WEST VIRGINIA CODE CHAPTER 11 ARTICLE 9

WV Legislature

§11-9-1. Short title; arrangement; classification.

This article may be cited as the "West Virginia Tax Crimes and Penalties Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter or headings relating to any part, section, subsection or paragraph of this article.

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§11-9-2. Application of this article.

(a) The provisions of this article apply to the following taxes imposed by this chapter:

(1) Inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter;

(2) Business registration tax imposed by article twelve of this chapter;

(3) Minimum severance tax on coal imposed by article twelve-b of this chapter;

(4) Corporate license tax imposed by article twelve-c of this chapter;

(5) Business and occupation tax imposed by article thirteen of this chapter;

(6) Severance and business privilege taxes imposed by article thirteen-a of this chapter;

(7) Additional severance taxes imposed by article thirteen-v of this chapter;

(8) Telecommunications tax imposed by article thirteen-b of this chapter;

(9) Gasoline and special fuels excise tax imposed by article fourteen of this chapter;

(10) Motor fuels excise tax imposed by article fourteen-c of this chapter;

(11) Motor carrier road tax imposed by article fourteen-a of this chapter;

(12) Interstate fuel tax agreement authorized by article fourteen-b of this chapter;

(13) Consumers sales and service tax imposed by article fifteen of this chapter;

(14) Use tax imposed by article fifteen-a of this chapter;

(15) Tobacco products excise taxes imposed by article seventeen of this chapter;

(16) Soft drinks tax imposed by article nineteen of this chapter;

(17) Personal income tax imposed by article twenty-one of this chapter;

(18) Business franchise tax imposed by article twenty-three of this chapter;

(19) Corporation net income tax imposed by article twenty-four of this chapter; and

(20) Health care provider taxes imposed by article twenty-seven of this chapter.

(b) The provisions of this article also apply to the West Virginia tax procedure and administration act in article ten of this chapter and to any other articles of this chapter when application is expressly provided by the Legislature.

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(c) The provisions of this article also apply to municipal sales and use taxes imposed pursuant to article thirteen-c, chapter eight of this code; the charitable bingo fee imposed by sections six and six-a, article twenty, chapter forty-seven of this code; the charitable raffle fee imposed by section seven, article twenty-one of said chapter; and the charitable raffle boards and games fees imposed by section three, article twenty-three of said chapter.

(d) Each and every provision of this article applies to the articles of this chapter listed in subsections (a), (b) and (c) of this section, with like effect, as if the provisions of this article were applicable only to the tax and were set forth in extenso in this article.

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§11-9-2a. Criminal investigation division established; funding of same.

(a) Criminal investigation division. -- A criminal investigation division consisting of no more than twelve investigators, of which one investigator shall serve as division director, plus necessary support staff, all of whom are exempt from the classified service, is hereby established in the state Tax Division for the purpose of assuring compliance with laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes, imposed on individuals by article twenty-one of this chapter.

(b) Special audits division. -- A special audits division consisting of no more than eight tax examiners, plus necessary support staff, all of whom are covered by the classified service, is hereby established in the auditing section of the state Tax Division for purposes of assuring compliance with laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes imposed on individuals by article twenty-one of this chapter.

(c) The Legislature hereby finds that the enforcement of the laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, as are applicable to persons whose residence or principal place of business is outside of the State of West Virginia, requires greater efforts and investigation than required for resident persons subject thereto, and does further find that there is a greater rate of noncompliance with said laws and rules by nonresident persons. Therefore, the criminal investigation division and the special audits division created in subsections (a) and (b) of this section are hereby directed to expend a significant amount of their efforts to ensure compliance with the laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter in accordance with the authority provided in this section, by persons whose residence or principal place of business is located outside the State of West Virginia.

(d) Deposits of certain fees. -- Charitable bingo fees imposed by article twenty, chapter forty-seven of this code; charitable raffle fees imposed by article twenty-one of said chapter; and charitable raffle boards and games fees imposed by article twenty-three of said chapter in an amount not to exceed the amount appropriated by the Legislature in any fiscal year shall be deposited in a special revenue account established in the Office of the Treasurer. The special revenue account shall be used to support compliance expenditures relating to the establishment, operation, maintenance and support of the criminal investigation division established in subsection (a) of this section and the special audits division established in subsection (b) of this section. The expenditures may include, but shall not be limited to, employee compensation, equipment, office supplies and travel expenses. On the last day of each fiscal year, unencumbered funds in the special revenue account in excess of $150,000 shall be transferred to the General Revenue Fund.

(e) Investigators. -- Investigators employed in the criminal investigation division shall have a

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background in accounting or law enforcement or related fields pursuant to article twenty-nine, chapter thirty of this code, or its equivalent. Any investigator designated by the Tax Commissioner shall have all the lawful powers delegated to members of the division of public safety except the power to carry firearms and shall have the authority to enforce the provisions of this article and the criminal provisions of any other article of this code to which this article applies, in any county or municipality of this state. The Tax Commissioner shall establish additional standards as he or she considers applicable or necessary. Any employee shall, before entering upon the discharge of his or her 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 the employee's duties and the bond shall be approved as to form by the Attorney General and shall be filed with the Secretary of State for preservation in that office. The division of public safety, any county sheriff or deputy sheriff and any municipal police officer upon request by the Tax Commissioner is hereby authorized to assist the Tax Commissioner in enforcing the provisions of this article and any criminal penalty provision of any article of this code to which this article applies.

(f) Class A license plates. -- Notwithstanding the provisions of article three, chapter seventeen-a of this code, upon application by the Tax Commissioner and payment of fees, the Commissioner of Motor Vehicles shall issue a maximum of twenty Class A license plates to be used on state owned or leased vehicles assigned to investigators employed in the criminal investigation division.

(g) Reports. -- On July 1, of each year, beginning in the year one thousand nine hundred ninety-four, the Tax Commissioner shall present a written report to the joint committee on government operations on the division's compliance with the provisions of this section, including, but not limited to, activities of the divisions created by this section and disbursement of funding.

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§11-9-3. Definitions.

For the purposes of this article, the term:

(1) "Person" means any individual, firm, partnership, limited partnership, copartnership, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator and any officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance or nonperformance of the act in respect of which a violation occurs under this article.

(2) "Return" or "report" means any return or report required to be filed by any article of this chapter imposing any tax to which this article applies as specified in section two of this article or by any other article of this code pursuant to which a tax or fee is imposed that is collected by the Tax Commissioner as specified in section two of this article.

(3) "Tax" or "taxes" means any tax to which this article applies, as specified in section two of this article, and includes additions to tax, penalties and interest unless the intention to give it a more limited meaning is disclosed by the context in which the term "tax" or "taxes" is used.

(4) "Tax commissioner" or "commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

(5) "This chapter" means chapter eleven of the Code of West Virginia, 1931, as amended, and shall include only those articles of chapter eleven of this code listed in section two of this article.

(6) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this chapter or article thirteen-c, chapter eight of this code, in respect of which the violation occurs: Provided, That the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant had knowledge of or notice of a duty to perform an act and that the defendant, with knowledge of or notice of that duty, intentionally failed to perform the act.

(7) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the state of payment of any tax which there is a known legal duty to pay under this chapter.

(8) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intent that the representation or concealment be relied upon by the state.

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§11-9-4. Failure to pay tax or file return or report.

Any person required by any provision of this chapter or article thirteen-c, chapter eight of this code to pay any tax, or to file any return or report, who willfully fails to pay the tax, or willfully fails to file the return or report, more than thirty days after the date the tax is required to be paid by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $2,500. Each failure to pay tax, or file a return or report, more than thirty days after its due date for any tax period is a separate offense under this section and punishable accordingly: Provided, That thirty days prior to instituting criminal proceedings under this section, the Tax Commissioner shall give the person written notice of any failure to pay a tax or to file a return or report. Notice shall be served on the person by certified mail or by personal service. The provisions of this section shall not apply to the business franchise registration tax imposed by article twelve of this chapter.

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§11-9-5. Failure to account for and pay over another's tax.

Any person required by any provision of this chapter or article thirteen-c, chapter eight of this code to collect, or withhold, account for and pay over any tax, who willfully fails to truthfully account for and pay over the tax in the manner required by law, more than thirty days after the date the tax is required to be accounted for and paid over by law, is guilty of a felony if the amount of tax not paid over is $1,000 or more and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000 or imprisoned in a correctional facility not less than one nor more than three years, or, in the discretion of the court, be confined in jail not more than one year, or both fined and imprisoned; or is guilty of a misdemeanor, if the amount of tax not paid over is less than $1,000, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000 or imprisoned in jail not more than six months, or both fined and imprisoned. Each failure to account for and pay over tax for any tax period under this section is a separate offense and punishable accordingly: Provided, That thirty days prior to instituting a criminal proceeding under this section, the Tax Commissioner shall give the person written notice of the failure to truthfully account for and pay over tax. Notice shall be served on the person by certified mail or personal service.

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§11-9-6. Failure to collect or withhold tax.

Any person required by any provision of this chapter or article thirteen-c, chapter eight of this code to collect or withhold any tax, who willfully fails to collect or withhold the tax in the manner required by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or imprisoned in jail not more than six months, or both fined and imprisoned. Each month or fraction thereof during which the failure continues is a separate offense under this section and punishable accordingly.

WV Legislature

§11-9-7. False statements to purchasers, lessees, or employees relating to tax.

[Repealed.]

WV Legislature

§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.

If any person: (1) Willfully fails to maintain any records, or supply any information, in the manner required by this chapter or article thirteen-c, chapter eight of this code or regulations therefor promulgated in accordance with law, to compute, assess, withhold or collect any tax imposed by this chapter; or (2) presents to any vendor a certificate for the purpose of obtaining an exemption from the tax imposed by article fifteen or fifteen-a of this chapter or article thirteen-c, chapter eight of this code and then knowingly uses the item or service purchased in a manner that is not exempt from the tax without remitting the tax in the manner required by law, that person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or imprisoned in jail not more than six months, or both fined and imprisoned.

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§11-9-9. Aiding, abetting, assisting or counseling in criminal violation.

Any person who shall knowingly aid or abet or assist or counsel another person in the commission of any act prohibited by this article, whether or not such act is with the knowledge or consent of the person required by law to do the act, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

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§11-9-10. Attempt to evade tax.

If any person: (1) Knowingly files a false or fraudulent return, report or other document under any provision of this chapter or article thirteen-c, chapter eight of this code; or (2) willfully delivers or discloses to the Tax Commissioner any list, return, account, statement, record or other document known by him or her to be fraudulent or false as to any material matter with the intent of obtaining or assisting another person in obtaining any credit, refund, deduction, exemption or reduction in tax not otherwise permitted by this chapter or article thirteen-c, chapter eight of this code; or (3) willfully attempts in any other manner to evade any tax imposed by this chapter or article thirteen-c, chapter eight of this code or the payment thereof, is guilty of a felony and, notwithstanding any other provision of the code, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000 or imprisoned in a correctional facility not less than one nor more than three years or, in the discretion of the court, be confined in jail not more than one year, or both fined and imprisoned.

WV Legislature

§11-9-11. Engaging in business without payment of business franchise registration tax; posting business franchise registration certificate.

If any person for more than thirty days:

(1) Engages in business without posting a business franchise registration certificate in the place of business in the manner required by law; (2) engages in business without payment of the business franchise registration tax when required by law; (3) engages in business after expiration of the period of time for which such certificate was granted without obtaining a new certificate; or (4) engages in business after the business franchise registration has been revoked, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined $100. Each day or part thereof that any violation continues is a separate offense and punishable accordingly: Provided, That the Tax Commissioner shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code relating to the posting of business franchise registration certificates, and violations of those rules and regulations shall constitute an offense under this section.

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§11-9-12. Engaging in business without a business franchise registration certificate.

If any person engages in business within the State of West Virginia without obtaining a business franchise registration certificate when required by law, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000.

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§11-9-13. Release on probation; conditions of probation.

Any circuit court of this state shall have the authority as provided in article twelve, chapter sixty-two of this code, to place on probation any person convicted of a crime pursuant to this article. Release on probation shall be upon the conditions required by section nine, article twelve, chapter sixty-two of this code, and such conditions may include, but need not be limited to, a specified period of public or community service by the probationer.

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§11-9-14. Venue.

The Tax Commissioner or any other public officer initiating proceedings against any person shall do so in the county of this state wherein such person resides, if any element of the offense occurred in the county of residence, or if no element of the offense occurs in the county of residence, then the county where the offense was committed.

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§11-9-15. Limitation on prosecution.

Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of this code to the contrary.

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§11-9-16. Effective date; former law preserved for certain purposes.

(a) The provisions of this article shall take effect on July 1, 1984, and shall apply to criminal violations of this chapter committed on or after such date.

(b) Any criminal violation of this chapter occurring before July 1, 1984, that would have been punishable under one of the sections of this chapter repealed by this act, shall nevertheless be punishable under those sections, as in effect on January 1, 1984, and for such purpose the following sections of this chapter are fully and completely preserved: Section twelve of article twelve, section twenty-two of article twelve-a, section twenty-one of article thirteen, section nine of article fourteen, section ten of article fourteen-a, section twenty-nine of article fifteen, sections nineteen and twenty of article fifteen-a, section ninety-two of article twenty-one and section thirty-eight of article twenty-four.

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§11-9-17. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

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