WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 333

(By Mr. Breinh)

PASSED March 3, 1984

In Effect July 1, 1984
AN ACT to repeal section twelve, article twelve; section twenty-two, article twelve-a; section twenty-one, article thirteen; section nine, article fourteen; section ten, article fourteen-a; section twenty-nine, article fifteen; sections eight, nineteen and twenty, article fifteen-a; section ninety-two, article twenty-one; and section thirty-eight, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter by adding thereto a new article, designated article nine; and to amend and reenact section four, article fifteen of said chapter, all relating generally to criminal offenses and criminal penalties for certain violations of state tax law; making it a misdemeanor to: willfully fail to pay tax for more than thirty days after its due date; willfully fail to file a tax return or report for more than thirty days after its due date; willfully fail to account for and pay over another’s tax in the manner required by law for more than thirty days after its due date when the amount of tax is less than one thousand dollars; willfully fail to collect or withhold tax in manner
required by law; represent, advertise or state to public or any purchaser, lessee or employee that tax to be collected or withheld will be absorbed or assumed or that such tax is not part of the sales price or wages payable; willfully fail to maintain any records in manner required by law or regulation to compute, assess, withhold or collect any tax; willfully fail to supply any information in manner required by law or regulation to compute, assess, withhold or collect any tax; present to any vendor a certification for the purpose of obtaining exemption from consumer sales and service or use taxes and then knowingly use the item or service purchased in manner that is not exempt from tax without remitting such tax in manner required by law; knowingly aid, abet, assist or counsel another person in commission of any criminal violation of this article; engage in business for more than thirty days without obtaining a business franchise registration certificate when required by law; engage in business for more than thirty days without posting business franchise registration certificate in place of business as required by law; engage in business for more than thirty days without payment of business franchise registration tax as required by law; engage in business for more than thirty days after expiration of period of time for which business franchise registration certificate was granted without obtaining a new certificate; engage in business for more than thirty days after business franchise registration certificate has been revoked; providing criminal penalties for such misdemeanor offenses; making it a felony to: willfully fail to account for and pay over another's tax in the manner required by law for more than thirty days after its due date when amount of tax is one thousand dollars or more; knowingly file false or fraudulent return, report or other document; willfully deliver or disclose to tax commissioner any list, return, account, statement, record or other document known by person delivering or disclosing same to be fraudulent or false as to any material matter with intent of obtaining or assisting another in obtaining any credit, refund, deduction, exemption, or reduction in tax not otherwise permitted by law; willfully attempt in any manner to evade tax or payment thereof; providing criminal penalties for such felony offenses; providing short title of article; providing rules of construction; specifying tax laws
to which this article applies; defining certain terms; authorizing release on probation of offenders convicted pursuant to this article; providing that a period of public service may be imposed as a condition of such probation; prescribing venue for institution of criminal proceedings; providing a three-year statute of limitations for commencement of such criminal proceedings; making article effective on the first day of July, one thousand nine hundred eighty-four; and preserving existing law as to criminal violations occurring prior to effective date of this article.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twelve; section twenty-two, article twelve-a; section twenty-one, article thirteen; section nine, article fourteen; section ten, article fourteen-a; section twenty-nine, article fifteen; sections eight, nineteen and twenty, article fifteen-a; section ninety-two, article twenty-one; and section thirty-eight, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said chapter eleven be amended by adding thereto a new article, designated article nine; and that section four, article fifteen of said chapter eleven be amended and reenacted, all to to read as follows:

ARTICLE 9. CRIMES AND PENALTIES.

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

1 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.

§11-9-2. Application of this article.

1 (a) The provisions of this article shall apply to the following taxes imposed by chapter eleven: (1) The inheritance and transfer taxes imposed by article eleven; (2) the business franchise registration tax imposed by article
twelve; (3) the annual tax on incomes of certain carriers imposed by article twelve-a; (4) the business and occupation tax imposed by article thirteen; (5) the gasoline and special fuels excise tax imposed by article fourteen; (6) the motor carrier road tax imposed by article fourteen-a; (7) the consumers sales and service tax imposed by article fifteen; (8) the use tax imposed by article fifteen-a; (9) the cigarette tax imposed by article seventeen; (10) the soft drinks tax imposed by article nineteen; (11) the personal income tax imposed by article twenty-one; and (12) the corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedures and administration act in article ten of chapter eleven.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect.


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 such 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.

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 delegate.

5. “This chapter” means chapter eleven of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, and shall include only those articles of chapter eleven 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, 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 such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such 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 such representation or concealment be relied upon by the state.

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

Any person required by any provision of this chapter to pay any tax, or to file any return or report, who willfully fails to pay such tax, or willfully fails to file such return or report, more than thirty days after the date such tax is required to be paid by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. 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. Such 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 chapter eleven.
§11-9-5. Failure to account for and pay over another's tax.

1 Any person required by any provision of this chapter to
2 collect, or withhold, account for and pay over any tax, who
3 willfully fails to truthfully account for and pay over such
4 tax in the manner required by law, more than thirty days
5 after the date such tax is required to be accounted for and
6 paid over by law, is guilty of a felony if the amount of tax not
7 paid over is one thousand dollars or more and, upon
8 conviction thereof, shall be fined not less than five thousand
9 dollars nor more than twenty-five thousand dollars, or
10 imprisoned in the penitentiary not less than one nor more
11 than three years, or, in the discretion of the court be
12 confined in the county jail not more than one year, or both
13 fined and imprisoned; or, is guilty of a misdemeanor if the
14 amount of tax not paid over is less than one thousand
15 dollars and, upon conviction thereof, shall be fined not less
16 than five hundred dollars nor more than five thousand
17 dollars, or imprisoned in the county jail not more than six
18 months, or both fined and imprisoned. Each failure to
19 account for and pay over tax for any tax period under this
20 section is a separate offense and punishable accordingly:
21 Provided, That thirty days prior to instituting a criminal
22 proceeding under this section, the tax commissioner shall
23 give the person written notice of the failure to truthfully
24 account for and pay over tax. Such notice shall be served on
25 the person by certified mail or personal service.

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

1 Any person required by any provision of this chapter to
2 collect or withhold any tax, who willfully fails to collect or
3 withhold such tax in the manner required by law, is guilty
4 of a misdemeanor and, upon conviction thereof, shall be
5 fined not less than one hundred dollars nor more than five
6 hundred dollars, or imprisoned in the county jail not more
7 than six months, or both fined and imprisoned. Each month
8 or fraction thereof during which such failure continues is a
9 separate offense under this section and punishable
10 accordingly.

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

1 Any person required by law to collect or withhold any
§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 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 articles fifteen or fifteen-a of this chapter and then knowingly uses the item or service purchased in a manner that is not exempt from such tax without remitting such tax in the manner required by law, such person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§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 one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§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 (2) willfully delivers or discloses to the tax commissioner any list, return, account, statement, record or other document known by him 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 (3) willfully attempts in any other manner to evade any tax imposed by this chapter 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 one thousand dollars nor more than ten thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or, in the discretion of the court be confined in the county jail not more than one year, or both fined and imprisoned.

§11-9-11. Engaging in business without payment of business franchise registration tax; posting business franchise 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 one hundred dollars. 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 certificates, and violations of those rules and regulations shall constitute an offense under this section.

§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 one thousand dollars nor more than ten thousand dollars.

§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, 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.


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.

§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.

§11-9-16. Effective date.

(a) The provisions of this article shall take effect on the first day of July, one thousand nine hundred eighty-four, and shall apply to criminal violations of this chapter committed on or after such date.

(b) Any criminal violation of this chapter occurring before the first day of July, one thousand nine hundred
eighty-four, 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 the first day of January, one thousand nine hundred
eighty-four, 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.

§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.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4. Purchaser to pay; vendor not to represent that he will
absorb tax; accounting by vendor; penalty.
The purchaser shall pay to the vendor the amount of tax
levied by this article which shall be added to and constitute
a part of the sales price, and shall be collectable as such by
the vendor who shall account to the state for all tax paid by
the purchaser. The vendor shall keep the amount of tax paid
separate from the proceeds of sale exclusive of the tax
unless authorized in writing by the tax commissioner to
keep such amount of tax in a different manner. Where such
authorization is given, the state's claim shall be enforceable
against and shall take precedence over, all other claims
against the moneys commingled.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Anello
Chairman House Committee

Originated in the Senate.

In effect July 1, 1984.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ......................... this the .......
day of .......................... 1984.

Governor