WEST VIRGINIA CODE CHAPTER 11 ARTICLE 12

WV Legislature

§11-12-1. Short title.

This article shall be cited as the "Business Registration Tax."

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§11-12-2. 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 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) "Agriculture and farming" shall mean and include the production of food, fiber, or woodland products (but not timbering activity) by means of cultivation or tillage of the soil, or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, or by horticulture, or by any other plant or animal production, and all farm practices related (usual or incidental) thereto, including the storage, packing, shipping and marketing thereof, but not including any manufacturing, milling, processing or selling of such products by person other than the producer thereof.

For the purposes of this article:

(2) "Business activity" shall mean and include all purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and all activities of this state and its political subdivisions which involve the sale of tangible personal property or the rendering of service when such service activities compete with or may compete with the activities of another person. "Business activity" shall not include:

(A) Judicial sales directed by law or court order.

(B) Sales for delinquent taxes of real or personal property.

(C) The conduct of charitable bingo by any person licensed under article twenty,chapter forty-seven of this code.

(D) The conduct of a charitable raffle by any person.

(E) The conduct of a horse or dog race meeting by any racing association licensed under article twenty-three, chapter nineteen of this code.

(F) The operation or maintenance of the pari-mutuel system of wagering during the conduct of a licensed horse or dog race meeting.

(G) The sale of any commodity during the conduct of a licensed horse or dog race meeting.

(H) The services of owners, trainers or jockeys which are essential to the effective conduct of a licensed horse or dog race meeting.

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(I) Occasional or casual sales of property or services.

(3) "Business registration certificate" shall mean a certificate issued by the Tax Commissioner authorizing a person to conduct business within the State of West Virginia; and when referred to in this article as a certificate of registration or a business franchise registration certificate, it shall mean a business registration certificate.

(4) "Occasional sale" or "casual sale" shall mean a sale of tangible personal property not held or used by a seller in the course of an activity for which a business registration certificate is required, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business: Provided, That such sale or exchange is not one of a series of sales or exchanges sufficient in number, scope and character to constitute a business activity requiring the holding of a business registration certificate.

(5) "Person" or "company" shall mean and include any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, or body politic or political subdivision (whether public or private, or quasi-public) and in the plural as well as the singular and when used in connection with the penalties imposed by section nine of this article, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint venture, association, corporation, trust, business trust, syndicate or any other groups or combinations acting as a unit.

(6) "Registration year" shall mean a period of twelve calendar months beginning July 1, and ending the thirtieth day of the following June.

(7) "Registrant" shall mean any person who has been issued a business registration certificate under this article for the current registration year.

(8) "Tax commissioner" shall mean the Tax Commissioner or his agent.

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§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; penalty.

(a) *Registration required.* — No person shall, without a business registration certificate, engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia. Additionally, before beginning business in this state, such person:

(1) If a transient vendor, shall comply with the provisions of sections 20 through 25 of this article.

(2) If a collection agency, shall comply with the provisions of §47-16-1 *et seq.* of this code.

(3) If an employment agency, shall comply with the provisions of §21-2-1 *et seq.* of this code.

(4) If selling drug paraphernalia, as defined in §47-19-3 of this code, shall comply with the provisions of §47-19-1 *et seq.* of this code.

Persons engaging in or prosecuting other business activities in this state may also be subject to other provisions of this code which they must satisfy before commencing or while engaging in a business activity in this state.

(b) *Tax levied.* — The business registration tax hereby levied shall be $15 for each annual business registration certificate: *Provided,* That for registration periods beginning on or after July 1, 1999, the business registration tax shall be $30, except as otherwise provided in this article: *Provided, however,* That after June 30, 2010, the business registration tax shall be $30.00 for each business registration certificate, including business registration certificates granted upon application after cessation of a business, or after suspension, revocation, cancellation or lapse of a prior business registration certificate.

(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) of this section for every

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person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if, in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

(c) *Exemption from registration.* — Any person engaging in or prosecuting business activity in this state:

(1) Who is not required by law to collect or withhold a tax administered under article ten of this chapter; and

(2) Who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed by this article, if such person had gross income from business activity of $4,000 or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is otherwise required by this article.

(d) *Exemptions from payment of tax.* — Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax administered under article ten of this chapter; or who claims exemption from payment of the taxes imposed by articles fifteen and fifteen-a of this chapter, shall be required to obtain a business registration certificate, as herein before provided, but shall be exempt from payment of the tax levied by subsection (b) of this section, if such person is:

(1) A person who had gross income of $10,000 or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is required under this article.

(2) An organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986, as amended.

(3) This state, or a political subdivision thereof, selling tangible personal property, admissions or services, when those activities compete with or may compete with the activities of another person.

(4) The United States, or an agency or instrumentality thereof, which is exempt from taxation by the states.

(5) A person engaged in the business of agriculture and farming: *Provided,* That no producer or grower selling products of the farm, garden or dairy and not included within the definition

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of business under subsection (a), section two of this article shall be required to obtain a business registration certificate or pay the business registration tax.

(6) A foreign retailer who is not a "retailer engaging in business in this state" as defined in section one, article fifteen-a of this chapter, who enters into an agreement with the Tax Commissioner to voluntarily collect and remit use tax on sales to West Virginia customers.

(e) *Money penalty.* — Any person required to obtain a business registration certificate under this section, who is exempt from payment of the tax, as provided in subsection (d) of this section, who does not obtain a registration certificate shall, in lieu of paying the penalty imposed by section nine of this article, pay a penalty of $15 for each business location for which a certificate is needed: *Provided,* That application for business registration is made and the applicable money penalty tendered to the Tax Commissioner within 15 days after such person receives written notice from the Tax Commissioner that such person is required to obtain a business registration certificate.

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§11-12-3a.

Repealed. Acts, 1970 Reg. Sess., Ch. 73.

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§11-12-4. Application for business registration certificate; issuance of business certificate; effect of business registration certificate; municipal license taxes.

(a) General rule. -- Except as otherwise provided in this article, a person shall register with the Tax Commissioner prior to engaging in or prosecuting any business activity in this state. The application for business registration shall be in such form and contain such information as the Tax Commissioner may require; and the applicant shall set forth truthfully and accurately the information required by the Tax Commissioner. Upon receipt of a complete and properly executed application form, accompanied by payment of (or claim of exemption from) the tax levied by section three for each business registration certificate, the Tax Commissioner shall, if he determines to his satisfaction that all of the conditions precedent to the granting of such certificate have been fulfilled by the applicant, issue such business registration certificate or certificates.

(b) Certificate not to validate illegal activity. -- Nothing in this article, including, but not limited to, any payment of the tax imposed or issuance of any certificate of registration under the provisions hereof, shall be deemed to legalize any act, business activity or transaction which otherwise may be illegal or conducted in violation of law; or to exempt any person from any civil or criminal penalty prescribed for such illegal act or violation.

(c) Certificate not to be construed as consent to general tax jurisdiction of this state. -- The filing of an application for business registration certificate (or for renewal thereof) and payment of the tax imposed by section three shall not be construed by the Tax Commissioner or the courts of this state as consent, submission or admission by the registrant to the general taxing jurisdiction of this state, and liability for such other taxes imposed by this state shall depend upon the relevant facts in each case and the applicable law.

(d) Power of municipalities to impose license taxes preserved. -- Notwithstanding the repeal, as of July 1, 1970, of certain license taxes then imposed by this article and article thirteen-a of this chapter, the power of a municipality to impose similar license taxes, by ordinance adopted pursuant to the authority of its charter or this code, was and is preserved: Provided, That the municipal license taxes imposed on any business, activity, trade or employment that was previously subject to a state license tax under this article or article thirteen-a of this chapter, cannot exceed the state license tax in effect on such business, activity, trade or employment of January 1, 1970; and municipalities shall have the power to impose similar penalties as those then provided in this article and article thirteen-a of this chapter for noncompliance with such state license taxes.

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§11-12-4a. Sellers of cigarettes, tobacco products or cigarette wrappers required to be licensed; business registration certificate is license; criminal penalties.

(a) For registration years beginning on or after July 1, 2000, each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license to sell cigarettes or other tobacco products or cigarette wrappers. The cigarette license application shall be a part of the business registration certificate application or the renewal application for a business registration certificate.

(b) The license shall be printed on the business registration certificate or certificates issued under the provisions of subsection (a), section four of this article.

(c) Any person or company who sells any cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail after July 1, 2001, without obtaining the license specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $250.

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§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. --

(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

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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.

(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,

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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 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.

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§11-12-5a. Prohibition on certificate being obtained by person connected to illegal activities involving scrap metal.

(a) For the purposes of this section, the term "scrap metal" shall have the same meaning ascribed to it in section forty-nine, article three, chapter sixty-one of this code.

(b) No person that has had a previous business registration certificate cancelled pursuant to subsection (j), section forty-nine, article three, chapter sixty-one of this code may apply for a subsequent business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility.

(c) No person may apply for a business registration certificate that would permit them to own, conduct, or operate any business involving the purchase of scrap metal or the operation or any salvage yard or recycling facility in which a person convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.

(d) Upon applying for a business registration certificate, pursuant to section four of this article, that would permit the applicant to own, conduct, or operate any business involving the purchase of scrap metal or the operation of any salvage yard or recycling facility, the Tax Commissioner shall require as part of the application a statement by the applicant that to the best of his or her knowledge and belief no person that has been convicted in the previous two years of a third or subsequent offense under section forty-nine, article three, chapter sixty-one of this code will hold a financial interest, be employed, or otherwise be involved in the day-to-day operations of said business.

WV Legislature

§11-12-6. Business certificate a personal privilege not assignable; change of name, location, ownership, etc.

Every business certificate issued under the provisions of section four of this article shall confer a personal privilege only to transact the business, activity or trade, which may be the subject of the business certificate and shall not be exercised except by the persons holding the same and shall not be assignable to any other person.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new certificate shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new certificate to be issued.

WV Legislature

§11-12-6a.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-6b.

Repealed.

Acts, 1967 Reg. Sess., Ch. 185.

WV Legislature

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

Any person to whom a certificate of registration has been issued under the provisions of section four of this article shall keep the certificate posted in a conspicuous position in the place where the privilege of the business is exercised. The certificate of registration shall be produced for inspection whenever required by the Tax Commissioner or by any law-enforcement officers of this state, county or municipality in which the privileges to conduct business are exercised.

No injunction shall issue from any court in the state enjoining the collection of any business registration certificate tax required in this section; and any person claiming that any business certificate is not due, for any reason, shall pay the tax under protest and petition the Tax Commissioner for a refund in accordance with the provisions of section fourteen, article ten of this chapter.

If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of the business certificate, the circuit court, or the judge thereof in vacation, of the county in which the violation occurred shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting that person from continuing the business, activity or trade until he or she has fully complied with the provisions of this article. The remedy provided in this section is in addition to all other penalties and remedies provided by law.

The Tax Commissioner shall make available, when requested, information as to whether a person is registered to do business in the State of West Virginia.

The Tax Commissioner shall deliver to the commissioner of the Bureau of Employment Programs and the executive director of the workers' compensation commission the information contained in the business franchise registration certificate when this information is used to implement and administer a single point of registration program for persons engaging in any business activity in the State of West Virginia. The single point of registration program shall provide that, once an individual has received a business franchise registration certificate, the Tax Commissioner shall notify the commissioner of the Bureau of Employment Programs and the executive director of the workers' compensation commission of the names, addresses and other identifying information of that individual or entity. Upon receiving this information, the commissioner of the Bureau of Employment Programs and the executive director of the workers' compensation commission shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms and paperwork to register a business within the bureau and commission pursuant to subsection (b), section six-b, article two, chapter twenty-one-a of this code and subsection (c), section two, article two, chapter twenty-three of this code.

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Notwithstanding the provisions of section five, article ten of this chapter, the Tax Commissioner may enter into a reciprocal agreement with the Governor's office of community and industrial development and other departments or agencies of this state for the exchange of information contained in the application for a business franchise registration certificate filed under section four of this article when the purpose for the exchange is to implement and administer a single-point of registration program for persons engaging in business in this state. The other departments and agencies may enter into a reciprocal exchange agreement for this purpose notwithstanding any provision of this code to the contrary.

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§11-12-8.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-12-9. Penalties.

In addition to the provisions of article ten of this chapter, any person engaging in or prosecuting any business contrary to the provisions of this article, whether without obtaining a business registration certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of any such certificate may, in addition to paying the business registration tax, additions to tax, penalties and interest, be liable for a penalty of $50 for each month or fraction thereof during which he has been in default of the business registration tax. It shall be the duty of the Tax Commissioner to collect the full amount of the business registration tax, additions to tax, interest, and all penalties imposed: Provided, That in no event may the total penalty for failure to renew a business registration certificate exceed $50 per registration certificate.

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§11-12-10. Collection of back taxes; notice of discontinuance of business.

Any person engaging in or prosecuting any business contrary to provisions of this article, whether without obtaining a certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of such certificate, shall, in addition to all other penalties provided by law, be liable for the payment of all back business franchise registration taxes and the additions to tax, penalties and interest due thereon and the penalties imposed by this article for a period not exceeding three years.

Whenever any person ceases to engage in business within this state by reason of the discontinuance, sale or transfer or by any other means of disposition of the business, it shall be his duty to notify the Tax Commissioner in writing of the discontinuance, sale or transfer or other disposition of the business, the date thereof and the name and address of the seller or transferor and purchaser or transferee thereof.

Unless the notice shall have been given to the Tax Commissioner as above provided, such seller or transferor and purchaser or transferee shall be jointly liable to the State of West Virginia for the amount of all taxes, additions to tax, penalties and interest due and unpaid under the provisions of this article or article ten of this chapter.

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§11-12-11.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-12-12.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

WV Legislature

§11-12-13.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-12-14. Hearing; appeal.

Any person adversely affected by refusal of the Tax Commissioner, or his representative, to issue a business franchise registration certificate or to renew this certificate may request a hearing before the Tax Commissioner, or his examiner, if such request is made within sixty days from receipt of written notice of the refusal.

The hearing provided for in this section and section five of this article shall be held as provided in section nine, article ten of this chapter and the taxpayer may take an appeal as provided in section ten of said article ten.

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§11-12-15. Enforcement.

Any employee of the State Tax Department so designated by the Tax Commissioner shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality of this state, and 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.

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§11-12-16. Disposition of money collected.

All money collected under the provisions of sections three and nine of this article shall be paid into the State Treasury, monthly, by the State Tax Commissioner, and shall be added to and shall constitute a part of the General Fund for the elementary schools.

WV Legislature

§11-12-17. Severability of provisions.

The provisions of this article are severable and if any shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions thereof. It is hereby declared as legislative intent that this article would have been adopted if such unconstitutional provision had not been included therein.

WV Legislature

§11-12-18. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the business franchise registration tax imposed by this article twelve, sections one through seventeen, with like effect as if said act were applicable only to such business franchise registration tax imposed by this article twelve and were set forth with respect thereto in extenso in this article twelve.

WV Legislature

§11-12-19. Contractors.

(a) General. -- Every person who engages in this state in any contracting business or activity shall have a copy of his business registration certificate available at every construction site in this state until his work at such site is completed.

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

(1) "Contracting business or activity" means and includes the furnishing of work, or both work and materials for the erecting, building, constructing, altering, repairing, removing or demolishing of any building or other structure, or other improvement appurtenant to any such building or other structure, or for altering, improving or developing of property, under and by virtue of a contract with the owner for an agreed lump sum or upon any other basis of settlement and payment agreed to by the parties, whether such contract be an oral agreement or in writing. The term "contracting business or activity" shall also include the furnishing of work or both work and materials or equipment under and by virtue of a subcontract with a general contractor for an agreed contract price, or by day, or by piece, or by other basis of payment agreed to by parties, whether such contract be an oral agreement or in writing.

(2) "Contractor" means every person, including a subcontractor, who agrees by a written or oral contract to engage in contracting activity.

(3) "Construction site" means the area in which the contractor is working or beginning to work when engaging in contracting activity.

(c) Penalty for failure to have available. -- In addition to other penalties provided by law, any contractor who fails to have available at the construction site during the time he is furnishing contracting activity at such site, his business registration certificate or a copy thereof, shall not be entitled to enforce the mechanics' lien created by section one or two, article two, chapter thirty-eight of this code, for contracting activity provided by him at such construction site.

WV Legislature

§11-12-20. Registration of transient vendors.

(a) Prior to conducting business or otherwise commencing operations within this state, a transient vendor shall obtain a business registration certificate from the Tax Commissioner and pay the tax imposed by this article.

(b) Upon receipt of the application for business registration and the posting of the bond required by section twenty-one of this article, the Tax Commissioner shall issue to the transient vendor a business registration certificate, which shall be valid for the current registration period, if the application is complete and the transient vendor is not delinquent in the payment of any tax imposed by this chapter. Upon renewal of the registration, the Tax Commissioner shall issue a new certificate, valid for the next ensuing registration period, provided he or she is satisfied that the transient vendor has complied with the provisions of this article and is not delinquent in the payment of any tax imposed by this article.

(c) The transient vendor shall keep the business registration certificate in his or her possession at all times when conducting business within this state. He or she shall publicly display the certificate whenever conducting business in this state and shall exhibit the certificate upon the request of an authorized employee of the tax commissioner or any law-enforcement officer.

(d) The business registration certificate issued by the Tax Commissioner shall constitute notice that the transient vendor named therein has registered with the Tax Commissioner, and shall provide notice to the transient vendor that:

(1) Before entering this state to conduct business the transient vendor must notify the Tax Commissioner, in writing, of the location or locations in this state where he or she intends to conduct business, and the date or dates on which he or she intends to conduct such business.

(2) Failure to notify, or the giving of false information to the Tax Commissioner is grounds for suspension or revocation of the transient vendor's business registration certificate.

(3) Conducting business in this state without having a valid business registration certificate after such certificate has been suspended or revoked, may result in criminal prosecution or the imposition of fines, or other penalties, or both for violation of this article.

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

(1) "Transient vendor" means any person who:

(A) Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the Tax Commissioner under article ten of this chapter;

(B) Offers or intends to offer such tangible personal property for sale to consumers in this

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state; and

(C) Does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business within this state.

(2) The term "transient vendor" shall not include any person who:

(A) Is a commercial traveler or selling agent who sells only to persons who purchase tangible personal property for purposes of resale to others;

(B) Only sells goods, wares or merchandise by sample catalog or brochure for future delivery;

(C) Only sells or offers for sale crafts or other handmade items that were made by the seller; or

(D) Only sells agricultural and farming products, except nursery products and foliage plants.

WV Legislature

§11-12-21. Bond of transient vendors.

(a) With its application for a business registration certificate, a transient vendor shall post a bond with the Tax Commissioner in the amount of $500 as surety for compliance with the provisions of this article. After a period of demonstrated compliance with these provisions, the Tax Commissioner may reduce the amount of the bond required of a transient vendor or may eliminate the bond entirely.

(b) A transient vendor may file with the Tax Commissioner a request for voluntary suspension of its business registration certificate. If the Tax Commissioner is satisfied that the transient vendor has complied with the provisions of this article and has relinquished to the Tax Commissioner possession of the transient vendor's business registration certificate, the Tax Commissioner shall return to the transient vendor the bond it posted.

WV Legislature

§11-12-22. Notification to department.

Prior to entering this state to conduct business, a transient vendor shall notify the Tax Commissioner, in writing, of the location or locations where he intends to conduct business and the date or dates when he intends to conduct such business.

WV Legislature

§11-12-23. Revocation of certificate of transient merchant.

The Tax Commissioner may suspend or revoke a business registration certificate issued to a transient vendor if the transient vendor:

(1) Fails to notify the Tax Commissioner as required by section twenty-two of this article.

(2) Provides the Tax Commissioner with false information regarding the conduct of his business by it within this state.

(3) Fails to collect and timely pay over consumers sales and service tax or use tax with regard to all sales of tangible personal property and services sold by him that are subject to the taxes imposed by article fifteen or fifteen-a of this section.

(4) Fails to timely file with the Tax Commissioner any tax return required to be filed by law or regulation for any tax administered by article ten of this chapter, or fails to timely pay the amount of tax shown thereon to be due.

(5) Fails to comply with the provisions of section eight, article five of this chapter, providing for assessment and payment of ad valorem property taxes on any goods or merchandise of a transient vendor to be offered or furnished for sale in this state.

WV Legislature

§11-12-24. Seizure of property of transient vendor.

(a) If a transient vendor conducting business within this state fails to exhibit a valid business registration certificate upon demand by an authorized employee of the Tax Commissioner, such employee or any peace officer of this state at the request of such employee shall have authority to seize, without warrant, the tangible personal property and automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the Tax Commissioner under procedures adopted by regulation, except as otherwise provided by this section.

(b) Property seized under subsection (a) shall be released upon:

(1) Presentation of a valid business registration certificate to an authorized employee of the Tax Commissioner; or

(2) Registration by the transient vendor with the Tax Commissioner and the posting of a bond in the amount of $500, either immediately or within fifteen days after the property is seized.

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§11-12-25. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this article, but shall be confined in its operation to the provision thereon directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other person or circumstances shall not be affected thereby.

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§11-12-26. Interpretation of preceding sections.

None of the provisions of the preceding sections in this article shall affect any of the sections of this article dealing with the corporation land holding tax or the corporation license tax; and none of the sections of this article dealing with such taxes shall affect any of the sections of this article dealing with the business registration tax.

WV Legislature

§11-12-27.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-28.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-29.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-30.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-31.

Repealed.

Acts, 1970 Reg. Sess., Ch. 73.

WV Legislature

§11-12-32.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-33.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-34.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-35.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-36.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-37.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-38.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-39.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-40.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-41.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-42.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-43.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-44.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-45.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-46.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-47.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-48.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-49.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-50.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-51.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-52.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-53.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-54.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-55.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-56.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-57.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-58.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-59.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-60.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-61.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-62.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-63.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-64.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-65.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-66.

Repealed.

Acts, 1957 Reg. Sess., Ch. 160.

WV Legislature

§11-12-67.

Reserved for future use.

WV Legislature

§11-12-68.

Reserved for future use.

WV Legislature

§11-12-69.

Reserved for future use.

WV Legislature

§11-12-70.

Reserved for future use.

WV Legislature

§11-12-71.

Reserved for future use.

WV Legislature

§11-12-72.

Reserved for future use.

WV Legislature

§11-12-73.

Reserved for future use.

WV Legislature

§11-12-74.

Reserved for future use.

WV Legislature

§11-12-75. Tax on corporations holding more than ten thousand acres of land.

Every corporation, including railroad and other corporations, holding more than ten thousand acres of land in this state shall pay to the state a tax of 5¢ per acre for the privilege of acquiring and holding of land so acquired and held by it in addition to ten thousand acres. Such corporations shall, under the hand of the president and seal of the corporation, and attested by the secretary, apply to the Secretary of State for a certificate authorizing the holding of the number of acres stated in such application, and pay the tax thereon; and it shall be the duty of the Secretary of State to issue to such corporation a certificate stating the amount of tax paid and the number of acres on which paid, and the number of acres the corporation is thereby entitled to hold. Hereafter a domestic corporation shall state in its agreement for incorporation and a foreign corporation shall state in its application for authority to hold property and transact business in this state, the number of acres it desires to hold, and pay the taxes thereon to the Secretary of State before the certificate of incorporation or of authority is issued. If any corporation desires to increase the number of acres it may hold, it shall make application therefor to the Secretary of State. Such application shall be signed by the president of the corporation, sealed with its corporate seal, and attested by the secretary, and shall state the number of acres it then holds and the number of acres it desires to hold. The Secretary of State shall collect the proper amount of tax and shall issue to the corporation a certificate reciting the number of acres the corporation may hold and the amount of tax paid to him If any corporation shall fail to comply with the provisions of this section it shall be liable to a fine of not less than twenty-five nor more than $500, and be liable to pay such tax due to the state with a penalty of ten percent on the total amount due, and be liable to all the provisions of sections eighty-six and eighty-seven of this article so far as they are applicable. All moneys received by the Secretary of State under the provisions of this section shall be reported to the Auditor, and paid into the State Treasury in the manner prescribed for the payment of other moneys received by him No corporation shall be required to pay the said tax of 5¢ per acre for license to hold any land in this state in excess of ten thousand acres for which such corporation shall have already paid a license tax at the time this law takes effect.

A corporation which has paid said tax may assign, without further payment by the assignee of the tax required hereunder, its license or authority to hold lands in excess of ten thousand acres provided the assignee shall be a corporation organized solely to conduct the same general business and with the same stock ownership as the original licensee and such assignment be accompanied by a conveyance and transfer to such assignee corporation of all the lands and other assets of the original licensee. Such assignment shall be filed with the Secretary of State who, upon being satisfied that the assignee corporation has conformed to the foregoing requirements, shall issue a certificate authorizing such assignee corporation to hold the same number of acres the original licensee was authorized to hold.

WVLegislature

§11-12-76.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-77.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-78.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-79.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-80.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-80a.

Repealed.

Acts, 1963 Reg. Sess., Ch. 180.

WV Legislature

§11-12-81.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-82.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-83.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-84.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-85. Investigation of corporations' delinquencies.

The Tax Commissioner, with the approval of the Governor, may appoint agents to investigate all violations of the provisions of this article concerning landholding taxes on corporations, and also for the purpose of collecting such taxes from all corporations which have not paid the same, whether due from domestic or foreign corporations. The compensation of all such agents shall be fixed by the Tax Commissioner.

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§11-12-86. Sparkler and novelty registration fee.

The Tax Commissioner shall establish a "Sparkler and Novelty Registration Fee" which shall be charged all businesses licensed to do business in the State of West Virginia desiring to sell sparklers and novelties authorized for sale in section twenty-three, article three, chapter twenty-nine of this code. This fee shall run concurrent with the business registration certificate set forth in section five of this article. This fee shall not be prorated. Each business shall pay $15 for each registration and shall be issued a sticker or card by the Tax Commissioner to be posted in a conspicuous position at the location of the business which has paid the registration fee. This fee shall be collected for each separate location where sparklers and novelties are sold. The Tax Commissioner may, in his or her discretion, require a separate certificate which shall be posted as set forth herein, or provide that the evidence of compliance with this section may be by a stamp or language added to the business registration certificate or by embossing or writing imprinted on the business registration certificate.

WV Legislature

§11-12-87.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-88.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-89.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-90.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature

§11-12-91.

Repealed.

Acts, 1992 Reg. Sess., Ch. 205.

WV Legislature