WEST VIRGINIA CODE: §11-10D-7

§11-10D-7. Application for amnesty; requirements; deficiency assessment.

(a) Timely application required. -- The provisions of this article apply to any taxpayer who, on or after the date of commencement of the tax amnesty program and on or before the termination date of the program designated by the Tax Commissioner, files an application for tax amnesty on or before the last day of the second 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 shown to be due on the amended return or returns and fifty percent of the interest imposed on the additional taxes by article ten of this chapter;

(2) Voluntarily completes, signs and files all delinquent tax returns and pays in full all taxes shown to be due on the return or returns and fifty percent of the interest imposed on the taxes by article ten of this chapter;

(3) Voluntarily completes, signs and files amended tax returns to correct all incorrect, deficient or incomplete original returns and pays in full all taxes shown to be due on the amended return or returns and fifty percent of the interest imposed on the tax or taxes by article ten of this chapter; 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 fifty percent of the interest due thereon imposed by article ten of this chapter.

(b) Due date of tax for which amnesty granted. -- Except as provided in subsection (d) of this section, all taxes for which tax amnesty is sought plus fifty percent of interest accrued to the date of payment shall be paid not later than the last day of the month next succeeding the termination of the amnesty program. Interest on the amount of tax due shall be calculated as prescribed in article ten of this chapter and shall continue to accrue until the tax liability is paid.

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

(d) Installment payment agreements. -- The Tax Commissioner may, at his or her discretion and upon such terms and conditions as the commissioner may prescribe, enter into an installment payment agreement with the taxpayer, which installment payment agreement shall be in lieu of the full immediate payment required by subsection (b) of this section: Provided, That the length of the installment payment may not exceed twelve months.

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(1) Each installment payment agreement shall provide for payment of the tax due and fifty percent of the statutory interest on the outstanding amount of tax due, computed to the date the installment payment agreement is executed by the taxpayer. The amount of tax and interest due from the taxpayer shall be stated in the installment payment agreement and constitute the installment payment agreement amount.

(2) Down payment. -– The installment payment agreement shall require payment of twenty-five percent of the installment payment agreement amount or $100,000, whichever amount is the greater, at the time the installment payment agreement is submitted to the Tax Commissioner for acceptance and signature.

(3) Interest. -– Interest on the installment payment agreement amount shall be calculated at the rates determined under sections seventeen and seventeen-a, article ten of this chapter, as applicable to the installment payment period, and shall accrue on the declining balance of the installment payment agreement amount from the date the installment payment agreement is signed by the taxpayer to the date the last installment payment is made by the taxpayer.

(4) Lien securing payment. -– When payments are made under an installment payment agreement, the amount due shall be secured by recordation of a tax lien against the property of the taxpayer and recordation of a tax lien against the property of any person guaranteeing payment of the installment payment agreement amount, should there be a guarantor, unless the Tax Commissioner determines that existing recorded tax liens are adequate to secure the payment. Liens required by this subdivision shall be recorded in each county of this state in which the taxpayer and the guarantor, if any, owns an interest in property and shall be released by the Tax Commissioner upon full payment of the amount stated in the installment payment agreement plus applicable interest.

(5) Failure to comply with installment payment agreement. -– Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties, additions to tax and interest under this amnesty program null and void, unless the Tax Commissioner determines that the failure was due to reasonable cause. In the event of an unexcused noncompliance with the terms of the installment payment agreement, the taxpayer shall immediately pay the unpaid balance of the installment payment agreement amount plus the interest and all additions to tax and penalties waived under section six of this article.

(6) Late payment of installment payment. -– Notwithstanding the provisions of subdivision (5) of this subsection, payment of an installment payment after the date the installment payment is due under the installment payment agreement shall not void the agreement provided the amount of the installment payment, plus a late payment fee of $10 or one half of one percent of the amount of the late installment payment, whichever is the greater amount, is paid within twenty days after the installment payment was due under the installment payment agreement.

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(7) Failure to timely pay current taxes. -- If a taxpayer with an installment payment agreement fails to timely file returns and remit current tax liabilities by their statutory due date or dates, the installment payment agreement shall be rendered null and void, unless the Tax Commissioner determines that the failure was due to reasonable cause. In the event an installment payment agreement becomes null and void, taxpayer shall immediately pay the unpaid balance of the installment payment agreement plus interest and all additions to tax and penalties waived when the Tax Commissioner accepted the installment payment agreement.

(e) Understatement of tax due. -- If, subsequent to termination of this tax amnesty program, the Tax Commissioner determines there was a defect in the amnesty application or in the materials submitted in support of the amnesty application and subsequently issues a deficiency assessment upon the application or a return or amended return filed pursuant to this article, the Tax Commissioner has the authority to collect the additional tax due, impose applicable penalties, additions to tax and interest and to pursue any criminal prosecution as may ordinarily be brought with respect to the defect as if no amnesty had been granted the taxpayer.

(f) Mistake or misrepresentation of material fact. -- The Tax Commissioner may review all cases in which amnesty has been granted and may on the basis of a mistake or misrepresentation of a material fact, 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. The taxpayer may appeal the Tax Commissioner's order rescinding the grant of amnesty by filing a petition for appeal with the office of tax appeals, established in article ten-a of this chapter, within thirty days after receipt of the Tax Commissioner's order, which shall be served by personal service or by certified mail.

(g) False or fraudulent amnesty return. -- Any taxpayer who files an amnesty tax return or amended return that is false or fraudulent shall be subject to applicable civil penalties and be referred for criminal prosecution.

(h) Attempt to evade or defeat tax. -- Any taxpayer who files a false amnesty application or attempts in any manner to defeat or evade payment of tax or interest under this amnesty program, shall be subject to applicable civil penalties and be referred for criminal prosecution.

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