WEST VIRGINIA CODE: §11-12-5

§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend, revoke or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.

(a) Registration period. -- All business registration certificates issued under the provisions of section four of this article are for the period of one year beginning July 1 and ending June 30 of the following year: Provided, That beginning on or after July 1, 1999, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on July 1 of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning July 1, 1999, and ending June 30, 2000, upon receipt of $15 for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after July 1, 2010, shall not be subject to the foregoing requirement that it be renewed, but shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or canceled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after July 1, 2010, reference to renewal of the business registration certificate shall refer to the issuance of a new business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or to reinstatement of a business registration certificate or to reinstatement of a business certificate previously suspended by the Tax Commissioner. Subject to the exemptions, exceptions and requirements other than the $4,000 or less gross income exemption, set forth in section three of this article, on or after July 1, 2010, the business registration certificate shall be issued upon payment of a tax of $30 to the Tax Commissioner for new issuances of the business registration certificate or for issuances of the business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or for reinstatement of a business registration certificate previously suspended by the Tax Commissioner, along with any applicable delinquent fees, interest, penalties and additions to tax. Subject to the exemptions, exceptions and requirements set forth in section three of this article, the $30 tax shall be paid each and every time there is an issuance, reissuance or reinstatement of a business registration certificate, along with any applicable delinquent fees, interest, penalties and additions to tax: Provided, however That the $4,000 or less gross income exemption set forth in subdivision (1), subsection (d), section three of this article does not apply.

(b) Revocation, cancellation or suspension of certificate. --

WV Legislature

(1) The Tax Commissioner may cancel, revoke or suspend a business registration certificate at any time during a registration period if:

(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a tax return or to report information required by the Tax Commissioner for any tax imposed by or pursuant to this chapter.

(C) The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(D) The registrant neglected to pay over to the Tax Commissioner on or before its due date, determined with regard to any authorized extension of time for payment, any tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant's purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(F) The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year.

(2) On or after July 1, 2010, a prospective registrant or a former registrant for which a business registration certificate has been suspended, canceled or revoked pursuant to the provisions of this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate upon payment of all outstanding delinquent fees, taxes, interest, additions to tax and penalties, in addition to payment to the Tax Commissioner of a penalty in the amount of $100. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has provided security acceptable to and authorized by the Tax Commissioner, payable to the Tax Commissioner, sufficient to secure all delinquent fees, taxes, interest, additions to tax and penalties owed by the prospective registrant. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has entered into a payment plan approved by the Tax Commissioner by which liability for all delinquent fees, taxes, interest, additions to tax and penalties will be paid in due course and without significant delay. Failure of any registrant to comply with a payment plan pursuant to this provision shall be grounds for immediate suspension or revocation of the registrant's business registration certificate.

WV Legislature

(3) On and after July 1, 2010, a prospective registrant or a former registrant for which a business registration certificate has been suspended, canceled or revoked pursuant to the provisions of any article of this code other than this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate, only if the prospective or former registrant has complied with all applicable statutory and regulatory requirements for renewal, issuance or reinstatement of the business registration certificate and upon payment to the Tax Commissioner of a penalty in the amount of $100.

(4) Except pursuant to exceptions specified in this code, before canceling, revoking or suspending any business registration certificate, the Tax Commissioner shall give written notice of his or her intent to suspend, revoke or cancel the business registration certificate of the taxpayer, the reason for the suspension, revocation or cancellation and the effective date of the cancellation, revocation or suspension. Written notice shall be served on the taxpayer in accordance with section five-e, article ten of this chapter not less than twenty days prior to the effective date of the cancellation, revocation or suspension. Acceptance of service of notice shall be deemed to have occurred if completed as set forth in section five-e, article ten of this chapter. The taxpayer may appeal cancellation, revocation or suspension of its business registration certificate by filing a petition for appeal with the Office of Tax Appeals within twenty days immediately succeeding receipt of the service of notice to suspend, revoke or cancel the business registration certificate. The filing of a petition for appeal does not stay the effective date of the suspension, revocation or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation, revocation or suspension until another date certain.

(5) On or before July 1, 2005, the Tax Commissioner shall propose for promulgation legislative rules establishing ancillary procedures for the Tax Commissioner's suspension of business registration certificates for failure to pay delinquent personal property taxes pursuant to paragraph (F), subdivision (1) of this section. The rules shall at a minimum establish any additional requirements for the provision of notice deemed necessary by the Tax Commissioner to meet requirements of law; establish protocols for the communication and verification of information exchanged between the Tax Commissioner, sheriffs and others; and establish fees to be assessed against delinquent taxpayers that shall be deposited into a special fund which is hereby created and expended for general tax administration by the Tax Division of the Department of Revenue and for operation of the Tax Division. Upon authorization of the Legislature, the rules shall have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the Tax Commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F), subdivision (1) of this section or under any other provision of this code prior to the authorization of the rules.

(c) Revocation, cancellation or suspension due to delinquent personal property tax. -- The Tax Commissioner may revoke, cancel or suspend a business registration certificate when

WV Legislature

informed in writing, signed by the county sheriff, that personal property owned by a registrant and used in conjunction with the business activity of the a registrant is subject to delinquent property taxes. The Tax Commissioner shall forthwith notify the registrant that the commissioner will revoke, cancel or suspend the registrant's business registration certificate unless information is provided evidencing that the taxes due are either exonerated or paid.

(d) Refusal to issue, revocation, suspension and refusal to renew business registration certificate of alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue, revocation, suspension or refuse to renew. --

(1) The Tax Commissioner may refuse to issue a business registration certificate, or may revoke a business registration certificate or may suspend a business registration certificate or may refuse to renew a business registration certificate for any business determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue a business registration certificate or of a lawful revocation, suspension or refusal to renew a business registration certificate pursuant to this section, and for which the business registration certificate has not been lawfully reinstated or reissued.

(2) For purposes of this section, a business is presumed to be an alter ego, nominee or instrumentality of another business or other businesses if:

(A) More than twenty percent of the real assets or more than twenty percent of the operating assets or more than twenty percent of the tangible personal property of one business are or have been transferred to the other business or businesses, or are or have been used in the operations of the other business or businesses, or more than twenty percent of the real assets or more than twenty percent of the operating assets or more than twenty percent of the tangible personal property of one business are or have been used to collateralize or secure debts or obligations of the other business or businesses;

(B) Ownership of the businesses is so configured that the attribution rules of either Internal Revenue Code section 267 or Internal Revenue Code section 318 would apply to cause ownership of the businesses to be attributed to the same person or entity; or

(C) Substantive control of the businesses is held or retained by the same person, entity or individual, directly or indirectly, or through attribution under paragraph (B) of this subdivision.

WV Legislature