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WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1984



**ENROLLED**

*Committee Substitute for*  
SENATE BILL NO. 333

(By Mr. Boehner)



PASSED March 3, 1984

In Effect July 1, 1984 ~~Message~~



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 333**  
(MR. BOETTNER, *original sponsor*)

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[Passed March 3, 1984; to take effect July 1, 1984.]

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**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<sup>the</sup> 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<sup>with</sup> and 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 matter<sup>on</sup> 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  
2 Crimes and Penalties Act.” No inference, implication or  
3 presumption of legislative construction shall be drawn or  
4 made by reason of the location or grouping of any particular  
5 section or provision or portion of this article, and no legal  
6 effect shall be given to any descriptive matter or headings  
7 relating to any part, section, subsection or paragraph of this  
8 article.

**§11-9-2. Application of this article.**

1 (a) The provisions of this article shall apply to the  
2 following taxes imposed by chapter eleven: (1) The  
3 inheritance and transfer taxes imposed by article eleven; (2)  
4 the business franchise registration tax imposed by article

5 twelve; (3) the annual tax on incomes of certain carriers  
6 imposed by article twelve-a; (4) the business and  
7 occupation tax imposed by article thirteen; (5) the gasoline  
8 and special fuels excise tax imposed by article fourteen; (6)  
9 the motor carrier road tax imposed by article fourteen-a; (7)  
10 the consumers sales and service tax imposed by article  
11 fifteen; (8) the use tax imposed by article fifteen-a; (9) the  
12 cigarette tax imposed by article seventeen; (10) the soft  
13 drinks tax imposed by article nineteen; (11) the personal  
14 income tax imposed by article twenty-one; and (12) the  
15 corporation net income tax imposed by article twenty-four.

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

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

**§11-9-3. Definitions.**

1 For the purposes of this article, the term:

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

11 (2) "Return or report" means any return or report  
12 required to be filed by any article of this chapter imposing  
13 any tax to which this article applies as specified in section  
14 two of this article.

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

20 (4) "Tax commissioner" or "commissioner" means the  
21 tax commissioner of the state of West Virginia or his  
22 delegate.

23 (5) "This chapter" means chapter eleven of the code of

24 West Virginia, one thousand nine hundred thirty-one, as  
 25 amended, and shall include only those articles of chapter  
 26 eleven listed in section two of this article.

27 (6) "Willfully" means the intentional violation of a  
 28 known legal duty to perform any act, required to be  
 29 performed by any provision of this chapter, in respect of  
 30 which the violation occurs: *Provided*, That the mere failure  
 31 to perform any act shall not be a willful violation under this  
 32 article. A willful violation of this article requires that the  
 33 defendant had knowledge of or notice of a duty to perform  
 34 such act, and that the defendant, with knowledge of or  
 35 notice of such duty, intentionally failed to perform such act.

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

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

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

1 Any person required by any provision of this chapter to  
 2 pay any tax, or to file any return or report, who willfully  
 3 fails to pay such tax, or willfully fails to file such return or  
 4 report, more than thirty days after the date such tax is  
 5 required to be paid by law, is guilty of a misdemeanor and,  
 6 upon conviction thereof, shall be fined not less than one  
 7 hundred dollars nor more than one thousand dollars, or  
 8 imprisoned in the county jail not more than six months, or  
 9 both fined and imprisoned. Each failure to pay tax, or file a  
 10 return or report, more than thirty days after its due date for  
 11 any tax period is a separate offense under this section and  
 12 punishable accordingly: *Provided*, That thirty days prior to  
 13 instituting criminal proceedings under this section, the tax  
 14 commissioner shall give the person written notice of any  
 15 failure to pay a tax or to file a return or report. Such notice  
 16 shall be served on the person by certified mail or by  
 17 personal service. The provisions of this section shall not  
 18 apply to the business franchise registration tax imposed by  
 19 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.

*scw*

**§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

2 tax, who represents, advertises or states to the public or to  
3 any purchaser, lessee or employee that he will absorb or  
4 assume payment of any part of such tax or that such tax is  
5 not to be considered as part of or added to the sales price, or  
6 wages payable, is guilty of a misdemeanor, and upon  
7 conviction thereof, shall be fined not less than one hundred  
8 dollars nor more than one thousand dollars, or imprisoned  
9 in the county jail not more than six months, or both fined  
10 and imprisoned.

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

1 If any person: (1) Willfully fails to maintain any records,  
2 or supply any information, in the manner required by this  
3 chapter or regulations therefor promulgated in accordance  
4 with law, to compute, assess, withhold or collect any tax  
5 imposed by this chapter; or (2) presents to any vendor a  
6 certificate for the purpose of obtaining an exemption from  
7 the tax imposed by articles fifteen or fifteen-a of this  
8 chapter and then knowingly uses the item or service  
9 purchased in a manner that is not exempt from such tax  
10 without remitting such tax in the manner required by law,  
11 such person is guilty of a misdemeanor and, upon  
12 conviction thereof, shall be fined not less than one hundred  
13 dollars nor more than one thousand dollars, or imprisoned  
14 in the county jail not more than six months, or both fined  
15 and imprisoned.

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

1 Any person who shall knowingly aid or abet or assist or  
2 counsel another person in the commission of any act  
3 prohibited by this article, whether or not such act is with  
4 the knowledge or consent of the person required by law to  
5 do the act, is guilty of a misdemeanor and, upon conviction  
6 thereof, shall be fined not less than one hundred dollars nor  
7 more than one thousand dollars, or imprisoned in the  
8 county jail not more than six months, or both fined and  
9 imprisoned.

**§11-9-10. Attempt to evade tax.**

1 If any person: (1) Knowingly files a false or fraudulent



2 return, report or other document under any provision of this  
3 chapter; or (2) willfully delivers or discloses to the tax  
4 commissioner any list, return, account, statement, record or  
5 other document known by him to be fraudulent or false as to  
6 any material matter with the intent of obtaining or assisting  
7 another person in obtaining any credit, refund, deduction,  
8 exemption or reduction in tax not otherwise permitted by  
9 this chapter; or (3) willfully attempts in any other manner to  
10 evade any tax imposed by this chapter or the payment  
11 thereof, is guilty of a felony and, notwithstanding any other  
12 provision of the code, upon conviction thereof, shall be  
13 fined not less than one thousand dollars nor more than ten  
14 thousand dollars, or imprisoned in the penitentiary not less  
15 than one nor more than three years, or, in the discretion of  
16 the court be confined in the county jail not more than one  
17 year, or both fined and imprisoned.

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

1 If any person for more than thirty days:  
2 (1) Engages in business without posting a business  
3 franchise registration certificate in the place of business in  
4 the manner required by law; (2) engages in business without  
5 payment of the business franchise registration tax when  
6 required by law; (3) engages in business after expiration of  
7 the period of time for which such certificate was granted  
8 without obtaining a new certificate; or (4) engages in  
9 business after the business franchise registration has been  
10 revoked, such person is guilty of a misdemeanor and, upon  
11 conviction thereof, shall be fined one hundred dollars. Each  
12 day or part thereof that any violation continues is a separate  
13 offense and punishable accordingly: *Provided*, That the tax  
14 commissioner shall promulgate rules and regulations  
15 pursuant to chapter twenty-nine-a of this code relating to  
16 the posting of business franchise certificates, and violations  
17 of those rules and regulations shall constitute an offense  
18 under this section.

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

1 If any person engages in business within the state of West

2 Virginia without obtaining a business franchise  
3 registration certificate when required by law, such person  
4 is guilty of a misdemeanor and, upon conviction thereof,  
5 shall be fined not less than one thousand dollars nor more  
6 than ten thousand dollars.

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

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

**§11-9-14. Venue.**

1 The tax commissioner or any other public officer  
2 initiating proceedings against any person shall do so in the  
3 county of this state wherein such person resides, if any  
4 element of the offense occurred in the county of residence,  
5 or if no element of the offense occurs in the county of  
6 residence, then the county where the offense was  
7 committed.

**§11-9-15. Limitation on prosecution.**

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

**§11-9-16. Effective date.**

1 (a) The provisions of this article shall take effect on the  
2 first day of July, one thousand nine hundred eighty-four,  
3 and shall apply to criminal violations of this chapter  
4 committed on or after such date.  
5 (b) Any criminal violation of this chapter occurring  
6 before the first day of July, one thousand nine hundred

7 eighty-four, that would have been punishable under one of  
8 the sections of this chapter repealed by this act, shall  
9 nevertheless be punishable under those sections, as in effect  
10 on the first day of January, one thousand nine hundred  
11 eighty-four, and for such purpose the following sections of  
12 this chapter are fully and completely preserved: section  
13 twelve of article twelve, section twenty-two of article  
14 twelve-a, section twenty-one of article thirteen, section  
15 nine of article fourteen, section ten of article fourteen-a,  
16 section twenty-nine of article fifteen, sections nineteen and  
17 twenty of article fifteen-a, section ninety-two of article  
18 twenty-one and section thirty-eight of article twenty-four.

**§11-9-17. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held unconstitutional or  
3 invalid, such unconstitutionality or invalidity shall not  
4 affect, impair or invalidate other provisions or applications  
5 of the article, and to this end the provisions of this article  
6 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.**

1 The purchaser shall pay to the vendor the amount of tax  
2 levied by this article which shall be added to and constitute  
3 a part of the sales price, and shall be collectable as such by  
4 the vendor who shall account to the state for all tax paid by  
5 the purchaser. The vendor shall keep the amount of tax paid  
6 separate from the proceeds of sale exclusive of the tax  
7 unless authorized in writing by the tax commissioner to  
8 keep such amount of tax in a different manner. Where such  
9 authorization is given, the state's claim shall be enforceable  
10 against and shall take precedence over, all other claims  
11 against the moneys commingled.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Harold A. Johns*  
.....  
Chairman Senate Committee

*Donald Anello*  
.....  
Chairman House Committee

Originated in the Senate.

In effect July 1, 1984.

*Jed C. Kuhl*  
.....  
Clerk of the Senate

*Donald L. O'Keefe*  
.....  
Clerk of the House of Delegates

*Walter P. Morgan*  
.....  
President of the Senate

*Walter M. Sedberry*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *30* .....  
day of *March* ..... 1984.

*John R. Dyer*  
.....  
Governor

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