WEST VIRGINIA CODE CHAPTER 11 ARTICLE 10D

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§11-10D-1. Short title.

This article may be cited as the "West Virginia Tax Amnesty Program of 2004."

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§11-10D-2. Legislative intent and findings.

(a) Intent. -- It is the intent of the Legislature in enacting the tax amnesty program 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.

(b) Findings. -- The Legislature finds and declares that a public purpose is served by the waiver of tax penalties, additions to tax, a portion of accrued interest, and criminal prosecution in return for the immediate reporting and payment of previously underreported, unreported, unpaid or underpaid tax liabilities that are due and owing and are delinquent as of January 1, 2004. 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 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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§11-10D-3. 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 this 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" means 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 any other article of chapter eleven of the code administered under article ten of this chapter;

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

(3) "Interest" means interest imposed pursuant to sections seventeen and seventeen-a, article ten of this chapter;

(4) "Penalty" means civil money penalties imposed by section nineteen, article ten of this chapter and any other civil money penalty imposed by any article of this chapter administered under article ten;

(5) "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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§11-10D-4. Development and administration of tax amnesty program, implementation of article.

(a) General. -– The Tax Commissioner shall develop and administer the tax amnesty program provided in this article, notwithstanding any provision of this article to the contrary. The Tax Commissioner shall develop and issue the forms, instructions and guidelines as the commissioner believes to be necessary, and take any other action needed to implement this article.

(b) Rules. -– The Tax Commissioner may promulgate rules, including emergency rules, that implement, clarify or explain the tax amnesty program, in the manner provided in article three, chapter twenty-nine-a of this code.

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§11-10D-5. Duration and application of program.

The Tax Commissioner shall establish a two-month tax amnesty program to be conducted during the calendar year, 2004. The program shall apply to payments and returns required pursuant to any tax administered under article ten of this chapter, but only if the obligation for payment or filing of a return, or both, arose after January 1, 1986, and prior to January 1, 2004, provided: (1) The tax return was due before January 1, 2004; (2) the amount of tax shown to be due on the tax return was due and payable to the Tax Commissioner before January 1, 2004; or (3) if no tax return was required by law to be filed, the tax was due and payable to the Tax Commissioner before January 1, 2004.

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§11-10D-6. Waiver of penalties; criminal immunity; exceptions and limitations.

(a) Waiver of penalty, addition to tax and interest. -– For any taxpayer who meets the requirements of section seven of this article and except as otherwise specifically provided in this article:

(1) Waiver. -– The Tax Commissioner shall waive all penalties and additions to tax and fifty percent of the interest imposed on the late filing of a return or the late payment of any tax for which tax amnesty is granted, which is owed as a result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities; and

(2) Criminal penalties. -– No criminal action may be brought against the taxpayer for the default for which tax amnesty is granted under this article.

(b) Exceptions. -– This section does not apply to nonpayment or underpayment of tax liabilities, or to nonreported, misreported or underreported tax liabilities for which amnesty is sought if, as of the date the taxpayer's 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 taxes administered under article ten of this chapter. 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 fifty percent of the accrued interest thereon and otherwise cures any default which is the subject of the proceeding.

(c) No refund or credit. -– No refund or credit may be granted for any penalty, addition to tax or interest paid prior to the date the taxpayer files his or her application for tax amnesty pursuant to section seven of this article. Additionally, no refund or credit shall be granted for any tax or interest paid under this program unless the Tax Commissioner, on his or her own motion, redetermines the amount of tax or accrued interest thereon.

(d) Bar to amnesty. -– A taxpayer shall not be eligible for amnesty for any tax liability if the taxpayer has other liabilities outstanding for any tax administered under article ten of this chapter, for which the taxpayer has not applied for amnesty. This includes tax deficiencies pending before the office of tax appeals or a court in this state.

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§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.

(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

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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.

(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

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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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§11-10D-8. Publicity efforts.

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

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§11-10D-9. Examination of amnesty returns and taxpayer books and records.

Nothing in this article shall prevent the Tax Commissioner or any authorized employee or agent of the commissioner from examining the books, paper, records and equipment of any taxpayer or other person in order to verify the accuracy and completeness of the application for amnesty or of any tax return filed or payment made under this article, as provided in article ten of this chapter, and to ascertain and assess any tax or other liability owed to the state for any tax administered under article ten of this chapter.

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§11-10D-10. Disposition of revenue collected.

There is hereby created in the State Treasury a special fund to be known as the "tax amnesty fund" into which shall be deposited all payments received under the tax amnesty program. On a monthly basis, the tax amnesty fund shall be distributed as follows:

(1) Dedicated taxes. -- A dedicated tax and applicable interest collected under the tax amnesty program shall be deposited in the fund or account in which the tax would have been deposited had the tax been timely paid; and

(2) Other taxes. -- After complying with subdivision (1) of this section, all other funds collected under the tax amnesty program shall be deposited into the General Revenue Fund.

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§11-10D-11. Penalty on liabilities eligible for amnesty for which taxpayer did not apply for amnesty.

(a) If a taxpayer has a liability that would be eligible for amnesty under this article but the taxpayer fails to apply for amnesty within the designated amnesty period as determined in this article, or, after applying for amnesty, fails to satisfy all of the requirements for amnesty, then a penalty in the amount of ten percent of the unpaid liability shall be added to the amount of any unpaid taxes eligible for amnesty.

(b) The Tax Commissioner shall assess the penalty provided in subsection (a) of this section unless:

(1) Taxpayer provides evidence satisfactory to the commissioner which demonstrates that taxpayer's failure to apply for amnesty or his or her failure to satisfy all of the requirements for amnesty was not an intentional attempt to avoid the payment of taxes and was based on the taxpayer's mistaken belief that he or she did not have any liability eligible for amnesty; or

(2) Taxpayer's failure to apply for amnesty, in the case of an assessment issued before the start of or during the amnesty period, is due to taxpayer contesting in an administrative or judicial forum the disputed liability.

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§11-10D-12. Report to Legislature and Governor.

On or before July 1, 2005, the Tax Commissioner shall issue a report to the Legislature and the Governor detailing the implementation and results of the tax amnesty program provided in this article. This report shall include, but not be limited to, the following information:

(1) A detailed breakdown of the Tax Commissioner's administrative costs in implementing the program;

(2) The total number of tax amnesty returns filed, by tax and by whether the returns are new returns or amended returns;

(3) The gross tax amnesty revenues collected by tax, which shall also be broken down into the following categories:

(A) Amounts represented by assessments made, but not finalized, and by liens filed by the Tax Commissioner before the first day of the amnesty period; and

(B) All other amounts;

(4) The total dollar amount of revenue collected by the program to a date no earlier than thirty days before the date of the report required by this section, which shall be further allocated by type of tax, interest on the tax to which the payment relates;

(5) The total amount of interest forgiven under the program;

(6) The total amount of additions to tax forgiven under the program;

(7) The total amount of penalties (not including additions to tax or interest) collected under the program; and

(8) Any other statistical information that the Tax Commissioner determines to be necessary to measure the net impact of this tax amnesty program.

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§11-10D-13. Suspension of inconsistent code provisions.

All provisions of article ten, chapter eleven of this code and all provisions of tax statutes administered under article ten of this chapter that are inconsistent with the provisions of this article are suspended to the extent necessary to carry out the provisions of this article.

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