WEST VIRGINIA CODE: §11-23-28

§11-23-28. Notice of business activities report.

(a) Except as provided by subsection (b) of this section, for each taxable year every corporation and partnership that carries on any business activity or owns or maintains property in West Virginia for the taxable year shall file a business activity report with the Tax Commissioner. The report must be filed on or before the fifteenth day of the fourth month after the end of the corporation or partnership's taxable year. The filing of a report shall not be a factor in determining whether a corporation or partnership is subject to taxation by this state.

(b) A corporation or partnership is not required to file a report under this section if:

(1) During the taxable year for which a report is due, the corporation or partnership is registered to engage in business in West Virginia in accordance with the provisions of article twelve of this chapter;

(2) A tax return was filed for that taxable year for any of the taxes subject to the provisions of article ten, chapter eleven of this code;

(3) The corporation or partnership is a type of organization expressly exempted from taxation by West Virginia or federal statute or regulation; or

(4) The activities or interests in property owned in this state by the corporation or partnership consist solely of activities or property expressly exempted from taxation by West Virginia or federal statute or regulation.

(c) Until a report is filed in compliance with this section, a corporation or partnership may not pursue in the courts of this state any claim not relating to tax liability:

(1) That arose under West Virginia law; or

(2) On a contract that is executed under West Virginia law, if the claim arose or the contract was executed before or during the taxable year for which a report should have been filed. However, the court in which such a claim is filed may allow the claim to be pursued if the corporation or partnership:

(A) Establishes that it was not required to file a report under subsection (b);

(B) Files a report for each year for which a report is due;

(C) Files a tax return for each year for which a return is due; or

(D) Provides adequate security, including a bond, in an amount sufficient to cover all tax

WV Legislature

liabilities, including additions to tax, penalties and interest.

(d) As used in this section, carrying on an activity or maintaining property in West Virginia includes, but is not limited to, any of the following:

(1) Maintaining an office or other place of business in West Virginia;

(2) The presence of employees, agents, representatives or independent contractors in West Virginia, if they are conducting business on behalf of the corporation or partnership, regardless of whether the individual or person is residing or regularly stationed in West Virginia;

(3) Owning or maintaining real property, tangible personal property, or intangible property that is in West Virginia; or

(4) Any activity of a financial organization described in item (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) or (x) of paragraph (B), subdivision (4), subsection (b), section five-a of this article.

WV Legislature