disaster, in twenty-nine counties of this state. The Tax Commissioner shall retain the amount of $200,000 to cover his costs of administering this program. All additional revenues collected by the Tax Commissioner under the provisions of this article, the disposition of which is not otherwise dedicated by Constitutional provision or prior statutory enactment, shall be paid by him into the General Fund.

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