WEST VIRGINIA CODE: §11-21-74

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

(a) General. — Every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code except as otherwise provided in this section: *Provided*, That not later than January 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year.

(b) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 shall, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner, and annually remit to the Tax Commissioner, West Virginia personal income taxes deducted and withheld for the employees together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-3-1 *et seq*. of this code for implementation of this subsection.

(c) Deposit in trust for Tax Commissioner. — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes

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which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

(d) Accelerated payment. —

(1) Every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under §11-21-74(a) of this code exceeded $100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

(2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first 15 days of June or, at the employer's election, the employer may remit an amount equal to 50 percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds $100,000, the employer shall remit the tax attributable to the first 15 days of June each year by June 23, as provided in §11-21-74(d)(2) of this code.

(4) When an employer required to make an advanced payment of withholding tax under §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

(e) Effective upon passage, the provisions of §11-21-74(d) of this code shall no longer have any force or effect.

(f) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by January 31, following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

(g) Any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code: *Provided*, That for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is

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required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of $25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

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