WEST VIRGINIA CODE: §29-22B-1407

§29-22B-1407. Civil penalty for failure to pay over state's share of gross terminal income.

(a) Any person required by law or contract to collect, truthfully account for, and pay over any of the state's share of gross terminal income who willfully fails to truthfully account for and pay over the net terminal income, or willfully attempts in any manner to evade or defeat any payment thereof, shall, in addition to other penalties provided by law, be liable for payment of a civil money penalty equal to the total amount of the state's share of gross terminal income not paid over to the commission.

(b)(1) No penalty may be imposed under subsection (a) unless the director notifies the person in writing, delivered in person or by mail sent to the last known address of the operator or limited video lottery retailer, that he or she is subject to an assessment of this penalty.

(2) The mailing of the notice described in subdivision (1) (or, in the case of notice delivered in person, the delivery) shall precede any notice and demand for payment of any penalty under subsection (a)of this section, by at least sixty days.

(3) If a notice described in subdivision (1) of this subsection (b) with respect to any penalty is mailed or delivered in person before the expiration of the three-year period for the assessment of the penalty (determined without regard to this subdivision), the three-year period provided for the assessment of a penalty shall not expire before the later of:

(A) The date ninety days after the date on which such notice was mailed, or delivered in person, or

(B) If there is a timely protest of the proposed assessment, the date thirty days after the director makes a final administrative determination with respect to the protest.

(4) The requirement that preliminary notice be given shall not apply if the director finds that the collection of the penalty is in jeopardy.

(c) This penalty may be collected by civil action instituted within three years after the date the state's share of gross terminal income not paid over to the commission should have been paid over to the commission, except as provided in subsection (b) of this section.

(d) If more than one person is liable for the penalty under subsection (a) with respect to any payment of the state's share of gross terminal income, each person who paid the penalty shall be entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by the person over that person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is

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separate from, and is not joined or consolidated with, an action for collection of such penalty brought by the State of West Virginia.

(e) No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under section 501 of the Internal Revenue Code of 1986, as amended, if such member:

(1) Is solely serving in an honorary capacity;

(2) Does not participate in the day-to-day or financial operations of the organization; and

(3) Does not have actual knowledge of the failure on which the penalty is imposed.

This subsection (e) shall not apply if it results in no person being liable for the penalty imposed by subsection (a) of this section.

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