WEST VIRGINIA CODE: §33-43-4A

§33-43-4a. Agreements and compromises.

(a) Prior to commencing any civil action, the commissioner may compromise any claim relating to the liability of a person with respect to any tax, including any surcharge, interest, additional tax, fee, fine or penalty, administered by the commissioner under this chapter for any taxable period. The following conditions apply to any agreement entered into under this subsection:

The agreement must be in writing;

(2) In the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, then:

(A) The agreement shall be final and conclusive;

(B) The agreement and the matters so agreed upon shall not be reopened or the agreement modified by any officer, employee or agent of this state; and

(C) In any civil action or administrative proceeding, the compromise agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith may not be annulled, modified, set aside or disregarded.

(b) The commissioner may compromise all or part of any civil case arising under the provisions of this article. The following conditions apply to any agreement entered into under this subsection:

(1) Any liability for tax, including any surcharge, interest, additional tax, fee, fine or penalty, may be compromised upon consideration of the terms and conditions of the compromise agreement in light of any or all of the following:

(A) Doubt as to liability;

(B) Doubt as to the ability to collect;

(C) Strength of the taxpayer's defenses to the assessment of the tax, surcharge, interest, additional tax, fee, fine or penalty;

(D) Age of the dispute;

(E) The anticipated time and resources which will be required to develop the civil action for adjudication; and

(F) Any other factors relevant to the determination of whether citizens of the State of West

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Virginia are best served by entering into a compromise agreement.

(2) In all matters involving issues in respect of a tax liability in controversy of $15,000 or more for one or all of the years involved in claim or case, the commissioner shall seek the written recommendation of the Attorney General before entering into the compromise agreement. The written recommendation of the Attorney General shall be placed in the commissioner's file.

(c) Whenever a compromise agreement is made by the commissioner under subsection (a) or (b) of this section, there shall be placed on file in the commissioner's office an opinion from the commissioner's legal counsel. The opinion must include the following:

(1) The amount of tax, surcharge, additional tax, fee and interest assessed;

(2) The anticipated fine or penalty imposed by law on the person against whom the tax, surcharge, additional tax, fee and interest was assessed; and

(3) The amount actually paid in accordance with the terms of the compromise agreement;

(4) The reasons underlying the decision to enter into a compromise agreement: Provided, That the requirements of this subsection do not apply with respect to any agreement in which the amount of the tax assessed, including any surcharge, interest, additional tax, fee, fine or penalty, is less than $1,000.

(d) Report to Legislature. -- The commissioner shall submit to the Speaker of the House of Delegates, the President of the Senate and the Legislative Auditor a quarterly report summarizing the issues and amounts of liabilities contained in the agreements and compromises into which he or she has entered pursuant to this section. The report shall be in a form which preserves the confidentiality of the identity of the taxpayers involved in the agreements and compromises. Notwithstanding any other provision of law to the contrary, the agreements and compromises entered into pursuant to this section shall be subject to audit, in their entirety, by the Legislative Auditor.

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