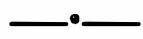


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WEST VIRGINIA LEGISLATURE



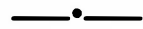
FIRST EXTRAORDINARY SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 4

(By Senator *Toukovich, Mr. President, et al*)



PASSED May 22, 1986

In Effect July 1, 1986, Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 4

(BY SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN)

[Passed May 22, 1986; to take effect July 1, 1986.]

AN ACT to repeal article eleven-e, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, six, seven, eight, ten, eleven, twelve, thirteen, fifteen, seventeen, eighteen and eighteen-a, article ten, chapter eleven of said code; to further amend said article ten by adding thereto thirty-two new sections, designated sections five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-j, five-k, five-l, five-m, five-n, five-o, five-p, five-q, five-r, seven-a, nine-a, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, thirteen-j, thirteen-k and seventeen-a; to amend and reenact sections one, two, three, four and five, article twelve, chapter eleven of said code; to further amend said article twelve by adding thereto eight new sections, designated sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and thirty-one; and to further amend chapter eleven of said code by adding thereto a new article, designated article ten-b, all relating generally to the "West Virginia Combined Amnesty and Tax Compliance Act of 1986" for taxes administered under the "West Virginia

Tax Procedure and Administration Act”; providing for tax commissioner to: Administer and enforce taxes administered under the “West Virginia Tax Procedure and Administration Act,” issue forms, make investigations, administer oath, issue subpoena and subpoena duces tecum providing rules for service thereof, payment of fees and enforcement or quashing thereof, make returns for nonfilers and for persons who file false or fraudulent returns, keep tax return and return information confidential except to the extent disclosure is authorized or permitted by law and imposing a misdemeanor criminal penalty for unlawful disclosure of returns and return information; authorizing and permitting disclosure of returns and return information under certain conditions and in certain circumstances; permitting tax commissioner to enter into certain circumstances; permitting tax commissioner to enter into written reciprocal exchange of information agreements with tax administrators from other jurisdictions who administer a similar tax; requiring that the tax commissioner release administrative decisions; providing rules for service of notices of assessments and administrative hearing decisions, for timely filing tax returns and other documents, for timely paying of taxes or any installment payment thereof and for timeliness when last day for performance of act falls on Saturday, Sunday or legal holiday; continuing vestment in tax commissioner of exclusive jurisdiction to enforce the provisions of the “West Virginia Tax Procedure and Administration Act” and the tax laws administered under it in courts of this state, but allowing the tax commissioner to be represented in any such civil court enforcement proceeding by the attorney general, or the prosecuting attorney of the county in which the enforcement proceeding is to be brought or by a staff attorney permanently employed by the tax commissioner who shall be designated by the attorney general to be a special assistant attorney general, and specifying that in all other court proceedings on appeals of administrative decisions of the tax commissioner, the tax commissioner shall be represented by the attorney general; giving certain employees designated by tax commissioner all lawful powers delegated to members of department of public safety to enforce the criminal provisions of any tax law administered under the provisions of the “West Virginia Tax

Crimes and Penalties Act," except authority to carry firearms, and permitting the department of public safety, county sheriffs and their deputies and municipal police officers to assist in enforcement of such criminal provisions; permitting fractional parts of a cent to be rounded off if less than one-half of one cent and rounded up if fractional part is one-half of one cent or greater; providing for installment payments to be treated as payment on account for the tax for which they are made; permitting overpayment of installment payments to be refunded or credited after actual liability for taxable year is determined; providing for taxpayer who pays by check or money order to remain liable for payment if check or money order is dishonored; imposing liability for payment on financial institution that guarantees payment of a negotiable instrument that is subsequently dishonored by guarantor; imposing a money penalty equal to service charge a financial institution charges the state when a check or other negotiable instrument issued by a taxpayer is dishonored; requiring fiduciaries to timely give notice to tax commissioner of their fiduciary relationship to a taxpayer; providing for changes in tax laws administered under the "West Virginia Tax Procedure and Administration Act" to apply to a particular taxpayer for taxable years beginning on or after effective date of enactment making the change unless a specific effective date provision is provided within the enactment; authorizing tax commissioner to execute closing agreements that are final and conclusive, except for fraud, malfeasance or misrepresentation of material fact, and to compromise taxes if there is doubt as to liability or collectibility, with threshold amount specified below which the tax commissioner may proceed solely and independently and above which he is required, before undertaking compromise action, to seek and obtain the written recommendation of the attorney general and with such recommendation to be made a part of the compromise file in the office of the tax commissioner on such compromise matter; requiring record to be kept of all compromises, except when amount of taxes is less than one thousand dollars, and quarterly reporting of compromises to Speaker of House of Delegates, President of Senate and legislative auditor; authorizing legislative auditor to audit all agreements and compromises, in their entirety; authorizing

issuance of technical assistance advisories to taxpayers; requiring notice of mathematical or clerical error to be given to taxpayers including notice of deficiency or overpayment resulting therefrom; permitting collection without assessment of balance shown due on signed return filed without full remittance thereof, after written notice and demand to taxpayer for payment thereof; authorizing issuance of deficiency assessments and amended or supplemental assessments and providing rules for issuance thereof; authorizing issuance of jeopardy assessments when collection of tax believed to be in jeopardy; making jeopardy assessments immediately due and payable and providing for administrative hearing and judicial appeal procedures to apply only if amount of jeopardy assessment is remitted or other security acceptable to tax commissioner is posted within twenty days after issuance of jeopardy assessment and petition for reassessment, timely filed; providing for abatement of assessments and authorizing tax commissioner to abate small balances when administrative and collection costs do not warrant collection of small balance; providing that notice of assessment (except of jeopardy assessment) or of amended or supplemental assessment becomes final and not subject to administrative or judicial review sixty days after its service on the taxpayer, unless taxpayer timely files a petition for reassessment or pays the amount of the assessment; permitting taxpayer who timely petitions for reassessment to thereafter pay amount thereof and convert petition for reassessment to a petition for refund; providing for amount of an assessment (including an amended or supplemental assessment) that becomes final to become due and payable and collectible on the day after it becomes final; specifying contents of a petition for reassessment; providing optional small claims procedure for amounts in controversy of ten thousand dollars or less per year; providing that if taxpayer elects optional small claims procedure and tax commissioner concurs in such election, no judicial appeal of a small claims administrative decision is permitted; providing for judicial appeals of administrative hearing decisions of tax commissioner, other than small claims decisions; specifying venue for appeal, contents of petition for appeal and method of service thereof on tax commissioner; requiring of appeal bond to be filed within

ninety days after appeal filed, unless court sooner requires; providing that in lieu of cash or corporate surety bond, tax commissioner may accept other security or indemnification; providing for tax commissioner's administrative decision along with notice of assessment (including jeopardy, amended or supplemental assessment) to be prima facie evidence of tax due; requiring tax commissioner to correct his assessment in accordance with the order of the court; permitting either taxpayer or tax commissioner to appeal court's order to West Virginia supreme court of appeals; requiring tax commissioner to collect taxes, additions to tax, penalties and interest that are legally due and owing to the state, using remedies available to the state for collection of debts owed to it, including foreclosure of tax liens and levy and distraint; requiring persons who contract with a nonresident contractor to withhold six percent of the contract price until receipt of a certificate from tax commissioner that taxes owed by contractor have been paid or provided for; prohibiting dissolution or withdrawal of corporations until tax commissioner certifies to secretary of state that taxes owed by such corporation have been paid or provided for; requiring all state, county, district and municipal officers making contracts on behalf of their governmental entity to withhold final payment under such contract until after receipt from the tax commissioner that certain state taxes have been paid or provided for, and if transaction is also subject to municipal business and occupation taxes, a similar receipt is needed from municipality imposing the tax, and imposing a money penalty on person who fails to withhold such payment; limiting the effect of tax commissioner's certificate that tax has been paid or provided for; providing for payment of tax when person sells out or quits business, creating a lien for taxes on property of such business and creating successor liability unless transferor produces receipt from tax commissioner evidencing payment of such taxes; providing for taxes that are due and payable to be paid from money first available for distribution in receivership, bankruptcy or other similar proceedings, and making fiduciary personally liable for failure to pay such taxes; authorizing circuit courts to enjoin persons and businesses from doing business unless and until taxpayer fully complies with this

state's tax laws; providing for tax commissioner to recover his costs in collection or injunction proceedings; authorizing tax commissioner to offset refund due or credit established for a taxpayer against any final and conclusive liability of that taxpayer for taxes; providing for relief of liability for tax in certain cases; providing for tax liabilities that are final and conclusive to be a debt due this state and for amount thereof to be a personal obligation of taxpayer and lien against taxpayer's real and personal property, and with respect to such lien, providing for: Duration of lien, recordation of lien, release or subordination of lien, discharge of lien and procedures for foreclosure of lien; authorizing tax commissioner to levy and distrain upon property (real or personal, tangible and intangible) and rights to property for collection of delinquent taxes and, with respect thereto: Authorizing jeopardy levies when collection of the tax is in jeopardy, defining "levy," permitting successive seizures, authorizing issuance of distress warrants to county sheriffs and employees of the tax commissioner; specifying procedures with respect thereto; requiring preseizure notice to taxpayer of intent to levy, except in case of jeopardy levy; requiring postseizure notice to taxpayer of property levied upon; providing for levy on salary and wages to be continuous until levy is satisfied; exempting certain property, salary, wages and income from levy; requiring surrender of property subject to levy; imposing personal liability and money penalty on persons in possession of property or rights to property subject to levy who refuse or fail to surrender such property or rights to property; exonerating person in possession of property or rights to property who surrender the same to the tax commissioner from liability to delinquent taxpayer with respect to surrendered property; requiring that notice of sale be given to the owner of seized property, specifying date, time and place of sale and that such notice be published as a Class II legal advertisement along with description of property to be sold; authorizing tax commissioner to fix a minimum selling price for such property; providing that upon sale of indivisible property, the proceeds of sale be divided and that attributable to the ownership interest of innocent co-owners or joint-owners be turned over to them, but that such innocent co-owner or joint-owner can seek

- relief by petition to circuit court for postponement of sale pending determination of divisibility of the property and certain other affordable relief; providing for sale of perishable goods; permitting redemption of property by owner or owners thereof prior to sale; permitting redemption of real property within one hundred eighty days after sale thereof, by any owner, his heirs, executors or administrators, or by any person having an interest in the real property; providing for person redeeming property of another to be subrogated to lien of the state on such interest, and for such lien to expire unless perfected; providing for issuance of certificates of sale and deeds to real property; specifying the legal effect of such documents, with issuance thereof to discharge junior encumbrances; requiring tax commissioner to keep records of sales of real property and redemptions thereof; providing for expenses of levy and sale to be recovered out of proceeds thereof; specifying how proceeds of sale are to be applied; authorizing tax commissioner to release levy and return property to facilitate collections or when property was wrongfully levied upon; requiring state to pay interest on money wrongfully levied upon and on proceeds of sale from property wrongfully seized; prescribing statute of limitations on issuance of assessments (including jeopardy, amended and supplemental assessments), exceptions thereto and for suspension of limitations on assessments and collections during pendency of bankruptcy proceeding; requiring interest to be paid on underpayments and overpayments of tax; providing rules for application, calculation and payment of such interest and specifying exceptions to payment of interest; providing for the rate of interest to be not less than eight percent beginning July first, one thousand nine hundred eighty-six, and thereafter, with such rate of interest to be determined semiannually by the tax commissioner in accordance with rules specified for determining rate of interest; imposing additions to tax for failure of taxpayer to timely file returns or pay tax and authorizing waiver thereof when tax commissioner finds such failure was due to reasonable cause and not due to willful neglect; imposing additions to tax for negligence or intentional disregard of rules and regulations of tax commissioner, with prior notice, stating reasons of tax

commissioner for such imposition; imposing additions to tax for filing of a false or fraudulent return with intent to evade tax and providing an innocent spouse exception; imposing additions to tax for failure to pay estimated tax; providing rules for computation of the amount thereof and safety zones which if applicable to a taxpayer bar imposition of this addition to tax; defining terms and providing internal effective dates; providing for a one-time only tax penalty and additions to tax amnesty program to be conducted by the tax commissioner during a three-month consecutive period in calendar year one thousand nine hundred eighty-six; defining terms; prescribing general rules for duration and conduct of amnesty program, eligibility for amnesty, legal effect of amnesty and disposition of revenues collected; providing a new short title for the business registration tax, and as to such tax, defining terms, requiring all persons engaging in or prosecuting business in this state to have registration certificate with additional certificate required for each additional business location and for conduct of certain businesses; imposing a fifteen dollar tax for each certificate; exempting certain persons from payment of the tax and from requirement to have a certificate; providing that registration certificate shall not validate an illegal activity or exonerate any person from any penalty for engaging in such illegal activity; providing that filing of application for a business registration certificate to not be construed as consent of business to general tax jurisdiction of this state; retaining for the benefit of municipalities the power to impose certain license taxes which had been imposed by the state prior to enactment of the business franchise registration tax in the year one thousand nine hundred seventy, and limiting the amount of such municipal license tax rates to those state rates then in effect; specifying time for which certificate is granted; authorizing tax commissioner to suspend or cancel certificate; specifying grounds and procedures therefor; empowering tax commissioner to not renew certificate of delinquent taxpayers; requiring persons engaged in any contracting business or activity to have available a copy of their certificate at the job site; defining terms; imposing penalty for failure to have certificate available; requiring registration of transient vendors; defining terms; requiring

transient vendors to post a bond and give tax commissioner written notices of the dates, times and places transient vendor will be in this state selling goods or wares; authorizing revocation of such certificate for certain failures of transient vendor and for providing false information to tax commissioner; authorizing seizure of property of unregistered transient vendor and of registered transient vendors who do not publicly display their registration certificate; declaring such seized property to be contraband forfeited to the state; providing for sale and redemption of such property; providing a severability clause and providing rules for construction of the business registration tax.

Be it enacted by the Legislature of West Virginia:

That article eleven-e, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five, six, seven, eight, ten, eleven, twelve, thirteen, fifteen, seventeen, eighteen and eighteen-a, article ten, chapter eleven of said code be amended and reenacted; that article ten of said chapter eleven be further amended by adding thereto thirty-two new sections, designated sections five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-j, five-k, five-l, five-m, five-n, five-o, five-p, five-q, five-r, seven-a, nine-a, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, thirteen-j, thirteen-k and seventeen-a; that sections one, two, three, four and five, article twelve of said chapter eleven be amended and reenacted; that article twelve of said chapter eleven be further amended by adding thereto eight new sections, designated sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and thirty-one; and that said chapter eleven be further amended by adding thereto a new article, designated article ten-b, all to read as follow:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5. General power; regulations and forms.

- 1 The tax commissioner shall administer and enforce each
- 2 tax to which this article applies and, in connection
- 3 therewith, shall prescribe all necessary forms. The tax
- 4 commissioner may make all needful rules and regulations
- 5 for the taxes to which this article applies as provided in the
- 6 State Administrative Procedures Act in chapter twenty-

7 nine-a of this code: *Provided*, That all rules and regulations
8 of the tax commissioner presently in effect on the effective
9 date of this article shall remain in full force and effect until
10 amended or repealed by the tax commissioner in the
11 manner prescribed by law.

§11-10-5a. Investigations.

1 For the purpose of ascertaining the correctness of any tax
2 return or assessment and for the purpose of making an
3 estimate of any taxpayer's liability for tax administered
4 under this article, and for the further purpose of conducting
5 the hearings provided for in section nine or nine-a of this
6 article, the tax commissioner shall have the power to
7 examine or cause to be examined, by any agent or
8 representative designated by the tax commissioner, any
9 books, papers, records, memoranda, inventory or
10 equipment bearing upon the matters required to be
11 included in the tax return, may make test checks of tax
12 yield, and may require the attendance of the person
13 rendering the tax return or the attendance of any other
14 person having knowledge of the matters contained therein
15 and may take testimony and may require material proof
16 with power to administer oath to such person or persons.

§11-10-5b. Subpoena and subpoena duces tecum.

1 (a) *Power to issue.* — For the efficient administration of
2 the powers vested in the tax commissioner by the preceding
3 section, and to facilitate determination or collection of any
4 tax under this article, the tax commissioner, or his delegate,
5 shall have the power to issue subpoenas and subpoenas
6 duces tecum, in the name of the state tax department, and
7 compel the attendance of witnesses and the production of
8 books, papers, records, documents and testimony at the
9 time and place specified. The tax commissioner, or his
10 delegate, may exercise such power, in the name of the state
11 tax department, upon request of any person who is a party
12 in any hearing to be held under the provisions of this article,
13 for purposes of such hearing.

14 (b) *Service.* — Every such subpoena and subpoena
15 duces tecum shall be served at least five days before the
16 return date thereof, by either personal service made by any
17 person over eighteen years of age, or by registered or

18 certified mail, but a return receipt signed by the person to
19 whom subpoena or subpoena duces tecum is directed shall
20 be required to prove service by registered or certified mail.
21 Any party requesting a subpoena or subpoena duces tecum
22 is responsible for service thereof and payment of any fee for
23 such service. Service of other subpoenas and subpoenas
24 duces tecum shall be the responsibility of the tax
25 commissioner or his delegate. Any person, except a person
26 in the employ of the state tax department, or any party, who
27 serves any such subpoena or subpoena duces tecum shall be
28 entitled to the same fee as sheriffs who serve witness
29 subpoenas for the circuit courts of this state.

30 (c) *Fees.* — Fees for the attendance of witnesses
31 subpoenaed shall be the same as for witnesses before the
32 circuit courts of this state. All such fees shall be paid by the
33 tax commissioner if the subpoena or subpoena duces tecum
34 was issued, without the request of an interested party, at the
35 insistence of the state tax department. All such fees related
36 to any subpoena or subpoena duces tecum issued at the
37 request of a party to an administrative hearing shall be paid
38 by the party who asked that such subpoena or subpoena
39 duces tecum be issued. All requests by interested parties for
40 issuance of subpoena or subpoena duces tecum shall be in
41 writing and shall contain a statement acknowledging that
42 the requesting party agrees to pay such fees.

43 (d) *Motion to quash.* — Upon motion made promptly,
44 and in an event before the time specified in a subpoena or
45 subpoena duces tecum for compliance therewith, the circuit
46 court of the county in which the hearing is to be held or the
47 circuit court of the county in which the person upon whom
48 any such subpoena or subpoena duces tecum was served
49 resides, has his or its principal place of business or is
50 employed, or the circuit court of the county in which any
51 such subpoena or subpoena duces tecum was served, or the
52 judge of any such circuit court in vacation, may grant any
53 relief with respect to any such subpoena or subpoena duces
54 tecum which any such circuit court, under the “West
55 Virginia Rules of Civil Procedure for Trial Courts of
56 Record,” could grant, and for any of the same reasons, with
57 respect to any such subpoena or subpoena duces tecum
58 issued from any such circuit court.

59 (e) *Enforcement of compliance.* — In case of
60 disobedience or neglect of any subpoena or subpoena duces
61 tecum served on any person, or the refusal of any witness to
62 testify to any matter regarding which he may be lawfully
63 interrogated, the circuit court of the county in which the
64 hearing is being held, or the circuit court of Kanawha
65 County or of the county in which such person resides, has
66 his or its principal place of business or is employed, or the
67 judge thereof in vacation, upon application by the tax
68 commissioner, shall compel obedience by attachment
69 proceedings for contempt as in the case of disobedience of
70 the requirements of a subpoena or subpoena duces tecum
71 issued from such circuit court for a refusal to testify therein.

72 (f) *Testimony under oath.* — Witnesses subpoenaed
73 under this section shall testify under oath or affirmation.

§11-10-5c. Returns by tax commissioner.

1 If any person fails to file any return required by this
2 article or any article administered by this article, at the time
3 required by law or by regulation made under authority of
4 law, or makes and files willfully or otherwise, a false or
5 fraudulent return, the tax commissioner may proceed to
6 make such return from any information available to him,
7 whether obtained through testimony or otherwise.

**§11-10-5d. Confidentiality and disclosure of returns and
return information.**

1 (a) *General Rule.* — Except when required in an official
2 investigation by the tax commissioner into the amount of
3 tax due under any article administered under this article or
4 in any proceeding in which the tax commissioner is a party
5 before a court of competent jurisdiction to collect or
6 ascertain the amount of such tax and except as provided in
7 subsections (d) through (m), it shall be unlawful for any
8 officer or employee of this state to divulge or make known in
9 any manner the tax return, or any part thereof, of any
10 person or disclose information concerning the personal
11 affairs of any individual or the business of any single firm or
12 corporation, or disclose the amount of income, or any
13 particulars set forth or disclosed in any report, declaration
14 or return required to be filed with the tax commissioner by
15 any article of this chapter imposing any tax administered

16 under this article or by any rule or regulation of the tax
17 commissioner issued thereunder, or disclosed in any audit
18 or investigation conducted under this article.

19 (b) *Definitions.* — For purposes of this section:

20 (1) *Background file document.* — The term
21 “background file document,” with respect to a written
22 determination, includes the request for that written
23 determination, any written material submitted in support
24 of the request and any communication (written or
25 otherwise) between the state tax department and person
26 outside the state tax department in connection with the
27 written determination received before issuance of the
28 written determination.

29 (2) *Disclosure.* — The term “disclosure” means the
30 making known to any person in any manner whatsoever a
31 return or return information.

32 (3) *Inspection.* — The terms “inspection” and
33 “inspected” mean any examination of a return or return
34 information.

35 (4) *Return.* — The term “return” means any tax or
36 information return or report, declaration of estimated tax,
37 claim or petition for refund or credit, or petition for
38 reassessment that is required by, or provided for, or
39 permitted, under the provisions of this article (or any article
40 of this chapter administered under this article) which is
41 filed with the tax commissioner by, on behalf of, or with
42 respect to any person, and any amendment or supplement
43 thereto, including supporting schedules, attachments, or
44 lists which are supplemental to, or part of, the return so
45 filed.

46 (5) *Return information.* — The term “return
47 information” means:

48 (A) A taxpayer’s identity; the nature, source or amount
49 of his income, payments, receipts, deductions, exemptions,
50 credits, assets, liabilities, net worth, tax liability, tax
51 withheld, deficiencies, over assessments, or tax payments,
52 whether the taxpayer’s return was, is being, or will be
53 examined or subject to other investigation or processing, or
54 any other data received by, recorded by, prepared by,
55 furnished to, or collected by the tax commissioner with
56 respect to a return or with respect to the determination of
57 the existence, or possible existence, of liability (or the

58 amount thereof) or by any person under the provisions of
59 this article (or any article of this chapter administered
60 under this article) for any tax, additions to tax, penalty,
61 interest, fine, forfeiture, or other imposition, or offense; and

62 (B) Any part of any written determination or any
63 background file document relating to such written
64 determination. "Return information" does not include,
65 however, data in a form which cannot be associated with, or
66 otherwise identify, directly or indirectly, a particular
67 taxpayer. Nothing in the preceding sentence, or in any other
68 provision of this code, shall be construed to require the
69 disclosure of standards used or to be used for the selection
70 of returns for examination, or data used or to be used for
71 determining such standards.

72 (6) *Tax administration.* — The term "tax
73 administration" means:

74 (A) The administration, management, conduct,
75 direction and supervision of the execution and application
76 of the tax laws or related statutes of this state, and the
77 development and formulation of state tax policy relating to
78 existing or proposed state tax laws, and related statutes of
79 this state, and

80 (B) Includes assessment, collection, enforcement,
81 litigation, publication and statistical gathering functions
82 under the laws of this state.

83 (7) *Taxpayer identity.* — The term "taxpayer identity"
84 means the name of a person with respect to whom a return is
85 filed, his mailing address, his taxpayer identifying number,
86 or a combination thereof.

87 (8) *Taxpayer return information.* — The term "taxpayer
88 return information" means return information as defined in
89 paragraph (5), above, which is filed with, or furnished to,
90 the tax commissioner by or on behalf of the taxpayer to
91 whom such return information relates.

92 (9) *Written determination.* — The term "written
93 determination" means a ruling, determination letter,
94 technical advice memorandum or letter or administrative
95 decision issued by the tax commissioner.

96 (c) *Criminal penalty.* — Any officer or employee (or
97 former officer or employee) of this state who violates this
98 section shall be guilty of a misdemeanor, and, upon
99 conviction thereof, shall be fined not more than one

100 thousand dollars or imprisoned for not more than one year,
101 or both, together with costs of prosecution.

102 (d) *Disclosure to designee of taxpayer.* — Any person
103 protected by the provisions of this article may, in writing,
104 waive the secrecy provisions of this section for such purpose
105 and such period as he shall therein state. The tax
106 commissioner may, subject to such requirements and
107 conditions as he may prescribe, thereupon release to
108 designated recipients such taxpayer's return or other
109 particulars filed under the provisions of the tax articles
110 administered under the provisions of this article, but only to
111 the extent necessary to comply with a request for
112 information or assistance made by the taxpayer to such
113 other person. However, return information shall not be
114 disclosed to such person or persons if the tax commissioner
115 determines that such disclosure would seriously impair
116 administration of this state's tax laws.

117 (e) *Disclosure of returns and return information for use*
118 *in criminal investigations.*

119 (1) *In general.* — Except as provided in paragraph (3),
120 any return or return information with respect to any
121 specified taxable period or periods shall, pursuant to and
122 upon the grant of an ex parte order by a federal district
123 court judge, federal magistrate or circuit court judge of this
124 state, under paragraph (2), be open (but only to the extent
125 necessary as provided in such order) to inspection by, or
126 disclosure to, officers and employees of any federal agency,
127 or of any agency of this state, who personally and directly
128 engaged in:

129 (A) Preparation for any judicial or administrative
130 proceeding pertaining to the enforcement of a specifically
131 designated state or federal criminal statute to which this
132 state, the United States or such agency is or may be a party;

133 (B) Any investigation which may result in such a
134 proceeding; or

135 (C) Any state or federal grand jury proceeding
136 pertaining to enforcement of such a criminal statute to
137 which this state, the United States or such agency is or may
138 be a party.

139 Such inspection or disclosure shall be solely for the use of
140 such officers and employees in such preparation,
141 investigation, or grand jury proceeding.

142 (2) *Application of order.* — Any United States attorney,
143 any special prosecutor appointed under Section 593 of Title
144 28, United States Code, or any attorney in charge of a
145 United States justice department criminal division
146 organized crime strike force established pursuant to
147 Section 510 of Title 28, United States Code, may authorize
148 an application to a circuit court judge or magistrate, as
149 appropriate, for the order referred to in paragraph (1). Any
150 prosecuting attorney of this state may authorize an
151 application to a circuit court judge of this state for the order
152 referred to in paragraph (1). Upon such application, such
153 judge or magistrate may grant such order if he determines
154 on the basis of the facts submitted by the applicant that:

155 (A) There is reasonable cause to believe, based upon
156 information believed to be reliable, that a specific criminal
157 act has been committed;

158 (B) There is reasonable cause to believe that the return
159 or return information is or may be relevant to a matter
160 relating to the commission of such act; and

161 (C) The return or return information is sought
162 exclusively for use in a state or federal criminal
163 investigation or proceeding concerning such act, and the
164 information sought to be disclosed cannot reasonably be
165 obtained, under the circumstances, from another source.

166 (3) The tax commissioner shall not disclose any return
167 or return information under paragraph (1) if he determines
168 and certifies to the court that such disclosure would
169 identify a confidential informant or seriously impair a civil
170 or criminal tax investigation.

171 (f) *Disclosure to person having a material interest.* —
172 The tax commissioner may, pursuant to legislative
173 regulations promulgated by him, and upon such terms as he
174 may require, disclose a return or return information to a
175 person having a material interest therein: *Provided*, That
176 such disclosure shall only be made if the tax commissioner
177 determines, in his discretion, that such disclosure would not
178 seriously impair administration of this state's tax laws.

179 (g) *Statistical use.* — This section shall not be construed
180 to prohibit the publication or release of statistics so
181 classified as to prevent the identification of particular
182 returns and the items thereof.

183 (h) *Disclosure of amount of outstanding lien.* — If notice

184 of lien has been recorded pursuant to section twelve of this
185 article, the amount of the outstanding obligation secured by
186 such lien may be disclosed to any person who furnishes
187 written evidence satisfactory to the tax commissioner that
188 such person has a right in the property subject to such lien
189 or intends to obtain a right in such property.

190 (i) *Reciprocal exchange.* — The tax commissioner may,
191 pursuant to written agreement, permit the proper officer of
192 the United States, or the District of Columbia or any other
193 state, or any political subdivision of this state, or his
194 authorized representative, who is charged by law with
195 responsibility for administration of a similar tax, to inspect
196 reports, declarations or returns filed with the tax
197 commissioner or may furnish to such officer or
198 representative a copy of any such document provided such
199 other jurisdiction grants substantially similar privileges to
200 the tax commissioner or to the attorney general of this state.
201 Such disclosure shall be only for the purpose of, and only to
202 the extent necessary in, the administration of tax laws:
203 *Provided*, That such information shall not be disclosed to
204 the extent that the tax commissioner determines that such
205 disclosure would identify a confidential informant or
206 seriously impair any civil or criminal tax investigation.

207 (j) *Inspection of business and occupation tax returns by*
208 *municipalities.* — The tax commissioner shall, upon the
209 written request of the mayor of any West Virginia
210 municipality having a business and occupation tax or
211 privilege tax, allow the duly authorized agent of such
212 municipality to inspect and make copies of the state
213 business and occupation tax return filed by taxpayers of
214 such municipality. Such inspection or copying shall only be
215 for the purpose of securing information for municipal tax
216 purposes and shall only be allowed if such municipality
217 allows the tax commissioner the right to inspect or make
218 copies of the municipal business and occupation tax returns
219 of such municipality.

220 (k) *Release of administrative decisions.* — The tax
221 commissioner shall release to the public his administrative
222 decisions, or a summary thereof: *Provided*, That unless the
223 taxpayer appeals the administrative decision to circuit
224 court or waives in writing his rights to confidentiality, any
225 identifying characteristics or facts about the taxpayer shall

226 be omitted or modified to such an extent so as to not disclose
227 the name or identity of the taxpayer.

228 (l) *Release of taxpayer information.*

229 (1) If the tax commissioner believes that enforcement of
230 the tax laws administered under this article will be
231 facilitated and enhanced thereby, he shall disclose, upon
232 request, the names and address of persons:

233 (A) Who have a current business registration certificate.

234 (B) Who are licensed employment agencies.

235 (C) Who are licensed collection agencies.

236 (D) Who are licensed to sell drug paraphernalia.

237 (E) Who are distributors of gasoline or special fuel.

238 (F) Who are contractors.

239 (G) Who are transient vendors.

240 (H) Who are authorized by law to issue a sales or use tax
241 exemption certificate.

242 (I) Who are required by law to collect sales or use taxes.

243 (J) Who are foreign vendors authorized to collect use
244 tax.

245 (K) Whose business registration certificate has been
246 suspended or canceled or not renewed by the tax
247 commissioner.

248 (L) Against whom a tax lien has been recorded under
249 section twelve of this article (including any particulars
250 stated in the recorded lien).

251 (M) Against whom criminal warrants have been issued
252 for a criminal violation of this state's tax laws.

253 (N) Who have been convicted of a criminal violation of
254 this state's tax laws.

255 (m) *Disclosure of return information to office of child*
256 *advocate.*

257 (1) *State return information.* — The tax commissioner
258 may, upon written request, disclose to the director of the
259 office of child advocate created by article two, chapter
260 forty-eight-a of this code:

261 (A) Available return information from the master files
262 of the tax department relating to the social security account
263 number, address, filing status, amounts and nature of
264 income, and the number of dependents reported on any
265 return filed by or with respect to, any individual with
266 respect to whom child support obligations are sought to be
267 enforced, and

268 (B) Available state return information reflected on any
269 state return filed by, or with respect to any individual
270 described in subparagraph (A), relating to the amount of
271 such individual's gross income, but only if such information
272 is not reasonably available from any other source.

273 (2) *Restrictions on disclosure.* — The tax commissioner
274 shall disclose return information under paragraph (1) only
275 for purposes of, and to the extent necessary in, collecting
276 child support obligations from, and locating individuals
277 owing such obligations.

§11-10-5e. Service of notice.

1 Notices of assessments and administrative decisions shall
2 be served upon the taxpayer either by personal or
3 substituted service or by certified mail. Service of notice by
4 personal or substituted service shall be valid if made by any
5 method authorized by Rule 4 of the West Virginia Rules of
6 Civil Procedure. Service of notice by certified mail shall be
7 valid if accepted by the taxpayer, or if addressed to and
8 mailed to the taxpayer's usual place of business or usual
9 place of abode or last known address and accepted by any
10 officer, partner, employee, spouse or child of the taxpayer
11 over the age of eighteen. Any notice addressed and mailed in
12 the above manner and accepted by any person, shall be
13 presumed to be accepted by such person unless proven
14 otherwise by the taxpayer. Any notice addressed and
15 mailed in the above manner, and which is refused or not
16 claimed, may then be served by regular mail if such notice is
17 subsequently mailed by first class mail, postage prepaid, to
18 the same address; and date of posting in the United States
19 mail shall be the date of service.

§11-10-5f. Timely filing and paying.

1 (a) *Delivery in person.* — If any return, claim, statement
2 or other document required to be filed, or any payment
3 required to be made within a prescribed period or on or
4 before a prescribed date, is delivered in person on or before
5 such date to the tax commissioner, or the appropriate
6 division or officer of the tax department, at Charleston,
7 West Virginia, during normal business hours of the tax
8 department, it shall be timely filed: *Provided*, That the tax
9 commissioner may authorize such delivery to be made to his

10 agent at such other location or locations in this state, as he
11 may from time to time prescribe.

12 (b) *Timely mailing.* — If any return, claim, statement or
13 other document, required to be filed, or any payment
14 required to be made within a prescribed period or on or
15 before a prescribed date under authority of this article or
16 the provisions of any article of this chapter imposing any
17 tax administered under this article, is, after such period or
18 such date, delivered by United States mail to the tax
19 commissioner or the state tax department, the date of the
20 United States postmark stamped on the cover in which such
21 return, claim, statement, or other document or payment is
22 mailed shall be deemed to be the date of delivery or the date
23 of payment, as the case may be, provided the following
24 mailing requirements are met:

25 (1) The postmark date falls within the prescribed period
26 or on or before the prescribed date for filing (including any
27 extension granted for such filing) of the return, claim,
28 statement or other document, or for making the payment
29 (including any extension granted for such payment); and

30 (2) The return, claim, statement, other document or
31 payment was, within the time prescribed in subparagraph
32 (1), deposited in the mail in the United States in an envelope
33 or other appropriate wrapper, postage prepaid, properly
34 addressed to the tax commissioner or the state tax
35 department.

36 (c) *Postmarks.* — This section shall apply in the case of
37 postmarks not made by the United States postal service
38 only if and to the extent provided by rules or regulations
39 prescribed by the tax commissioner.

40 (d) *Registered and certified mailing.* — For purposes of
41 this section, if any return, claim, statement, or other
42 document or payment is sent by United States registered or
43 certified mail, the date of registration or certification shall
44 be deemed the postmark date.

45 (e) *Last date for filing or payment.* — The last date for
46 timely filing or timely making payment shall include any
47 extension of time authorized by law or regulation and any
48 extension of time granted in writing by the tax
49 commissioner.

§11-10-5g. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

1 When the last day prescribed under authority of this
2 article or any article of this chapter imposing any tax
3 administered under this article for performing any act falls
4 on Saturday, Sunday or a legal holiday, the performance of
5 such act shall be considered timely if it is performed on the
6 next succeeding day which is not a Saturday, Sunday or a
7 legal holiday. For purposes of this section, the last day for
8 the performance of any act shall be determined by including
9 any authorized extension of time; and the term "legal
10 holiday" means a legal holiday in this state.

§11-10-5h. Enforcement proceedings.

1 The enforcement of any of the collections provisions of
2 this article in any of the courts of this state shall be under
3 the exclusive jurisdiction of the tax commissioner. The tax
4 commissioner may, at his request, be represented in any
5 such collection civil action by the attorney general, the
6 prosecuting attorney of any county in which action is
7 instituted or by any attorney permanently employed by the
8 tax commissioner and designated by the attorney general to
9 be a special assistant attorney general. In all other court
10 proceedings on appeals of administrative decisions of the
11 tax commissioner, the tax commissioner shall be
12 represented by the attorney general. Whenever a
13 prosecuting attorney represents the tax commissioner in
14 civil collection actions or the like, such prosecuting
15 attorney shall receive no fees or compensation in addition to
16 the salary paid by the county for such office for services
17 rendered.

§11-10-5i. Enforcement powers.

1 Any employee of the state tax department, so designated
2 by the tax commissioner, and who shall have attended a
3 course of instruction at the state police academy, or its
4 equivalent, shall have all the lawful powers delegated to
5 members of the department of public safety except the
6 power to carry firearms to enforce the provisions of article
7 nine of this chapter in any county or municipality of this
8 state. Any such employee shall, before entering upon the
9 discharge of his duties, execute a bond with security in the

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10 sum of three thousand five hundred dollars, payable to the
11 state of West Virginia, conditioned for the faithful
12 performance of his duties, as such, and such bond shall be
13 approved as to form by the attorney general, and the same
14 shall be filed with the secretary of state and preserved in his
15 office. The department of public safety, any county sheriff
16 (or his deputy) or any municipal police officer, upon request
17 by the tax commissioner, is hereby authorized to assist the
18 tax commissioner in enforcing the provisions of article nine
19 of this chapter and the criminal penalty provisions of this
20 article or any article of this chapter administered under this
21 article.

§11-10-5j. Liability for taxes withheld or collected.

1 Whenever any person is required by this article (or any
2 article of this chapter administered by this article) to collect
3 or withhold any tax from any person and to pay it over to the
4 tax commissioner, the amount of tax so collected or
5 withheld shall be deemed to be moneys held in trust for the
6 state of West Virginia. The amount of such moneys shall be
7 assessed, collected and paid in the same manner and subject
8 to the same provisions and limitations (including penalties)
9 as are applicable with respect to the taxes from which such
10 fund arose.

§11-10-5k. Fractional parts of a cent.

1 In the payment of any tax administered by this article, a
2 fractional part of a cent shall be disregarded unless it
3 amounts to one-half cent or more, in which case it shall be
4 increased to one cent.

§11-10-5l. Payment of estimated tax.

1 Payment of estimated tax or any installment thereof,
2 shall be considered payment on account of the tax imposed
3 by any article administered under this article for the
4 taxable year.

§11-10-5m. Overpayment of installments.

1 In the case of tax payable in installments, if the taxpayer
2 has paid, as an installment of the tax, more than the amount
3 determined to be the correct amount of such installment,
4 the overpayment shall be credited against the unpaid

5 installments, if any for the taxable year. If the amount
6 already paid, whether or not on the basis of installments,
7 exceeds the amount determined to be the correct amount of
8 the tax due for the taxable year, the overpayment shall be
9 credited or refunded as provided in section fourteen of this
10 chapter.

§11-10-5n. Payment by check or money order.

1 (a) *Check or money order unpaid.*

2 (1) *Ultimate liability.* — If a check or money order
3 tendered in payment of taxes is not duly paid, the person by
4 whom such check or money order was tendered shall remain
5 liable for payment of the tax and for all legal penalties and
6 additions thereto, to the same extent as if such check or
7 money order had not been tendered.

8 (2) *Liability of bank and others.* — If any certified
9 treasurer's or cashier's check (or other guaranteed draft) or
10 any money order tendered for payment of taxes is not duly
11 paid, the state of West Virginia shall, in addition to its right
12 to exact payment from the party originally indebted
13 therefor, have a lien for the amount of such check (or draft)
14 upon all the assets of the financial institution on which it is
15 drawn or for the amount of such money order upon all the
16 assets of the issuer thereof; and such amount shall be paid
17 out of the assets in preference to any other claims
18 whatsoever against such financial institution or issuer,
19 except the necessary costs and expenses of administration
20 and perfected liens that are prior in time.

21 (b) *Bad check charge.* — If any check or money order
22 tendered in payment of any amount of tax, interest,
23 additions to tax or penalties is not duly paid, then, in
24 addition to any other penalties provided by law, there shall
25 be paid as a penalty by the person who tendered such check,
26 upon written notice and demand by the tax commissioner,
27 in the same manner as tax, an amount equal to the service
28 charge which the bank or other financial institution
29 charged the state for each check returned to the tax
30 commissioner because the account is closed or there are
31 insufficient funds in the account.

§11-10-5o. Notice of fiduciary relationship.

1 (a) *Rights and obligations of fiduciary.* — Upon notice to
2 the tax commissioner that any person is acting for another

3 person in a fiduciary capacity, such fiduciary shall assume
4 that power, rights, duties and privileges of such other
5 person in respect of any tax administered under this article
6 (except that the tax shall be collected from the estate of such
7 other person), until notice is given that the fiduciary
8 capacity has terminated.

9 (b) *Notice.* — Notice under this section shall be given in
10 accordance with regulations prescribed by the tax
11 commissioner.

§11-10-5p. Effective date of amendments.

1 Any amendment to any article administered under this
2 article shall first apply to a particular taxpayer for taxable
3 years beginning on or after the effective date of the act of
4 the Legislature containing such amendment, as determined
5 under article six, section thirty of the constitution of this
6 state, unless the language of the act provides a controlling
7 internal effective date provision.

§11-10-5q. Settlement agreements and compromises.

1 (a) *Closing agreements authorized.* — The tax
2 commissioner is authorized to enter into an agreement in
3 writing with any person relating to the liability of such
4 person (or of the person or estate for whom he acts) in
5 respect of any tax administered by the tax commissioner
6 under this article, for any taxable period.

7 (b) *Finality of closing agreement.* — If a closing
8 agreement is entered into by the tax commissioner, (within
9 such time as may be stated in such agreement, or later
10 agreed to) such agreement shall be final and conclusive, and
11 except upon a showing of fraud or malfeasance or
12 misrepresentation of a material fact:

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

16 (2) In any civil action or administrative proceeding, the
17 closing agreement or any determination, assessment,
18 collection, payment, abatement, refund or credit made in
19 accordance therewith, shall not be annulled, modified, set
20 aside or disregarded.

21 (c) *Compromises authorized.* — The tax commissioner
22 may compromise all or part of any civil case arising under

23 the provisions of this article. In all such matters involving
24 issues in respect of tax liability in controversy of fifteen
25 thousand dollars or more for one or all of the years involved
26 in such matter, claim or case, the tax commissioner shall
27 seek the written recommendation of the attorney general
28 before entering into such compromise. Any liability for tax
29 (including any interest, additions to tax and penalties) may
30 be compromised upon one or more, or both, of the following
31 grounds:

32 (1) Doubt as to liability; or

33 (2) Doubt as to collectibility.

34 (d) *Record of compromise.* — Whenever a compromise is
35 made by the tax commissioner under subsection (c), there
36 shall be placed on file in the tax commissioner's office the
37 opinion of the tax commissioner's legal counsel (with his
38 reasons therefor) and any written recommendation of the
39 attorney general received pursuant to subsection (c) above
40 together with a statement of:

41 (1) The amount of tax assessed,

42 (2) The amount of interest, additions to the tax, or
43 assessable penalty imposed by law on the person against
44 whom the tax is assessed, and

45 (3) The amount actually paid in accordance with the
46 terms of compromise.

47 Notwithstanding the foregoing provisions of this
48 subsection (d), no such opinion shall be required with
49 respect to the compromise of any civil case in which the
50 amount of tax assessed (including any interest, additions to
51 tax or assessable penalty) is less than one thousand dollars.

52 (e) *Report to Legislature.* — The tax commissioner shall
53 submit to the Speaker of the House of Delegates, the
54 President of the Senate and the legislative auditor a
55 quarterly report summarizing the issues and amounts of
56 liabilities contained in the agreements and compromises
57 into which he has entered pursuant to this section. Such
58 report shall be in a form which preserves the confidentiality
59 of the identity of the taxpayers involved in such agreements
60 and compromises. Notwithstanding any other provision of
61 law to the contrary, the agreements and compromises
62 entered into pursuant to this section shall be subject to
63 audit, in their entirety, by the legislative auditor.

§11-10-5r. Technical assistance advisories.

- 1 (a) The tax commissioner may issue an informal
2 technical assistance advisory to a person, upon written
3 request, as to the position of his office on the tax
4 consequences of a stated transaction or event, under
5 existing statutes, rules or policies. However, after the
6 issuance of an assessment to a taxpayer, a technical
7 assistance advisory may not be issued to that taxpayer with
8 respect to the issue or issues involved in the assessment.
- 9 (b) A technical assistance advisory shall have no
10 precedential value except to the taxpayer who requests the
11 advisory and then only for the specific transaction
12 addressed in the technical assistance advisory, unless
13 specifically stated otherwise in the advisory.
- 14 (c) Any modification of an advisory shall be prospective
15 only.
- 16 (d) The tax commissioner may, in his discretion,
17 promulgate rules prescribing guidelines and procedures for
18 submission, issuance or denial of assistance, and disclosure
19 of technical assistance advisory: *Provided*, That the tax
20 commissioner shall not disclose a technical assistance
21 advisory to any person other than the person who requested
22 the advisory, or his authorized representative, without first
23 deleting the name, address and other identifying details of
24 the person to whom the technical assistance advisory was
25 issued, unless that person executes a written waiver of
26 confidentiality.
- 27 (e) The tax commissioner shall release copies of technical
28 assistance advisories issued pursuant to this section to the
29 public. Any identifying characteristics or facts about the
30 taxpayer shall be omitted or modified in such technical
31 assistance advisories to such an extent so as to not disclose
32 the name or identity of the taxpayer.

§11-10-6. Mathematical or clerical errors; collection of balance due on return without remittance.

- 1 (a) *Mathematical or clerical error.* — When it appears to
2 the tax commissioner that the taxpayer has made a
3 mathematical error (including an overstatement of the
4 credit for the amount paid as estimated tax), or clerical
5 error, the tax commissioner shall correct such error and
6 notify the taxpayer, in writing, of the deficiency or

7 overpayment in tax. The taxpayer shall have fifteen days
8 after receipt of such notice within which to pay any such
9 deficiency. If the taxpayer fails to pay such deficiency
10 within fifteen days, the tax commissioner shall make an
11 assessment of such deficiency in accordance with section
12 seven and shall give the taxpayer written notice thereof.

13 (b) *Collection of balance due.* — If a taxpayer files a
14 mathematically correct return which reflects a balance due
15 of any tax administered under this article, and if full
16 payment thereof has not been made, the tax commissioner
17 shall notify the taxpayer, in writing, of the amount of tax,
18 additions to tax, penalties or interest due. The taxpayer
19 shall have fifteen days after receipt of such notice within
20 which to make payment. If the taxpayer fails to make
21 payment within such fifteen-day period, the tax
22 commissioner shall proceed under section eleven of this
23 article to collect the amount due.

24 (c) *Certain terms defined.* — For the purposes of this
25 section:

26 (1) *Mathematical or clerical error.* — The term
27 “mathematical or clerical error” means:

28 (A) An error in addition, subtraction, multiplication or
29 division shown on any return;

30 (B) An incorrect use of any table provided by the tax
31 commissioner with respect to any return if such incorrect
32 use is apparent from the existence of other information on
33 the return;

34 (C) An entry on a return of an item which is inconsistent
35 with another entry of the same or another item on such
36 return;

37 (D) An omission of information which is required to be
38 supplied on the return to substantiate an entry on the
39 return; and

40 (E) An entry on a return of a deduction or credit in an
41 amount which exceeds a statutory limit, if such limit is
42 expressed:

43 (i) As a specified monetary amount, or

44 (ii) As a percentage, ratio, or fraction, and if the items
45 entering into the application of such limit appear on such
46 return.

47 (2) *Return.* — The term “return” includes any return,
48 statement, schedule, or list, and any amendment or

49 supplement thereto filed with respect to any tax
50 administered under this article.

§11-10-7. Assessment.

1 (a) *General.* — If the tax commissioner believes that any
2 tax administered under this article has been insufficiently
3 returned by a taxpayer, either because the taxpayer has
4 failed to properly remit the tax, or has failed to make a
5 return, or has made a return which is incomplete, deficient
6 or otherwise erroneous, he may proceed to investigate and
7 determine or estimate the tax liability and make an
8 assessment therefor.

9 (b) *Jeopardy assessments.* — If the tax commissioner
10 believes that the collection of any tax administered under
11 this article will be jeopardized by delay, he shall thereupon
12 make an assessment of tax, noting that fact upon the
13 assessment. The amount assessed shall immediately be due
14 and payable. Unless the taxpayer against whom a jeopardy
15 assessment is made posts the required security and
16 petitions for reassessment within twenty days after service
17 of notice of the jeopardy assessment, such assessment shall
18 become final: *Provided*, That upon written request of the
19 taxpayer made within such twenty-day period, showing
20 reasonable cause therefor, the tax commissioner may grant
21 an extension of time not to exceed thirty additional days
22 within which such petition may be filed. If a taxpayer
23 against whom a jeopardy assessment has been made
24 petitions for reassessment or requests an extension of time
25 to file a petition for reassessment, the petition or request
26 shall be accompanied by remittance of the amount assessed
27 or such security as the tax commissioner may deem
28 necessary to insure compliance with the applicable
29 provisions of this chapter. If a petition for reassessment is
30 timely filed, and the amount assessed has been remitted, or
31 such other security posted, the provisions for hearing,
32 determination and appeal set forth in sections nine and ten
33 shall then be applicable.

34 (c) *Amendment of assessment.* — The tax commissioner
35 may, at any time before the assessment becomes final,
36 amend, in whole or in part, any assessment whenever he
37 ascertains that such assessment is improper or incomplete
38 in any material respect.

39 (d) *Supplemental assessment.* — The tax commissioner
 40 may, at any time within the period prescribed for
 41 assessment, make a supplemental assessment whenever he
 42 ascertains that any assessment is imperfect or incomplete in
 43 any material respect.

44 (e) *Address for notice of assessment.*

45 (1) *General rule.* — In the absence of notice to the tax
 46 commissioner under section five-o of the existence of a
 47 fiduciary relationship, notice of assessment, if sent by
 48 certified mail or registered mail to the taxpayer at his last
 49 known address, shall be sufficient even if such taxpayer is
 50 deceased, or is under a legal disability, or, in the case of a
 51 corporation, has terminated its existence.

52 (2) *Joint income tax return.* — In the case of a joint
 53 income tax return filed by a husband and wife, such notice
 54 of assessment may be a single notice, except that if the tax
 55 commissioner has been notified by either spouse that
 56 separate residences have been established, then in lieu of a
 57 single notice, a duplicate original of the joint notices shall be
 58 sent by certified or registered mail to each spouse at his last
 59 known address.

60 (3) *Estate tax.* — In the absence of notice to the tax
 61 commissioner of the existence of a fiduciary relationship,
 62 notice of assessment of a tax imposed by article eleven of
 63 this chapter, if addressed in the name of the decedent or
 64 other person subject to liability and mailed to his last
 65 known address, by registered or certified mail, shall be
 66 sufficient for purposes of this article and article eleven of
 67 this chapter.

§11-10-7a. Abatement.

1 (a) *General rule.* — The tax commissioner is authorized
 2 to abate the assessment of any tax or any liability in respect
 3 thereto which:

4 (1) Is void, or

5 (2) Is assessed after the expiration of the period of
 6 limitation properly applicable thereto, or

7 (3) Is voidable: *Provided*, That no claim for abatement
 8 shall be filed by a taxpayer under this paragraph (3) if the
 9 assessment has become final.

10 (b) *Small tax balances.* — The tax commissioner is
 11 authorized to abate the unpaid portion of an assessment of

12 any tax, or any liability in respect thereof, which has
13 become final, if the tax commissioner determines under
14 uniform rules promulgated by him that the administration
15 and collection costs involved would not warrant collection
16 of the amount due.

**§11-10-8. Notice of assessment; petition for reassessment or
payment of assessment within sixty days; finality
of assessment; payment of final assessment;
effective date.**

1 (a) *Notice of assessment.* — The tax commissioner shall
2 give the taxpayer written notice of any assessment or
3 amended or supplemental assessment made pursuant to
4 this article. The assessment or amended or supplemental
5 assessment, as the case may be, shall become final and
6 conclusive of the liability of the taxpayer and not subject to
7 either administrative or judicial review under the
8 provisions of sections nine or nine-a, and ten of this article
9 unless the taxpayer to whom a notice of assessment or
10 amended or supplemental assessment, is given, shall within
11 sixty days after service thereof (except in the case of
12 jeopardy assessments, as to which the time for filing a
13 petition is specified in section seven) either:

14 (1) *Petition for reassessment.* — Personally or by
15 certified mail, files with the tax commissioner a petition in
16 writing, verified under oath by the taxpayer or his duly
17 authorized agent having knowledge of the facts, setting
18 forth with particularity the items of the assessment
19 objected to, together with the reasons for such objections;
20 or

21 (2) *Payment of assessment.* — Personally or by certified
22 mail, remits to the tax commissioner the total amount of the
23 assessment or amended or supplemental assessment,
24 including such additions to tax and penalties as may have
25 been assessed and the amount of interest due.

26 (b) *Finality of assessment.* — The amount of an
27 assessment or amended or supplemental assessment shall
28 be due and payable on the day following the date upon
29 which the assessment or amended or supplemental
30 assessment becomes final. Payment of the amount of the
31 assessment, or amended or supplemental assessment, as
32 provided in paragraph (2), above, within sixty days after

33 service of notice of such assessment shall not prohibit or
 34 otherwise bar the taxpayer from filing a claim for refund or
 35 credit under the provisions of section fourteen of this article
 36 within the time prescribed therein for the filing of a claim
 37 for refund or credit.

38 (c) *Payment of assessment after petition filed.* — A
 39 taxpayer who has timely filed a petition for reassessment
 40 may, at any time prior to issuance of the tax commissioner's
 41 administrative decision under section nine or nine-a of this
 42 article, pay under protest the amount of the assessment.
 43 Upon such payment, the contested case shall thereafter be
 44 treated for all purposes as a petition for refund: *Provided,*
 45 That if payment is made after the administrative hearing
 46 under section nine or nine-a of this article has commenced
 47 or concluded, a new hearing shall not be held, but the record
 48 thereof shall be properly amended by the tax commissioner
 49 to show that the amount assessed has been paid under
 50 protest by the taxpayer and that the petition for
 51 reassessment previously filed under this section is now to be
 52 treated as a petition for refund filed under section fourteen
 53 of this article.

54 (d) *Effective date.* — This section, as amended, shall
 55 apply to all assessments (including amended and
 56 supplemental assessments) which are issued on or after the
 57 first day of July, one thousand nine hundred eighty-six and
 58 to all assessments issued prior to such effective date which
 59 have not become final as provided in this section.

§11-10-9a. Small claims procedure; disputes involving \$10,000 or less.

1 (a) *In general.* — Notwithstanding the provisions of
 2 section nine of this article, if the amount in dispute in any
 3 petition for reassessment filed under section eight or in any
 4 petition for refund or credit filed under section fourteen
 5 does not exceed ten thousand dollars for any one taxable
 6 year, then, at the option of the taxpayer and concurred in by
 7 the tax commissioner before the hearing of the case,
 8 proceedings in the case shall be conducted under this
 9 section. Such proceedings shall be conducted in an informal
 10 manner and in accordance with such rules of evidence and
 11 rules of procedure as the tax commissioner may prescribe. A
 12 decision, together with a brief summary of the reasons
 13 therefor shall be issued by the tax commissioner.

14 (b) *Finality of decision.* — A decision entered in any case
15 in which proceedings are conducted under this section shall
16 not be subject to review, administrative or judicial, and
17 shall not be treated as precedent for any other case.

18 (c) *Discontinuance of proceedings.* — At any time before
19 commencement of the hearing held under this section, the
20 taxpayer may unilaterally withdraw its election made
21 under subsection (a); and at any time before a decision is
22 issued under this section, the taxpayer may request or the
23 tax commissioner, on his own motion, may order that
24 further proceedings under this section in such case be
25 discontinued because there are reasonable grounds for
26 believing that the amount in dispute exceeds the amount
27 described in subsection (a) of this section. Upon any such
28 discontinuance, or change of election, a hearing shall be
29 held in the same manner as other cases to which section nine
30 of this article applies.

31 (d) *Amount of deficiency in dispute.* — For purposes of
32 this section, the amount in dispute includes tax, additions
33 to tax, additional amounts and penalties. It excludes
34 interest.

§11-10-10. Appeals.

1 (a) *Right of appeal.* — A taxpayer may appeal the
2 administrative decision of the tax commissioner issued
3 under section nine or fourteen of this article, by taking an
4 appeal to the circuit courts of this state within sixty days
5 after being served with notice of the administrative
6 decision.

7 (b) *Venue.* — The appeal may be taken in the circuit
8 court of any county:

9 (1) Wherein the activity taxed was engaged in; or

10 (2) Wherein the taxpayer resides; or

11 (3) Wherein the will of the decedent was probated or
12 letters of administration granted; or

13 (4) To the circuit court of Kanawha County.

14 (c) *Petition for appeal.* — The appeal proceeding shall
15 be instituted by filing a petition with the circuit court, or
16 the judge thereof in vacation, within the sixty-day period
17 prescribed in subsection (a). The clerk of the circuit court
18 shall, within ten days after date the petition is filed, serve
19 the tax commissioner with a copy of the same by registered

20 or certified mail. This petition shall be in writing, verified
21 under oath by the taxpayer, or his duly authorized agent,
22 having knowledge of the facts, set forth with particularity
23 the items of the administrative decision or the assessment
24 objected to, together with the reasons for such objections.

25 (d) *Appeal bond.* — If the appeal is of any assessment for
26 additional taxes (except a jeopardy assessment for which
27 security in the amount thereof was previously filed with the
28 tax commissioner), then within ninety days after the
29 petition for appeal is filed, or sooner if ordered by the
30 circuit court, the taxpayer shall file with the clerk of the
31 circuit court a cash bond or a corporate surety bond
32 approved by the clerk. The surety must be qualified to do
33 business in this state. These bonds shall be conditioned that
34 the taxpayer shall perform the orders of the court. The
35 penalty of this bond shall be not less than the total amount
36 of tax, additions to tax, penalties and interest for which the
37 taxpayer was found liable in the administrative decision of
38 the tax commissioner. Notwithstanding the foregoing and
39 in lieu of such bond, the tax commissioner, in his discretion
40 upon such terms as he may prescribe, may upon a sufficient
41 showing by the taxpayer, certify to the clerk of the circuit
42 court that the assets of the taxpayer subject to the lien
43 imposed by section twelve of this article, or other
44 indemnification, are adequate to secure performance of the
45 orders of the court.

46 (e) *Hearing of appeal.* — The court shall hear the appeal
47 and determine anew all questions submitted to it on appeal
48 from the determination of the tax commissioner. In such
49 appeal a certified copy of the tax commissioner's notice of
50 assessment or amended or supplemental assessment and
51 administrative decision thereon shall be admissible and
52 shall constitute prima facie evidence of the tax due under
53 the provisions of those articles of this chapter to which this
54 article is applicable. The court shall render its decree
55 thereon and a certified copy of said decree shall be filed by
56 the clerk of the court with the tax commissioner who shall
57 then correct the assessment in accordance with the decree.
58 An appeal may be taken by the taxpayer or the tax
59 commissioner to the supreme court of appeals of this state.

§11-10-11. Collection of tax.

1 (a) *General.* — The tax commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by
3 this article or any of the other articles of this chapter to
4 which this article is applicable. In addition to all other
5 remedies available for the collection of debts due this state,
6 the tax commissioner may proceed by foreclosure of the lien
7 provided in section twelve, or by levy and distraint under
8 section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.*

11 (1) Any person contracting with a nonresident
12 contractor subject to the taxes imposed by articles thirteen,
13 twenty-one and twenty-four of this chapter, shall withhold
14 payment, in the final settlement of such contract, of such
15 sufficient amount, not exceeding six percent of the contract
16 price, as will in such person's opinion be sufficient to cover
17 such taxes, until the receipt of a certificate from the tax
18 commissioner to the effect that the above referenced taxes
19 imposed against the nonresident contractor have been paid
20 or provided for.

21 (2) If any person shall fail to withhold as provided
22 herein, such person shall be personally liable for the
23 payment of all such taxes attributable to the contract, not to
24 exceed six percent of the contract price. The same shall be
25 recoverable by the tax commissioner by appropriate legal
26 proceedings, which may include issuance of an assessment
27 under this article.

28 (c) *Prerequisite for issuance of certificate of dissolution*
29 *or withdrawal of corporation.* — The secretary of state shall
30 withhold the issuance of any certificate of dissolution or
31 withdrawal in the case of any corporation organized under
32 the laws of this state, or organized under the laws of another
33 state and admitted to do business in this state, until the
34 receipt of a certificate from the tax commissioner to the
35 effect that every tax administered under this article
36 imposed against any such corporation has been paid or
37 provided for, or that the applicant is not liable for any tax
38 administered under this article.

39 (d) *Prerequisite to final settlement of contract with this*
40 *state or political subdivision; penalty.* — All state, county,

41 district and municipal officers and agents making contracts
42 on behalf of this state or any political subdivision thereof
43 shall withhold payment, in the final settlement of any such
44 contract, until the receipt of a certificate from the tax
45 commissioner to the effect that the taxes imposed by
46 articles thirteen, twenty-one and twenty-four of this
47 chapter against the contractor have been paid or provided
48 for. If the transaction embodied in such contract or the
49 subject matter of the contract is subject to county or
50 municipal business and occupation tax, then such payment
51 shall also be withheld until receipt of a release from such
52 county or municipality to the effect that all county or
53 municipal business and occupation taxes levied or accrued
54 against the contractor have been paid. Any official
55 violating this section shall be subject to a civil penalty of
56 one thousand dollars, recoverable as a debt in a civil action
57 brought by the tax commissioner.

58 (e) *Limited effect of tax commissioner's certificates.* —
59 The certificates of the tax commissioner provided for in
60 subsections (b), (c) and (d) of this section shall not bar
61 subsequent investigations, assessments, refunds and
62 credits with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *liability of successor; lien.*

65 (1) If any person subject to any tax administered under
66 this article sells out his or its business or stock of goods, or
67 ceases doing business, any tax, additions to tax, penalties
68 and interest imposed by this article or any of the other
69 articles of this chapter to which this article is applicable
70 shall become due and payable immediately and such person
71 shall, within thirty days after selling out his or its business
72 or stock of goods or ceasing to do business, make a final
73 return or returns and pay any tax or taxes which may be
74 due. The unpaid amount of any such tax shall be a lien upon
75 the property of such person.

76 (2) The successor in business of any person who sells out
77 his or its business or stock of goods, or ceases doing
78 business, shall be personally liable for the payment of tax,
79 additions to tax, penalties and interest unpaid after
80 expiration of the thirty-day period allowed for payment:
81 *Provided,* That if the business is purchased in an arms-
82 length transaction, and if the purchaser withholds so much

83 of the consideration for the purchase as will satisfy any tax,
84 additions to tax, penalties and interest which may be due
85 until the seller produces a receipt from the tax
86 commissioner evidencing the payment thereof, the
87 purchaser shall not be personally liable for any taxes
88 attributable to the former owner of the business unless the
89 contract of sale provides for the purchaser to be liable for
90 some or all of such taxes. The amount of tax, additions to
91 tax, penalties and interest for which the successor is liable
92 shall be a lien on the property of the successor, which shall
93 be enforced by the tax commissioner as provided in this
94 article.

95 (g) *Priority in distribution of estate or property in*
96 *receivership; personal liability of fiduciary.* — All taxes due
97 and unpaid under this article shall be paid from the first
98 money available for distribution, voluntary or compulsory,
99 in receivership, bankruptcy or otherwise, of the estate of
100 any person, firm or corporation, in priority to all claims,
101 except taxes and debts due the United States which under
102 federal law are given priority over the debts and liens
103 created by this article. Any trustee, receiver, administrator,
104 executor or person charged with the administration of an
105 estate who shall violate the provisions of this section shall
106 be personally liable for any taxes accrued and unpaid under
107 this article, which are chargeable against the person, firm
108 or corporation whose estate is in administration.

109 (h) *Injunction.* — If the taxpayer fails for a period of
110 more than sixty days to fully comply with any of the
111 provisions of this article or of any other article of this
112 chapter to which this article is applicable, the tax
113 commissioner may institute a proceeding to secure an
114 injunction to restrain the taxpayer from doing business in
115 this state until the taxpayer fully complies with the
116 provisions of this article or any of such other articles. No
117 bond shall be required of the tax commissioner in any
118 action instituted under this subsection.

119 (i) *Costs.* — In any proceeding under this section, upon
120 judgment or decree for the tax commissioner, he shall be
121 awarded his costs.

122 (j) *Refunds; credits; right to offset.* — Whenever a
123 taxpayer has a refund or credit due it for an overpayment of
124 any tax administered under this article, the tax

125 commissioner may reduce the amount of such refund or
126 credit by the amount of any tax administered under this
127 article, whether it be the same tax or any other tax, which is
128 owed by the same taxpayer, and collectible as provided in
129 subsection (a) of this section.

130 (k) *Spouse relieved of liability in certain cases.*

131 (1) *In General.* — Under regulations prescribed by the
132 tax commissioner, if—

133 (A) A joint personal income tax return has been made
134 for a taxable year,

135 (B) On such return there is a substantial
136 understatement of tax attributable to grossly erroneous
137 items of one spouse,

138 (C) The other spouse establishes that in signing the
139 return he or she did not know, and had no reason to know,
140 that there was such substantial understatement, and

141 (D) Taking into account all the facts and circumstances,
142 it is inequitable to hold the other spouse liable for the
143 deficiency in tax for such taxable year attributable to such
144 substantial understatement, then the other spouse shall be
145 relieved of any liability for tax (including interest,
146 additions to tax, and other amounts) for such taxable year
147 to the extent such liability is attributable to such
148 substantial understatement.

149 (2) *Grossly erroneous items.* — For purposes of this
150 subsection, the term “grossly erroneous items” means, with
151 respect to any spouse—

152 (A) Any item of gross income attributable to such
153 spouse which is omitted from gross income, and

154 (B) Any claim of a deduction, credit, or basis by such
155 spouse in an amount for which there is no basis in fact or
156 law.

157 (3) *Substantial understatement.* — For purposes of this
158 subsection, the term “substantial understatement” means
159 any understatement (as defined in regulations prescribed
160 by the tax commissioner) which exceed five hundred
161 dollars.

162 (4) *Understatement must exceed specified percentage of*
163 *spouse's income.*

164 (A) *Adjusted gross income of \$20,000 or less.* — If the
165 spouse's adjusted gross income for the preadjustment year
166 is twenty thousand dollars or less, this subsection shall

167 apply only if the liability described in paragraph (1) is
168 greater than ten percent of such adjusted gross income.

169 (B) *Adjusted gross income of more than twenty*
170 *thousand dollars.* — If the spouse's adjusted gross income
171 for the preadjustment year is more than twenty thousand
172 dollars, subparagraph (A) shall be applied by substituting
173 "twenty-five percent" for "ten percent".

174 (C) *Preadjustment year.* — For purposes of this
175 paragraph, the term "preadjustment year" means the most
176 recent taxable year of the spouse ending before the date the
177 deficiency notice is mailed.

178 (D) *Computation of spouse's adjusted gross income.* —
179 If the spouse is married to another spouse at the close of the
180 preadjustment year, the spouse's adjusted gross income
181 shall include the income of the new spouse (whether or not
182 they file a joint return).

183 (E) *Exception for omissions from gross income.* — This
184 paragraph shall not apply to any liability attributable to the
185 omission of an item from gross income.

186 (5) *Adjusted gross income.* — For purposes of this
187 subsection, the term "adjusted gross income" means the
188 West Virginia adjusted gross income of the taxpayer,
189 determined under article twenty-one of this chapter.

§11-10-12. Liens, release; subordination; foreclosure.

1 (a) *General.* — Any tax, additions to tax, penalties or
2 interest due and payable under this article or any of the
3 other articles of this chapter to which this article is
4 applicable shall be a debt due this state. It shall be a
5 personal obligation of the taxpayer and shall be a lien upon
6 the real and personal property of the taxpayer.

7 (b) *Duration of lien.* — The lien created by this section
8 shall continue until the liability for the tax, additions to tax,
9 penalties and interest is satisfied or becomes unenforceable
10 by reason of lapse of time.

11 (c) *Recordation.* — The lien created by this section shall
12 be subject to the restrictions and conditions embodied in
13 article ten-c, chapter thirty-eight of this code and any
14 amendment made or which may hereafter be made thereto.

15 (d) *Release or subordination.* — The tax commissioner,
16 pursuant to rules or regulations prescribed by him, may
17 issue his certificate of release of any lien created pursuant

18 to this section when the debt is adequately secured by bond
19 or other security. He shall issue his certificate of release
20 when the debt secured has been satisfied. The certificate of
21 release shall be issued in duplicate. One copy shall be
22 forwarded to the taxpayer, and the other copy shall be
23 forwarded to the clerk of the county commission of the
24 county wherein the lien is recorded. The clerk of the county
25 commission shall record the release without payment of any
26 fee and such recordation shall constitute a release and full
27 discharge of the lien. The tax commissioner may issue his
28 certificate of release of any such lien as to all or any part of
29 the property subject to the lien, or may subordinate such
30 lien to any other lien or interest, but only if there is paid to
31 the state an amount not less than the value of the interest of
32 the state in such property, or if the interest of the state in
33 such property has no value.

34 (e) *Foreclosure.* — The tax commissioner may enforce
35 any lien created and recorded under this section, against
36 any property subject to such lien by civil action in the
37 circuit court of the county wherein such property is located,
38 in order to subject such property to the payment of the tax
39 secured by such lien. All persons having liens upon or
40 having any interest in the property shall be made parties to
41 such action. The court may appoint a receiver or
42 commissioner who shall ascertain and report all liens,
43 claims and interests in and upon the property, the validity,
44 amount and priority of each. The court shall, after notice to
45 all parties, proceed to adjudicate all matters involved
46 therein, shall determine the validity, amount and priorities
47 of all liens, claims and interests in and upon the property
48 and shall decree a sale of such property by the sheriff or any
49 commissioner to whom the action is referred, and shall
50 decree distribution of the proceeds of such sale according to
51 the findings of the court in respect to the interests of the
52 parties.

53 (f) *Discharge of lien.* — A sale of property against which
54 the state has a lien under this section, made pursuant to an
55 instrument creating a lien on such property, or made
56 pursuant to a statutory lien on such property, or made
57 pursuant to a judicial order to enforce any judgment in any
58 civil action, shall be made subject to and without disturbing
59 the state tax lien if the state tax lien was recorded more than

60 thirty days before such sale, unless:

61 (1) The tax commissioner is made a party to such civil
62 action, or

63 (2) The tax commissioner is given notice of such sale in
64 writing not less than fifteen days prior to sale, or

65 (3) The tax commissioner consents to such sale. Such
66 notice shall contain the name of the owner of the property
67 and the social security number or federal employer
68 identification number of the owner.

§11-10-13. Levy and distraint.

1 (a) *Authority of tax commissioner.* — If any tax
2 administered under this article is shown to be due on a
3 return, it is required to be paid at the time the return is filed
4 and if any portion of such tax is not so paid, or if an
5 assessment of tax is made by the tax commissioner and
6 notice thereof is given as required by this article and such
7 assessment has become final and is not subject to
8 administrative or judicial review, then, if any person liable
9 to pay any tax administered under this article neglects or
10 refuses to pay the same within fifteen days after notice and
11 demand, it shall be lawful for the tax commissioner (or his
12 delegate) to collect such tax (and such further sum as is
13 sufficient to cover the expense of the levy) by levy upon all
14 property and rights to property belonging to such person or
15 on which there is a lien provided in this article, or any
16 article administered under this article, for payment of the
17 tax. If the tax commissioner makes a finding that the
18 collection of such tax is in jeopardy, notice and demand for
19 immediate payment of such tax may be given by the tax
20 commissioner (or his delegate) and, upon failure or refusal
21 to pay such tax, collection thereof by levy shall be lawful
22 without regard to the fifteen-day period provided in this
23 section.

24 (b) *“Levy” defined.* — The term “levy” as used in this
25 section includes the power of distraint and seizure by any
26 means. Except as otherwise provided in this section, a levy
27 shall extend only to property possessed and obligations
28 existing at the time thereof. In any case in which the tax
29 commissioner, or his delegate, may levy upon property or
30 rights to property, he may seize and sell such property or
31 rights to property, whether such property be real or
32 personal, tangible or intangible.

33 (c) *Successive seizures.* — Whenever any property or a
34 right to property upon which levy has been made by virtue
35 of subsection (a) is not sufficient to satisfy the claim of the
36 state of West Virginia for which levy is made, the tax
37 commissioner may, thereafter, and as often as may be
38 necessary, proceed to levy in like manner upon any other
39 property liable to levy of the person against whom such
40 claim exists, until the amount due from him, together with
41 all expenses, is fully paid.

42 (d) *Distress warrant.* — The tax commissioner may issue
43 a distress warrant to the sheriff of any county of this state,
44 or to any officer or employee of the state tax department,
45 commanding him to levy upon and sell any such property or
46 rights to property subject to levy in accordance with the
47 provisions of this article. A distress warrant shall be
48 executed within sixty days from the date the warrant was
49 issued. The sheriff shall return the warrant and any money
50 collected to the tax commissioner within sixty-five days
51 from the date the warrant was issued. The provisions of
52 articles four, five and six, chapter thirty-eight of this code
53 shall not apply to the issuance or execution of any distress
54 warrant issued under this subsection.

55 (e) *Requirement of notice before levy.*

56 (1) *In general.* — Levy may be made under subsection (a)
57 upon the salary or wages or other property or rights to
58 property of any person with respect to any unpaid tax only
59 after the tax commissioner has notified such person in
60 writing of his intention to make such levy.

61 (2) *Ten-day requirement.* — The notice required under
62 paragraph (1) shall be given in person, or left at the dwelling
63 or usual place of business of such person, or sent by certified
64 mail to such person's last known address, no less than ten
65 days prior to the day of levy: *Provided*, That no notice need
66 be given if the tax commissioner has made a finding under
67 the last sentence of subsection (a) that collection of the tax
68 is in jeopardy.

69 (3) *Continuing levy on salary and wages.* — The effect of
70 a levy on salary or wages payable to or received by a
71 taxpayer shall be continuous from the date such levy is first
72 made until the liability out of which such levy arose is
73 satisfied or becomes unenforceable by reason of lapse of
74 time, at which time the tax commissioner shall promptly

75 release such levy and notify the person upon whom such
76 levy was made that such levy has been released.

§11-10-13a. Property exempt from levy.

- 1 (a) *Enumeration.* — There shall be exempt from levy:
- 2 (1) *Wearing apparel and school books.* — Items of
3 wearing apparel and school books that are necessary for the
4 taxpayer or for members of his or her family.
- 5 (2) *Fuel, provisions, furniture and personal effects.* — If
6 the taxpayer is the head of a family, so much of the fuel,
7 provisions, furniture and personal effects in his household
8 and of the arms for personal use, livestock and poultry of
9 the taxpayer, as does not exceed one thousand five hundred
10 dollars in value; if the taxpayer is an individual who is not
11 the head of a household, this exemption shall not exceed one
12 thousand dollars.
- 13 (3) *Books and tools of a trade, business or profession.* —
14 So many of the books and tools necessary for the trade,
15 business, or profession of the taxpayer as do not exceed in
16 the aggregate one thousand dollars in value.
- 17 (4) *Unemployment benefits.* — Any amount payable to
18 an individual with respect to his or her unemployment
19 (including any portion thereof payable with respect to
20 dependents) under an unemployment compensation law of
21 the United States, or of this state or any other state.
- 22 (5) *Undelivered mail.* — Mail, addressed to any person,
23 which has not been delivered to the addressee.
- 24 (6) *Annuity and pension payments.* — Annuity or
25 pension payments under any pension or retirement plan,
26 including social security payments.
- 27 (7) *Workers' compensation.* — Any amount payable to
28 an individual as workers' compensation (including any
29 portion thereof payable with respect to dependents) under a
30 workers' compensation law of the United States, or of this
31 state or any other state.
- 32 (8) *Judgments for support of minor children.* — If the
33 taxpayer is required by a judgment of a court of competent
34 jurisdiction, entered prior to the date of levy, to contribute
35 to the support of his other minor children, so much of his or
36 her salary, wages or other income as is necessary to comply
37 with such judgment.
- 38 (9) *Public assistance.* — Any amount payable to any

39 person from a public assistance or relief fund created under
 40 the law of the United States or of this state or of any other
 41 state.

42 (10) *Minimum exemption for wages, salary and other*
 43 *income.* — Any amount payable to or receivable by an
 44 individual as wages or salary for services provided by an
 45 employee to his or her employer, or as income derived from
 46 other sources, during any period, to the extent that the total
 47 of such amounts payable to or received by him or her during
 48 such period does not exceed the applicable exempt amount
 49 determined under subsection (d).

50 (11) *Homestead.* — If the taxpayer owns a homestead
 51 located in this state, the first five thousand dollars thereof
 52 shall be exempt from levy.

53 (b) *Appraisal.* — The officer seizing property of the type
 54 described in subsection (a) shall appraise and set aside to
 55 the owner the amount of such property declared to be
 56 exempt. If the taxpayer objects at the time of the seizure to
 57 the valuation fixed by the office making the seizure, the tax
 58 commissioner shall summon three disinterested individuals
 59 who shall make the valuation.

60 (c) *No other property exempt.* — Notwithstanding any
 61 other law of this state, no property or rights to property
 62 shall be exempt from levy other than property specifically
 63 made exempt by subsection (a).

64 (d) *Exempt amount of wages, salary or other income.*

65 (1) In the case of an individual who is paid or receives all
 66 of his wages, salary and other income on a weekly basis, the
 67 amount of the wages, salary and other income payable to or
 68 receivable by the person during any week which is exempt
 69 from levy under paragraph (1), subsection (a) shall be:

70 (A) Thirty times the state minimum wage per hour, plus

71 (B) Twenty-five dollars for each additional dependent
 72 of the taxpayer.

§11-10-13b. Surrender of property subject to levy.

1 (a) *Requirement.* — Any person in possession of (or
 2 obligated with respect to) property or rights to property
 3 subject to levy upon which a levy has been made shall, upon
 4 demand of the tax commissioner, surrender such property
 5 or rights (or discharge such obligation) to the tax
 6 commissioner, except such part of the property or rights as

7 is, at the time of such demand, subject to any prior
8 attachment, execution or levy.

9 (b) *Enforcement of levy.*

10 (1) *Extent of personal liability.*

11 Any person in possession of or obligated with respect to
12 property subject to levy upon which levy has been made,
13 who fails or refuses to surrender any property or rights to
14 property, subject to levy, upon demand by the tax
15 commissioner, shall be personally liable to the state in a
16 sum equal to the value of the property or rights not so
17 surrendered, but not exceeding the amount of taxes for the
18 collection of which such levy has been made, together with
19 costs and interest on such sum at an annual rate established
20 under section seventeen-a of this article, from the date of
21 the levy. Any amount (other than costs) received under this
22 paragraph shall be credited ~~against~~ the liability for the
23 collection of which such levy was made.

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24 (2) *Penalty for violation.* — In addition to the personal
25 liability imposed by paragraph (1), if any person required to
26 surrender property or rights to property fails or refuses to
27 surrender the same without reasonable cause, such person
28 shall be liable for a money penalty equal to fifty percent of
29 the amount recovered under paragraph (1). No part of this
30 penalty shall be credited against the tax liability for the
31 collection of which such levy was made.

32 (c) *Effect of honoring levy.* — Any person in possession
33 of (or obligated with respect to) property or rights to
34 property subject to levy upon which levy has been made,
35 who upon demand by the tax commissioner, surrenders
36 such property or rights to property (or discharges such
37 obligation) to the tax commissioner, or who pays a liability
38 under subsection (b) (1) shall be discharged from any
39 obligation or liability to the delinquent taxpayer with
40 respect to such property or rights to property arising from
41 such surrender or payment.

42 (d) *"Person" defined.* — The term "person" as used in
43 subsection (a) includes an officer or employee of a
44 corporation or a member or employee of a partnership, who
45 as such officer, employee or member is under a duty to
46 surrender the property or rights to property or to discharge
47 the obligation.

§11-10-13c. Sale of seized property.

1 (a) *Notice of seizure.* — As soon as practicable after
2 seizure of property, notice in writing shall be given by the
3 tax commissioner to the owner of the property (or, in the
4 case of personal property, the possessor thereof), or shall be
5 left at his usual place of abode or business if he has such
6 within the county where the seizure is made. If the owner
7 cannot be readily located, or has no dwelling or place of
8 business within such county, the notice may be mailed to his
9 last known address. Such notice shall specify the sum
10 demanded and shall contain, in the case of personal
11 property, an account of the property seized and, in the case
12 of real property, a description with reasonable certainty of
13 the property seized.

14 (b) *Notice of sale.* — The tax commissioner may sell any
15 property seized under section thirteen of this article. As
16 soon as practicable after the seizure of the property, the tax
17 commissioner shall give notice to the owner, in the manner
18 prescribed in subsection (a), and shall cause a notice of sale
19 to be published as a Class II legal advertisement in some
20 newspaper published or generally circulated within the
21 county wherein such seizure is made, or the county where
22 the property is located, the last date of publication being
23 not less than five days prior to sale. This notice shall
24 identify the property to be sold, and the date, time, place,
25 manner and conditions of the sale thereof, all of which shall
26 be at the discretion of the tax commissioner. The sale shall
27 be conducted by public auction, or by public sale under
28 sealed bids. Before the sale, the tax commissioner may
29 determine a minimum price for which the property shall be
30 sold, and if no person offers for such property at the sale, the
31 amount of the minimum price, the property shall be
32 declared to be purchased at such price for the state of West
33 Virginia; otherwise the property shall be declared to be sold
34 to the highest bidder. In determining the minimum price,
35 the tax commissioner shall take into account the expense of
36 making the levy and sale.

37 (c) *Sale of indivisible property.* — If any property liable
38 to levy is not divisible, so as to enable the tax commissioner
39 by sale of a part thereof to raise the whole amount of the tax
40 and expense of making the levy and sale, the whole of such
41 property shall be sold. However, where the property sold is

42 co-owned or jointly-owned by the taxpayer and an innocent
 43 third party, the proceeds of sale shall be divided, based on
 44 the respective interests of the persons owning the property
 45 immediately prior to the levy and sale, and the proceeds
 46 attributable to the interest of the innocent owner or owners
 47 shall be distributed to them: *Provided*, That where the
 48 property to be sold is so co-owned or jointly-owned by an
 49 innocent third party, having no delinquent tax liability
 50 attempted to be collected under such levy and sale, such
 51 innocent party may petition the circuit court of the county
 52 in which the property is located for relief, including
 53 postponement of the sale, in order that the court can
 54 determine if the property can be partitioned, so as to avoid
 55 sale of the innocent party's portion or grant and afford
 56 other relief by the court protective of the rights and
 57 interests of such innocent party.

§11-10-13d. Sale of perishable goods.

1 If the tax commissioner determines that any property
 2 seized is liable to perish or become greatly reduced in price
 3 or value by keeping, or that such property cannot be kept
 4 without great expense, he shall appraise the value of such
 5 property and:

6 (a) *Return to owner.* — If the owner of the property can
 7 be readily found, the tax commissioner shall give him notice
 8 of such determination of the appraised value of the property.
 9 The property shall be returned to the owner if, within such
 10 time as may be specified in the notice, the owner either:

11 (1) Pays to the tax commissioner an amount equal to the
 12 appraised value; or

13 (2) Gives bond in such form, with such sureties, and in
 14 such amount as the tax commissioner shall prescribe, to pay
 15 the appraised amount at such time as the tax commissioner
 16 determines to be appropriate under the circumstances.

17 (b) *Immediate sale.* — If the owner does not pay such
 18 amount or furnish such bond in accordance with this
 19 subsection, the tax commissioner shall, as soon as
 20 practicable, make public sale of the property in accordance
 21 with such regulations as may be prescribed by the tax
 22 commissioner.

§11-10-13e. Redemption of property.

1 (a) *Before sale.* — Any person whose property has been

2 levied upon shall have the right to pay the amount due,
3 together with the expenses of the proceeding, if any, to the
4 tax commissioner at any time prior to the sale thereof, and
5 upon such payment, the tax commissioner shall restore such
6 property to him, and all further proceedings in connection
7 with the levy on such property shall cease from the time of
8 such payment.

9 (b) *Redemption of real estate after sale.*

10 (1) *Period.* — The owners of any real property sold as
11 provided in section thirteen-c, their heirs, executors or
12 administrators, or any person having any interest therein,
13 or a lien thereon, or any person in their behalf, shall be
14 permitted to redeem the property sold, or any particular
15 tract of such property, at any time within one hundred
16 eighty days after the sale thereof.

17 (2) *Price.* — Such property or tract of property shall be
18 permitted to be redeemed upon payment to the purchaser,
19 or in case he cannot be found in the county in which the
20 property to be redeemed is situated, then to the tax
21 commissioner, for the use of the purchaser, his heirs or
22 assigns, the amount paid by such purchaser and interest
23 thereon at the rate specified in section seventeen-a, from
24 the date the purchaser paid the purchase price to the date
25 the property is redeemed.

26 (c) *Record.* — When any lands sold are redeemed as
27 provided in this section, the tax commissioner shall cause
28 entry of the fact to be made upon the record mentioned in
29 section thirteen-h and such entry shall be evidence of such
30 redemption.

31 (d) *Subrogation to state lien.* — Any person redeeming
32 the interest of another shall be subrogated to the lien of the
33 state on such interest. Such person shall lose his right to this
34 lien, however, unless within thirty days after receiving the
35 certificate of sale of personal property or the tax
36 commissioner's deed of real property, he shall file with the
37 clerk of the county in which the real property is located or of
38 the county in which the personal property is located or
39 where the delinquent taxpayer resides or has his business
40 location, or if neither be in this state, the clerk of Kanawha
41 County, his claim against the delinquent taxpayer and a
42 copy of the certificate of sale of personal property or deed to
43 real property.

§11-10-13f. Certificate of sale; deed to real property.

1 (a) *Certificate of sale.* — In the case of property sold as
2 provided in section thirteen-c the tax commissioner shall
3 provide to the purchaser a certificate of sale upon payment
4 in full of the purchase price. In the case of real property,
5 such certificate shall set forth the real property purchased,
6 for whose taxes the same was sold, the name of the
7 purchaser and the price paid therefor.

8 (b) *Deed to real property.* — In the case of any real
9 property sold as provided in section thirteen-c and not
10 redeemed in the manner and within the time provided in
11 section thirteen-e, the tax commissioner shall execute, in
12 accordance with the laws of this state pertaining to sales of
13 real property under execution, to the purchaser of such real
14 property at such sale, upon his surrender of the certificate
15 of sale, a deed to the real property so purchased by him
16 reciting the facts set forth in the certificate.

17 (c) *Real property purchased by the state.* — If real
18 property is declared purchased by the state of West Virginia
19 at a sale pursuant to section thirteen-c, the tax
20 commissioner shall, at the proper time, execute a deed
21 therefor, and without delay cause such deed to be duly
22 recorded in the office of the clerk of the county in which the
23 real property is located.

§11-10-13g. Legal effect of certificate of sale of personal property and deed of real property.

1 (a) *Certificate of sale of property other than real*
2 *property.* — In all cases of sale pursuant to section thirteen-
3 c of property (other than real property), the certificate of
4 such sale:

5 (1) *As evidence.* — Shall be prima facie evidence of the
6 right of the officer to make such sale, and conclusive
7 evidence of the regularity of his proceedings in making the
8 sale; and

9 (2) *As conveyances.* — Shall transfer to the purchaser
10 all right, title and interest of the party delinquent in and to
11 the property sold; and

12 (3) *As authority for transfer of corporate stock.* — If
13 such property consists of stocks, shall be notice, when
14 received, to any corporation, company or association of
15 such transfer, and shall be authority to such corporation,

16 company or association to record the transfer on its books
17 and records in the same manner as if the stocks were
18 transferred or assigned by the party holding the same, in
19 lieu of any original or prior certificate, which shall be void,
20 whether canceled or not; and

21 (4) *As receipts.* — If the subject of sale is securities or
22 other evidences of debt, shall be a good and valid receipt to
23 the person holding the same, as against any person holding
24 or claiming to hold possession of such securities or other
25 evidences of debt; and

26 (5) *As authority for transfer of title to motor vehicle.* —
27 If such property consists of a motor vehicle, shall be notice,
28 when title to received, to any public official charged with
29 the registration of title to motor vehicles, of such transfer
30 and shall be authority to such official to record the transfer
31 on his books and records in the same manner as if the
32 certificate of title to such motor vehicle has been
33 transferred or assigned by the party holding the same, in
34 lieu of any original or prior certificate, which shall be void,
35 whether canceled or not.

36 (b) *Deed of real property.* — In the case of the sale of real
37 property, pursuant to section thirteen-c:

38 (1) *Deed as evidence.* — The deed of sale given pursuant
39 to section thirteen-c shall be prima facie evidence of the
40 facts therein stated; and

41 (2) *Deed as conveyance of title.* — If the proceedings of
42 the tax commissioner as set forth have been substantially in
43 accordance with the provisions of law, such deed shall be
44 considered and operate as a conveyance of all the rights,
45 title and interest the party delinquent had in and to the real
46 property thus sold at the time the lien of the state of West
47 Virginia attached thereto.

48 (c) *Effect of junior encumbrances.* — A certificate of sale
49 of personal property given or a deed to real property
50 executed pursuant to section thirteen-f shall discharge such
51 property from all liens, encumbrances and titles over which
52 the lien of the state of West Virginia with respect to which
53 the levy was made had priority.

§11-10-13h. Records of sale.

1 (a) *Requirement.* — The tax commissioner shall, for
2 each county, keep a record of all sales of real property under

3 section thirteen-c and of redemptions of such property. The
4 record shall set forth the tax for which any such sale was
5 made, the dates of seizure and sale, the name of the party
6 assessed and all proceedings in making such sale, the
7 amount of expenses, the names of the purchasers and the
8 date of the deed.

9 (b) *Copy as evidence.* — A copy of such record, or any
10 part thereof, certified by the tax commissioner shall be
11 evidence in any court of this state of the truth of the facts
12 therein stated.

§11-10-13i. Expense of levy and sale.

1 The tax commissioner shall determine the expenses to be
2 allowed in all cases of levy and sale under this article.

§11-10-13j. Application of proceeds of levy.

1 (a) *Collection of liability.* — Any money realized from a
2 levy shall be applied as follows:

3 (1) *Expense of levy and sale.* — First, against the
4 expenses of the proceedings;

5 (2) *Liability of delinquent taxpayer.* — The amount, if
6 any, remaining after applying paragraph (1) shall then be
7 applied against the liability in respect of which the levy was
8 made or the sale conducted. The amount, if any, remaining
9 shall then be applied against any other delinquent tax
10 liability of the taxpayer for which levy may be made under
11 section thirteen.

12 (b) *Surplus proceeds.* — Any surplus proceeds
13 remaining after the application of subsection (a) shall, upon
14 application and satisfactory proof in support thereof, be
15 credited or refunded by the tax commissioner to the person
16 or persons legally entitled thereto.

§11-10-13k. Authority to release levy and return property.

1 (a) *Release of levy.* — It shall be lawful for the tax
2 commissioner, under regulations prescribed by him, to
3 release the levy upon all or part of the property or rights to
4 property levied upon where the tax commissioner
5 determines that such action will facilitate the collection of
6 the liability, but such release shall not operate to prevent a
7 subsequent levy.

8 (b) *Return of property.* — If the tax commissioner
9 determines that property has been wrongfully levied upon,

10 it shall be lawful for the tax commissioner to return:

11 (1) The specific property levied upon;

12 (2) An amount of money equal to the amount of money
13 levied upon; or

14 (3) An amount of money equal to the amount of money
15 received by the state of West Virginia from a sale of such
16 property. Property may be returned at any time. An amount
17 equal to the amount of money levied upon or received from
18 such sale may be returned at any time before the expiration
19 of nine months from the date of such levy. For purposes of
20 paragraph (3), if property is declared purchased by the state
21 of West Virginia at a sale pursuant to section thirteen-c
22 (relating to manner and conditions to sale), the state of West
23 Virginia shall be treated as having received an amount of
24 money equal to the minimum price determined pursuant to
25 such section or (if larger) the amount received by the state of
26 West Virginia from the resale of such property.

27 (c) The tax commissioner shall, upon request, make
28 public the names and persons in whose favor a release of
29 levy or return of property has been made in subsections (a)
30 and (b).

31 (d) *Interest.* — Interest shall be allowed and paid at an
32 annual rate established under section seventeen-a:

33 (1) In a case described in subsection (b)(2), from the date
34 the tax commissioner receives the money to a date (to be
35 determined by the tax commissioner) preceding the date of
36 return by not more than thirty days; or

37 (2) In a case described in subsection (b)(3), from the date
38 of the sale of the property to a date (to be determined by the
39 tax commissioner) preceding the date of return by not more
40 than thirty days.

§11-10-15. Limitations on assessment.

1 (a) *General rule.* — The amount of any tax, additions to
2 tax, penalties and interest imposed by this article or any of
3 the other articles of this chapter to which this article is
4 applicable shall be assessed within three years after the
5 date the return was filed (whether or not such return was
6 filed on or after the date prescribed for filing): *Provided,*
7 That in the case of a false or fraudulent return filed with the
8 intent to evade tax, or in case no return was filed, the
9 assessment may be made at any time.

10 (b) *Time return deemed filed.*

11 (1) *Early return.* — For purposes of this section, a return
12 filed before the last day prescribed by law, or by regulations
13 promulgated by the tax commissioner for filing thereof,
14 shall be considered as filed on such last date;

15 (2) *Returns executed by tax commissioner.* — The
16 execution of a return by the tax commissioner pursuant to
17 the authority conferred by section five-c of this article, shall
18 not start the running of the period of limitations on
19 assessment and collection.

20 (c) *Exceptions.* — Notwithstanding subsection (a):

21 (1) *Extension by agreement.* — The tax commissioner
22 and the taxpayer may enter into written agreements to
23 extend the period within which the tax commissioner may
24 make an assessment against the taxpayer which shall not
25 exceed two years. The period so agreed upon may be
26 extended for additional periods not in excess of two years
27 each by subsequent agreements in writing made before the
28 expiration of the period previously agreed upon;

29 (2) *Deficiency in federal tax.* — Notwithstanding
30 subsection (a), in the event of a final determination by the
31 United States Internal Revenue Service or other competent
32 authority of a deficiency in the taxpayer's federal income
33 tax liability, the period of limitation, upon assessment of a
34 deficiency reflecting such final determinations in the net
35 income tax imposed by article twelve-a and the taxes
36 imposed by articles twenty-one and twenty-four of this
37 chapter, shall not expire until ninety days after the tax
38 commissioner is advised of the determination by the
39 taxpayer as provided in section six-a of said article twelve-
40 a, section fifty-nine of said article twenty-one and section
41 twenty of said article twenty-four, or until the period of
42 limitations upon assessment provided in subsection (a) has
43 expired, whichever expires the later, and regardless of the
44 tax year of the deficiency;

45 (3) *Special rule for certain amended returns.* — Where,
46 within the sixty-day period ending on the day on which the
47 time prescribed in this section for the assessment of any tax
48 for any taxable year would otherwise expire, the tax
49 commissioner receives a written document signed by the
50 taxpayer showing that the taxpayer owes an additional
51 amount of such tax for such taxable year, the period for the
52 assessment of such additional amount shall not expire

53 before the day sixty days after the day on which the tax
54 commissioner receives such document;

55 (4) *Net operating loss or capital loss carrybacks.* — In
56 the case of a deficiency attributable to the application by
57 the taxpayer of a net operating loss carryback or a capital
58 loss carryback (including that attributable to a
59 mathematical or clerical error in application of the loss
60 carryback) such deficiency may be assessed at any time
61 before expiration of the period within which a deficiency
62 for the taxable year of the net operating loss or net capital
63 loss which results in such carryback may be assessed;

64 (5) *Certain credit carrybacks.* — In the case of a
65 deficiency attributable to the application to the taxpayer of
66 a credit carryback (including that attributable to a
67 mathematical or clerical error in application of the credit
68 carryback) such deficiency may be assessed at any time
69 before expiration of the period within which a deficiency
70 for the taxable year of the unused credit which results in
71 such carryback may be assessed, or with respect to any
72 portion of a credit carryback from a taxable year
73 attributable to a net operating loss carryback, capital loss
74 carryback, or other credit carryback from a subsequent
75 taxable year, at any time before expiration of the period
76 within which a deficiency for such subsequent taxable year
77 may be assessed. The term “credit carryback” means any
78 carryback allowed under section eight, article one, chapter
79 five-e of this code;

80 (6) *Overpayment of tax credited against payment of*
81 *another tax.* — In the event of a final determination that a
82 taxpayer owes less tax than the amount paid by the
83 taxpayer, and the amount paid was allowed as a credit
84 against a tax administered under this article, the period of
85 limitation upon assessment of a deficiency in the payment
86 of such other tax due to the overstating of the allowable
87 credit, shall not expire until ninety days after the tax
88 commissioner receives written notice from the taxpayer
89 advising the tax commissioner of the final determination
90 reducing the taxpayer’s liability for a tax allowed as a
91 credit against a tax administered under this article, or until
92 the period of limitations upon assessment provided in
93 subsection (a) has expired, whichever expires the later, and
94 regardless of the tax year of the deficiency.

95 (d) *Cases under bankruptcy code.* — The running of
96 limitations provided in subsection (a), on the making of
97 assessments, or provided in section sixteen, on collection,
98 shall, in a case under title eleven of the United States code,
99 be suspended for the period during which the tax
100 commissioner is prohibited by reason of such case from
101 making the assessment or from collecting the tax and:

102 (1) For assessment, sixty days thereafter; and

103 (2) For collection, six months thereafter.

§11-10-17. Interest.

1 (a) *Underpayments.* — If any amount of a tax
2 administered under this article is not paid on or before the
3 last day prescribed for payment, interest on such amount at
4 the rate of eight percent per annum shall be paid for the
5 period from such last date to the date paid: *Provided*, That
6 on and after the first day of July, one thousand nine
7 hundred eighty-six, interest on underpayments shall be
8 paid at the annual rate established under section seventeen-
9 a from the period beginning on the said first day of July, or
10 from the last day prescribed for payment, whichever is the
11 later, to the date paid, regardless of when liability for the
12 tax arose. For purposes of this subsection, the last date
13 prescribed for payment shall be the due date of the return
14 and shall be determined without regard to any extension of
15 time for payment.

16 (b) *Last date for payment not otherwise prescribed.* —
17 In the case of taxes payable by stamp or other indicia of tax
18 payment and in all other cases in which the last date for
19 payment is not otherwise prescribed, the last date for
20 payment shall be deemed to be the date the liability for tax
21 arises and in no event shall be later than the date notice and
22 demand for payment of the tax is made by the tax
23 commissioner.

24 (c) *Erroneous refund or credit.* — If any refund is made
25 or credit is established upon an erroneous claim for refund
26 or credit, interest on such amount refunded or credited at
27 the annual rate established under section seventeen-a shall
28 be paid by the claimant from the date the refund was made
29 or the credit was taken to the date such amount is recovered.

30 (d) *Overpayments.* — Interest shall be allowed and paid
31 at the annual rate of eight percent per annum upon any
32 amount which has been finally administratively or
33 judicially determined to be an overpayment in respect of
34 each tax administered under this article except the taxes
35 imposed by articles twelve, fourteen and fourteen-a of this
36 chapter: *Provided*, That on and after the first day of July,
37 one thousand nine hundred eighty-six, interest on
38 overpayments shall be paid at the annual rate established
39 under section seventeen-a from said first day of July, or the
40 date the claim for refund or credit is filed, whichever is the
41 later, regardless of when the tax was paid. Such interest
42 shall be allowed and paid for the period commencing with
43 the date of the filing by the taxpayer of a claim for refund or
44 credit with the tax commissioner and ending with the date
45 of a final administrative or judicial determination of
46 overpayment. The tax commissioner shall, within thirty
47 days after such determination of entitlement to refund,
48 issue his requisition or establish a credit as requested by the
49 taxpayer. Whenever the tax commissioner fails or refuses to
50 issue any such requisition or establish such credit within
51 said thirty-day period, the interest provided herein shall
52 commence to accrue until performance by the tax
53 commissioner. The acceptance of such refund check or
54 credit shall be without prejudice to any right of the
55 taxpayer to claim any additional overpayment and interest
56 thereon.

57 (e) *Applicable rules.* — For purposes of this section:

58 (1) *No interest payable on tax refunded or credited*
59 *within ninety days after claim for refund or credit is filed.* —
60 In the event of the overpayment of any tax administered
61 under this article, except the tax imposed by articles
62 twenty-one and twenty-four of this chapter, where the tax
63 commissioner issues his requisition or establishes a credit
64 as requested by the taxpayer within ninety days after the
65 date of the filing by the taxpayer of a claim for refund or
66 credit, no interest shall be allowed under this section.

67 (2) *No interest payable where personal income tax and*
68 *corporation net income tax refunded or credited within six*
69 *months after claim for refund or credit is filed.* — In the
70 event of the overpayment of the tax imposed by articles
71 twenty-one and twenty-four of this chapter, where the tax

72 commissioner issues his requisition or establishes a credit
73 as requested by the taxpayer within six months after the
74 date of the filing by the taxpayer of a claim for refund or
75 credit, no interest shall be allowed under this section.

76 (3) *Interest treated as tax.* — Interest prescribed under
77 this section on any tax shall be collected and paid in the
78 same manner as taxes.

79 (4) *No interest on interest.* — No interest under this
80 section shall be imposed on the interest provided by this
81 section prior to the first day of July, one thousand nine
82 hundred eighty-six.

83 (5) *Interest on penalties or additions to tax.* — Interest
84 shall be imposed under subsection (a) on any assessable
85 penalty or additions to tax only if such penalty or additions
86 to tax is not paid within fifteen days from the date of notice
87 and demand therefor, and in such case interest shall be
88 imposed only for the period from the date of the notice and
89 demand to the date of payment.

90 (6) *Payments made within fifteen days after notice and*
91 *demand.* — If notice and demand is made for payment of any
92 amount, and if such amount is paid within fifteen days after
93 the date of such notice and demand, interest under this
94 section on the amount so paid shall not be imposed for the
95 period after the date of such notice and demand.

96 (7) *Limitation on collection.* — Interest prescribed
97 under this section on any tax may be collected at any time
98 during the period within which the tax to which such
99 interest relates may be collected.

100 (8) *Exception as to estimated tax.* — This section shall
101 not apply to any failure to pay any estimated tax required to
102 be paid under articles thirteen, thirteen-c, thirteen-b,
103 twenty-one, twenty-three or twenty-four of this chapter.

§11-10-17a. Determination of rate of interest.

1 (a) *In general.* — The annual rate of interest established
2 under this section shall be such adjusted rate as is
3 established by the tax commissioner under subsection (b):
4 *Provided,* That such annual rate shall never be less than
5 eight percent per annum.

6 (b) *Adjustments of interest rate.*

7 (1) *Establishment of adjusted rate.* — If the adjusted
8 prime rate charged by banks (rounded to the nearest full
9 percent):

10 (A) During the six-month period ending on the thirtieth
11 day of September of any calendar year; or

12 (B) During the six-month period ending on the thirty-
13 first day of March of any calendar year, differs from the
14 interest rate in effect under this section on either such date,
15 respectively, then the tax commissioner shall establish,
16 within fifteen days after the close of the applicable six-
17 month period, an adjusted rate of interest equal to such
18 adjusted prime rate.

19 (2) *Effective date of adjustment.* — Any such adjusted
20 rate of interest established under paragraph (1) shall
21 become effective:

22 (A) On the first day of January of the succeeding year in
23 the case of an adjustment attributable to paragraph (1)(A)
24 above; and on

25 (B) The first day of July of the same year in the case of an
26 adjustment attributable to paragraph (1)(B).

27 (c) *Definition of “adjusted prime rate.”* — For purposes
28 of subsection (b), the term “adjusted prime rate charged by
29 banks” means the average predominant prime rate quoted
30 by commercial banks to large businesses, as determined by
31 the board of governors of the Federal Reserve System.

32 (d) *Application of change in interest rate.*

33 (1) *To deficiencies.* — The interest rate in effect at the
34 time of assessment or when the payment of delinquent tax is
35 made shall not be applied retroactively to the date the tax
36 was due. Interest on moneys owed by the taxpayer shall be
37 the sum of the interest amounts calculated for each year or
38 part thereof from the date prescribed for payment
39 (determined without regard to any extensions) to the date
40 the payment is made using the interest rate in effect for each
41 respective year or part thereof.

42 (2) *To overpayments.* — The interest rate in effect at the
43 time an overpayment of tax is refunded, or a credit therefor
44 is established, by the tax commissioner, shall not be applied
45 retroactively to the date the claim for refund or credit was
46 filed with the tax commissioner. Interest on moneys owed to
47 taxpayers shall be the sum of the interest amounts
48 calculated for each year or part thereof from date the claim
49 for refund or credit was filed with the tax commissioner
50 until date the refund is paid or a credit therefor is
51 established (such dates determined as provided in section

seventeen) using the interest rate in effect for each respective year or part thereof.

§11-10-18. Additions to tax.

(a) *Failure to file tax return or pay tax due.*

(1) In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided*, That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided*, That the addition to tax shall be imposed only on the net amount of tax due;

(3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in paragraph (1) which is not so shown within fifteen days of the date of notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the

39 aggregate: *Provided*, That this addition to tax shall be
40 imposed only on the net amount of tax due.

41 (b) *Limitation and special rule.*

42 (1) Additions under more than one paragraph:

43 (A) With respect to any return, the amount of the
44 addition under paragraph (1) of subsection (a) shall be
45 reduced by the amount of the addition under paragraph (2)
46 of subsection (a) for any month to which an addition to tax
47 applies under both paragraphs (1) and (2);

48 (B) With respect to any return, the maximum amount of
49 the addition permitted under paragraph (3) of subsection
50 (a) shall be reduced by the amount of the addition under
51 paragraph (1) of subsection (a) (determined without regard
52 to the last sentence of such subsection) which is attributable
53 to the tax for which the notice and demand is made and
54 which is not paid within fifteen days of notice and demand.

55 (2) *Amount of tax shown more than amount required to*
56 *be shown.* — If the correct amount of tax due is less than the
57 amount shown on the return, paragraphs (1) and (2) of
58 subsection (a) shall only apply to the lower amount.

59 (3) *Exception for estimated tax.* — Subsection (a) shall
60 not apply to any failure to pay any estimated tax.

61 (c) *Negligence or intentional disregard of rules and*
62 *regulations.* — If any part of any underpayment of any tax
63 administered under this article is due to negligence or
64 intentional disregard of rules and regulations (but without
65 intent to defraud), there shall be added to the amount of tax
66 due five percent of the amount of such tax if the
67 underpayment due to negligence or intentional disregard of
68 rules and regulations is for not more than one month, with
69 an additional five percent for each additional month or
70 fraction thereof during which such underpayment
71 continues, not exceeding twenty-five percent in the
72 aggregate: *Provided*, That these additions to tax shall be
73 imposed only on the net amount of tax due and shall be in
74 lieu of the additions to tax provided for in subsection (a),
75 and the tax commissioner shall state in his notice of
76 assessment the reason or reasons for imposing this addition
77 to tax with sufficient particularity to put the taxpayer on
78 notice regarding why it was assessed.

79 (d) *False or fraudulent return.* — In the case of the filing
80 of any false or fraudulent return with intent to evade any

81 such tax, or in the case of willful failure to file a return with
82 intent to evade tax, there shall be added to the tax due an
83 amount equal to fifty percent thereof which shall be in lieu
84 of the additions to tax provided for in subsections (a) and
85 (c). The burden of proving fraud, willfulness or intent to
86 evade tax shall be upon the tax commissioner. In the case of
87 a joint personal income tax return under article twenty-one
88 of this chapter, this subsection shall not apply with respect
89 to the tax of the spouse unless some part of the
90 underpayment is due to the fraud of such spouse.

91 (e) *Additions to tax treated as tax.* — Additions to tax
92 prescribed under this section on any tax shall be assessed,
93 collected and paid in the same manner as taxes.

§11-10-18a. Additions to tax for failure to pay estimated tax.

1 (a) *Addition to tax.* — Except as provided in subsections
2 (d) and (e), in the case of any underpayment of estimated
3 tax, there shall be added to the tax due for the taxable year,
4 under any article administered by this article, an amount
5 determined at the rate established under section seventeen
6 or seventeen-a of this article, on the amount of the
7 underpayment of estimated tax for the period of
8 underpayment.

9 (b) *Amount of underpayment.* — For purposes of
10 subsection (a), the amount of the underpayment shall be in
11 excess of:

12 (1) The amount of the installment which would be
13 required to be paid if the estimated tax were an amount
14 equal to ninety percent of the tax shown on the return for
15 the taxable year, or if no return was filed, ninety percent of
16 the tax for such year, over

17 (2) The amount, if any, of the installments paid on or
18 before the last date prescribed for payment.

19 (c) *Period of underpayment.* — The period of
20 underpayment shall run from the date the installment was
21 required to be paid to whichever of the following dates is
22 the earlier:

23 (1) The due date of the annual return following the close
24 of the taxable year for which the installment was due;

25 (2) With respect to any portion of the underpayment, the
26 date on which such portion is paid. For purposes of this
27 subdivision, a payment of estimated tax on any installment

28 shall be considered a payment of any previous
29 underpayment only to the extent such payment exceeds the
30 amount of the installment determined under subdivision
31 (1), subsection (b) for such installment date.

32 (d) *Exception.* — Notwithstanding the provisions of the
33 preceding subsections, the additions to tax with respect to
34 any underpayment of any installment shall not be imposed
35 if the total amount of all payments of estimated tax made on
36 or before the last date prescribed for the payment of such
37 installment equals or exceeds the amount which would
38 have been required to be paid on or before such date if the
39 estimated tax were whichever of the following is lesser:

40 (1) *Prior year's tax.* — The tax shown on the return of
41 the taxpayer for the preceding taxable year, if a return
42 showing a liability for tax was filed by the taxpayer for the
43 preceding taxable year and such preceding year was a
44 taxable year of twelve months;

45 (2) *Prior year's facts.* — An amount equal to the tax
46 computed at the rates applicable to the current taxable
47 year, but otherwise on the basis of the facts shown on the
48 return of the taxpayer for, and the law applicable to, the
49 preceding taxable year;

50 (3) *Annualized tax.*

51 (A) An amount equal to ninety percent of the tax for the
52 current taxable year computed by placing on an annualized
53 basis the taxable income:

54 (i) For the first three months of the taxable year, in the
55 case of the installment required to be paid in the third or
56 fourth month;

57 (ii) For the first three months of the first five months of
58 the taxable year, in the case of the installment required to
59 be paid in the sixth month;

60 (iii) For the first six months or the first eight months of
61 the taxable year, in the case of the installment required to
62 be paid in the nine months; and

63 (iv) For the first nine months or for the first eleven
64 months of the taxable year, in the case of the installment
65 required to be paid in the twelfth month of the taxable year
66 or the first month of the next succeeding taxable year.

67 (B) For purposes of this subdivision (3), the taxable
68 income shall be placed on an annualized basis by:

69 (i) Multiplying by twelve the taxable income referred to
70 in subparagraph (A); and

71 (ii) Dividing the resulting amount by the number of
72 months in the taxable year (three, five, six, eight, nine or
73 eleven, as the case may be) referred to in subparagraph (A).

74 (e) *Short taxable year.* — The application of this section
75 to taxable years of less than twelve months shall be in
76 accordance with regulations prescribed by the tax
77 commissioner.

ARTICLE 10B. TAX PENALTY AND ADDITIONS TO TAX AMNESTY.

§11-10B-1. Legislative intent.

1 It is the intent of the Legislature in enacting the tax
2 penalty and additions to tax amnesty program, as provided
3 by this article, to improve compliance with this state's tax
4 laws and to accelerate and increase collections of certain
5 taxes currently owed to this state. The Legislature finds and
6 declares that a public purpose is served by the waiver of tax
7 penalties, additions to tax and criminal prosecution in
8 return for the immediate reporting and payment of
9 previously underreported, nonreported, unpaid or
10 underpaid tax liabilities which accrued prior to or are
11 delinquent as of the first day of January, one thousand nine
12 hundred eighty-six. The benefits gained by this program
13 include, among other things, accelerated receipt of certain
14 currently owed taxes, permanently bringing into the tax
15 system taxpayers who have been evading tax and providing
16 an opportunity for taxpayers to clear their records and
17 satisfy tax obligations. It is further the intent of the
18 Legislature in enacting this article that the tax penalty and
19 additions to tax amnesty program be a one-time occurrence
20 which shall not be repeated in the future, since taxpayers'
21 expectations of future amnesty programs could have a
22 counterproductive effect on compliance today.

§11-10B-2. Definitions.

1 (a) *General rule.* — Terms used in this article shall have
2 the meaning ascribed to them in section four, article ten of
3 this chapter, unless the context in which the term is used in
4 the article clearly requires a different meaning, or the term
5 is defined in subsection (b) of this section.

6 (b) *Terms defined.* — For purposes of this article, the
7 term:

8 (1) "Additions to tax" shall mean that amount imposed

9 by section eighteen, or eighteen-a, article ten of this
 10 chapter, for failure to file a return or pay tax due, or for
 11 negligence or intentional disregard of rules and regulations
 12 of the tax commissioner, for filing a false or fraudulent
 13 return, or for failure to pay estimated tax, and includes
 14 "additions to tax" imposed by articles fourteen, fourteen-a,
 15 seventeen, nineteen, twenty-one and twenty-four of this
 16 chapter, as in effect on the thirtieth day of June, one
 17 thousand nine hundred seventy-eight, and preserved in
 18 section twenty, article ten of this chapter, for periods
 19 ending on or before that date;

20 (2) "Applicant" shall mean any person who timely files
 21 an application for amnesty under this article;

22 (3) "Penalty" shall mean and include additions to tax,
 23 penalties imposed by section nineteen, article ten of this
 24 chapter, penalties imposed by articles eleven, twelve,
 25 thirteen, fourteen, fourteen-a, fifteen, fifteen-a, seventeen,
 26 nineteen, twenty-one or twenty-four of this chapter, as such
 27 articles are presently written or as in effect on the thirtieth
 28 day of June, one thousand nine hundred seventy-eight, and
 29 preserved in section twenty, article ten of this chapter, for
 30 periods ending on or before that date;

31 (4) "Specified tax" shall mean the tax or taxes and the
 32 periods thereof for which the taxpayer applies for amnesty
 33 under this article.

**§11-10B-3. Development and administration of program,
 implementation of article.**

1 The tax commissioner shall develop and administer the
 2 tax penalty and additions to tax amnesty program as
 3 provided in this article, and shall develop and issue such
 4 forms, instructions, regulations and guidelines as he deems
 5 to be necessary, and take any other action needed to
 6 implement this article.

§11-10B-4. Duration and application of program.

1 The tax commissioner shall establish a three-month tax
 2 penalty and additions to tax amnesty program to be
 3 conducted during the calendar year, one thousand nine
 4 hundred eighty-six. The program shall apply to payments
 5 and returns required pursuant to any tax specified in
 6 section three, article ten of this chapter, but only if the

7 obligation for payment or filing of a return, or both, arose
8 prior to, is delinquent as of, or is due and payable as of the
9 first day of January, one thousand nine hundred eighty-six.

**§11-10B-5. Waiver of penalties; criminal immunity;
exceptions and limitations.**

1 (a) For any taxpayer who meets the requirements of
2 section six below, and except as otherwise specifically
3 provided in this article.

4 (1) The tax commissioner shall waive all penalties, as
5 defined in section two of this article, and all additions to
6 tax, as defined in said section two, for the taxes for which
7 tax penalty and additions to tax amnesty is granted, which
8 are owed as a result of nonpayment, underpayment,
9 nonreporting or underreporting of tax liabilities; and

10 (2) No criminal action may be brought against the
11 taxpayer for the default for which tax penalty and
12 additions to tax amnesty is granted.

13 (b) This section does not apply to nonpayment,
14 underpayment, nonreporting, misreporting or
15 underreporting of tax liabilities for which amnesty is
16 sought if, as of the date the taxpayers' application for
17 amnesty is filed:

18 (1) The taxpayer is the subject of a criminal
19 investigation by any agency of this state; or

20 (2) An administrative proceeding, or a civil or criminal
21 court proceeding has been initiated or is pending in any
22 administrative agency or court of this state or of the United
23 States for nonpayment, delinquency, fraud or other event of
24 noncompliance in relation to any of the specified taxes. An
25 administrative or civil proceeding shall not be deemed to be
26 pending if the taxpayer withdraws with prejudice from the
27 proceeding prior to the granting of amnesty, pays in full the
28 outstanding tax liability plus the accrued interest thereon
29 and otherwise cures any default which is the subject of such
30 proceeding.

31 (c) No refund or credit may be granted for any penalty
32 or addition to tax paid prior to the time the taxpayer files
33 his application for tax penalty and additions to tax amnesty
34 pursuant to section six below. Additionally, no refund or
35 credit shall be granted for any specified taxes plus interest
36 paid under this program unless the tax commissioner, on his

37 own motion, redetermines the amount of tax and accrued
38 interest thereon.

39 (d) The taxpayer shall not be eligible for amnesty for
40 any tax liability if the taxpayer has other liabilities
41 outstanding for a tax listed in section three, article ten of
42 this chapter, for which he has not applied for amnesty.

**§11-10B-6. Application for amnesty; requirements; deficiency
assessment.**

1 (a) The provisions of this article apply to any taxpayer
2 who, on or after the date of commencement of the tax
3 penalty and additions to tax amnesty program and on or
4 before the termination date designated by the tax
5 commissioner, files an application for tax penalty and
6 additions to tax amnesty on or before the last day of the
7 third calendar month of the amnesty program and does the
8 following:

9 (1) Voluntarily completes, signs and files amended tax
10 returns to report transactions and other material matters
11 not included on original returns and pays in full all
12 additional taxes and interest shown to be due thereon;

13 (2) Voluntarily completes, signs and files all delinquent
14 tax returns and pays in full all taxes and interest shown to
15 be due thereon;

16 (3) Voluntarily completes, signs and files amended tax
17 returns to correct all incorrect, deficient or incomplete
18 original returns and pays in full all taxes and interest shown
19 to be due thereon; and

20 (4) Voluntarily pays in full all previously assessed tax
21 liabilities and other taxes legally collectible under section
22 eleven, article ten of this chapter, and interest due thereon.

23 (b) Except as provided in subsection (d) below, all taxes
24 for which tax penalty and additions to tax amnesty is
25 sought plus accrued interest shall be paid not later than the
26 last day of the month next succeeding the termination of the
27 amnesty program. Interest on the amount of tax due shall be
28 calculated at the rate prescribed in article ten of this
29 chapter, which continues to accrue until the tax liability is
30 paid.

31 (c) Payments made by the taxpayer under this tax
32 penalty and additions to tax amnesty program shall be in
33 money, United States currency or by certified check,

34 cashier's check or post office money order, payable to the
35 tax commissioner of this state.

36 (d) The tax commissioner may, at his discretion and
37 upon such terms and conditions as he may prescribe, enter
38 into an installment payment agreement with the taxpayer,
39 such installment payment agreement to be in lieu of the full
40 immediate payment required by subsection (b) of this
41 section. Any such agreement shall include interest on the
42 outstanding amount due. Failure of the taxpayer to fully
43 comply with the terms of the installment payment
44 agreement shall render the waiver of penalties and
45 additions to tax under this amnesty program null and void,
46 unless the tax commissioner determines that the failure was
47 due to reasonable cause, and, in the event of such unexcused
48 noncompliance with the terms of the installment payment
49 agreement, the total amount of tax, interest and all
50 additions to tax and penalties shall be immediately due and
51 payable.

52 (e) If, subsequent to termination of the tax penalty and
53 additions to tax amnesty program, the tax commissioner
54 determines there was a defect in the amnesty application or
55 in the materials submitted in support of the amnesty
56 application and subsequently issues a deficiency
57 assessment upon a return or amended return filed pursuant
58 to subsection (a) of this section, the tax commissioner has
59 the authority to impose applicable penalties and additions
60 to tax and to pursue any criminal prosecution as may
61 ordinarily be brought with respect to such defect as if no
62 amnesty had been granted the taxpayer.

63 (f) The tax commissioner may review all cases in which
64 amnesty has been granted and may on the basis of mistake
65 of fact, fraud or misrepresentation rescind the grant of
66 amnesty, or in lieu thereof, appropriate review of the grant
67 of amnesty may be obtained by proceeding under article
68 nine or ten (or both) of this chapter. Any taxpayer who files
69 a false or fraudulent return or amended return, or attempts
70 in any manner to defeat or evade payment of a tax under
71 this amnesty program, shall be subject to applicable civil
72 penalties and criminal prosecution.

§11-10B-7. Publicity efforts.

1 The tax commissioner shall cause the tax penalty and
2 additions to tax amnesty program to be adequately

3 publicized so as to maximize public awareness of and
4 participation in the program.

§11-10B-8. Disposition of revenue collected.

1 From the revenue collected under this tax penalty and
2 additions tax amnesty program, four million dollars of
3 revenue collected, the disposition of which is not otherwise
4 dedicated by constitutional provision or prior statutory
5 enactment, shall be paid by the tax commissioner into a
6 special "disaster recovery fund," which is hereby created in
7 the state treasurer's office to be used as appropriated by the
8 Legislature for the recovery of losses occurring in the
9 November one thousand nine hundred eighty-five flood
10 disaster, in twenty-nine counties of this state. The tax
11 commissioner shall retain the amount of two hundred
12 thousand dollars to cover his costs of administering this
13 program. All additional revenues collected by the tax
14 commissioner under the provisions of this article, the
15 disposition of which is not otherwise dedicated by
16 constitutional provision or prior statutory enactment, shall
17 be paid by him into the general fund.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-1. Short title.

1 This article shall be cited as the "Business Registration
2 Tax."

§11-12-2. Definitions.

1 (a) *General rule.* — Terms used in this article shall have
2 the meaning ascribed to them in section four, article ten of
3 this chapter, unless the context in which the term is used in
4 this article clearly requires a different meaning, or the term
5 is defined in subsection (b) of this section.

6 (b) *Terms defined.* — For purposes of this article, the
7 term:

8 (1) "Agriculture and farming" shall mean and include
9 the production of food, fiber, or woodland products (but not
10 timbering activity) by means of cultivation or tillage of the
11 soil, or by the conduct of animal, livestock, dairy, apiary,
12 equine or poultry husbandry, or by horticulture, or by any
13 other plant or animal production, and all farm practices
14 related (usual or incidental) thereto, including the storage,

15 packing, shipping and marketing thereof, but not including
16 any manufacturing, milling, processing or selling of such
17 products by person other than the producer thereof.

18 For the purposes of this article:

19 (2) "Business activity" shall mean and include all
20 purposeful revenue-generating activity engaged in or
21 caused to be engaged in with the object of gain or economic
22 benefit, either direct or indirect, and all activities of this
23 state and its political subdivisions which involve the sale of
24 tangible personal property or the rendering of service when
25 such service activities compete with or may compete with
26 the activities of another person. "Business activity" shall
27 not include:

28 (A) Judicial sales directed by law or court order.

29 (B) Sales for delinquent taxes of real or personal
30 property.

31 (C) The conduct of charitable bingo by any person
32 licensed under article twenty, chapter forty-seven of this
33 code.

34 (D) The conduct of a charitable raffle by any person.

35 (E) The conduct of a horse or dog race meeting by any
36 racing association licensed under article twenty-three,
37 chapter nineteen of this code.

38 (F) The operation or maintenance of the pari-mutuel
39 system of wagering during the conduct of a licensed horse or
40 dog race meeting.

41 (G) The sale of any commodity during the conduct of a
42 licensed horse or dog race meeting.

43 (H) The services of owners, trainers or jockeys which are
44 essential to the effective conduct of a licensed horse or dog
45 race meeting.

46 (I) Occasional or casual sales of property or services.

47 (3) "Business registration certificate" shall mean a
48 certificate issued by the tax commissioner authorizing a
49 person to conduct business within the state of West
50 Virginia; and when referred to in this chapter as a
51 certificate of registration or a business franchise
52 registration certificate, it shall mean a business registration
53 certificate.

54 (4) "Occasional sale" or "casual sale" shall mean a sale
55 of tangible personal property not held or used by a seller in
56 the course of an activity for which a business registration

57 certificate is required, including the sale or exchange of all
 58 or substantially all the assets of any business and the
 59 reorganization or liquidation of any business: *Provided*,
 60 That such sale or exchange is not one of a series of sales or
 61 exchanges sufficient in number, scope and character to
 62 constitute a business activity requiring the holding of a
 63 business registration certificate.

64 (5) "Person" or "company" shall mean and include any
 65 individual, firm, copartnership, joint venture, association,
 66 corporation, estate, trust, business trust, receiver,
 67 syndicate, club, society, or other group or combination
 68 acting as a unit, or body politic or political subdivision
 69 (whether public or private, or quasi-public) and in the
 70 plural thereof as well as the singular, and when used in
 71 connection with the penalties imposed by section nine of
 72 this article shall mean and include the officers, directors,
 73 trustees, or members of any firm, copartnership, joint
 74 venture, association, corporation, trust, business trust,
 75 syndicate or any other groups or combinations acting as a
 76 unit.

77 (6) "Registration year" shall mean a period of twelve
 78 calendar months beginning the first day of July and ending
 79 the thirtieth day of the following June.

80 (7) "Registrant" shall mean any person who has been
 81 issued a business registration certificate under this article
 82 for the current registration year.

83 (8) "Tax commissioner" shall mean the tax
 84 commissioner or his agent.

**§11-12-3. Business registration certificate required; tax levied;
 exemption from tax.**

1 (a) *Registration required.* — No person shall, without a
 2 business registration certificate, engage in or prosecute, in
 3 the state of West Virginia, any business activity without
 4 first obtaining a business registration certificate from the
 5 tax commissioner of the state of West Virginia.
 6 Additionally, before beginning business in this state, such
 7 person:

8 (1) If a transient vendor, shall comply with the
 9 provisions of sections twenty through twenty-five of this
 10 article.

11 (2) If a collection agency, shall comply with the

12 provisions of article sixteen, chapter forty-seven of this
13 code.

14 (3) If an employment agency, shall comply with the
15 provisions of article two, chapter twenty-one of this code.

16 (4) If selling drug paraphernalia, as defined in section
17 three, article nineteen, chapter forty-seven of this code,
18 shall comply with the provisions of article nineteen, chapter
19 forty-seven of this code.

20 Persons engaging in or prosecuting other business
21 activities in this state may also be subject to other
22 provisions of this code which they must satisfy before
23 commencing or while engaging in a business activity in this
24 state.

25 (b) *Tax levied.* — The business registration tax hereby
26 levied shall be fifteen dollars for each business registration
27 certificate.

28 (1) A separate business registration certificate is
29 required for each fixed business location from which
30 property or services are offered for sale or ~~least~~ to the public
31 as a class, or to a limited portion of the public; or at which
32 customer accounts may be opened, closed or serviced.

← lease
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33 (2) A separate business registration certificate is not
34 required for each coin-operated machine. A separate
35 certificate is required for each location from which making
36 coin-operated machines available to the public is itself a
37 business activity.

38 (3) A business that sells tangible personal property or
39 services from or out of one or more vehicles needs a separate
40 business registration certificate for each fixed location in
41 this state from or out of which business is conducted. A copy
42 of its business registration certificate shall be carried in
43 each vehicle and publicly displayed while business is
44 conducted from or out of the vehicle.

45 (4) A business registration certificate is required by
46 subsection (a) for every person engaging in purposeful
47 revenue generating activity in this state. If that activity is
48 one for which an employment agency license or a collection
49 agency license or a license to sell drug paraphernalia is
50 required and no other business activity is conducted by that
51 person at each business location for which the employment
52 agency license or collection agency license or license to sell
53 drug paraphernalia is issued, then only that license is

54 required for each such activity conducted by the licensee at
 55 each business location. However, if in addition to the
 56 activity for which each license is issued, some other
 57 business activity is conducted by the licensee at such
 58 business location, a separate business registration
 59 certificate is required to conduct the nonlicensed activity.

60 (c) *Exemptions from payment of tax.* — The following
 61 persons are not required to obtain a business registration
 62 certificate, and are exempt from payment of the tax levied
 63 by subsection (b);

64 (1) Any person who had gross income from business
 65 activity of four thousand dollars or less during that person's
 66 tax year for state income tax purposes immediately
 67 preceding the registration year for which a registration
 68 certificate is required under this article.

69 (2) Any organization which qualifies, or would qualify,
 70 for exemption from federal income taxes under section 501
 71 of the Internal Revenue Code of 1954, as amended.

72 (3) Activities of this state and its political subdivisions
 73 which involve sales of tangible personal property,
 74 admissions or services, when those service activities
 75 compete with or may compete with the activities of another
 76 person.

77 (4) Activities of the United States, its agencies or
 78 instrumentalities which are exempt from taxation by the
 79 states.

80 (5) Any person engaged in the business of agriculture
 81 and farming.

82 (6) Any foreign retailer who is not a "retailer engaging
 83 in business in this state" as defined in section one, article
 84 fifteen-a of this chapter, who enters into an agreement with
 85 the tax commissioner to voluntarily collect and remit use
 86 tax on sales to West Virginia customers.

**§11-12-4. Application for business registration certificate;
 issuance of business certificate; effect of business
 certificate; municipal license taxes.**

1 (a) *General rule.* — Except as otherwise provided in this
 2 article, a person shall register with the tax commissioner
 3 prior to engaging in or prosecuting any business activity in
 4 this state. The application for business registration shall be
 5 in such form and contain such information as the tax

6 commissioner may require; and the applicant shall set forth
7 truthfully and accurately the information required by the
8 tax commissioner. Upon receipt of a complete and properly
9 executed application form, accompanied by payment of (or
10 claim of exemption from) the tax levied by section three for
11 each business registration certificate, the tax commissioner
12 shall, if he determines to his satisfaction that all of the
13 conditions precedent to the granting of such certificate
14 have been fulfilled by the applicant, issue such business
15 registration certificate or certificates.

16 (b) *Certificate not to validate illegal activity.* — Nothing
17 in this article, including, but not limited to, any payment of
18 the tax imposed or issuance of any certificate of registration
19 under the provisions hereof, shall be deemed to legalize any
20 act, business activity or transaction which otherwise may
21 be illegal or conducted in violation of law; or to exempt any
22 person from any civil or criminal penalty prescribed for
23 such illegal act or violation.

24 (c) *Certificate not to be construed as consent to general*
25 *tax jurisdiction of this state.* — The filing of an application
26 for business registration certificate (or for renewal thereof)
27 and payment of the tax imposed by section three shall not be
28 construed by the tax commissioner or the courts of this state
29 as consent, submission or admission by the registrant to the
30 general taxing jurisdiction of this state, and liability for
31 such other taxes imposed by this state shall depend upon
32 the relevant facts in each case and the applicable law.

33 (d) *Power of municipalities to impose license taxes*
34 *preserved.* — Notwithstanding the repeal, as of the first day
35 of July, one thousand nine hundred seventy, of certain
36 license taxes then imposed by this article and article
37 thirteen-a of this chapter, the power of a municipality to
38 impose similar license taxes, by ordinance adopted
39 pursuant to the authority of its charter or this code, was and
40 is preserved: *Provided*, That the municipal license taxes
41 imposed on any business, activity, trade or employment
42 that was previously subject to a state license tax under this
43 article or article thirteen-a of this chapter, cannot exceed
44 the state license tax in effect on such business, activity,
45 trade or employment of the first day of January, one
46 thousand nine hundred seventy; and municipalities shall
47 have the power to impose similar penalties as those then

48 provided in this article and article thirteen-a of this chapter
49 for noncompliance with such state license taxes.

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to suspend or cancel
certificate; refusal to renew.**

1 (a) *Registration year.* — All business registration
2 certificates issued under the provisions of section four of
3 this article shall be for a period of one year beginning the
4 first day of July and ending the thirtieth day of the
5 following June.

6 (b) *Revocation or suspension of certificate.*

7 (1) The tax commissioner may cancel or suspend a
8 business registration certificate at any time during a
9 registration year if:

10 (A) The registrant filed an application for a business
11 registration certificate, or an application for renewal
12 thereof, for the registration year that was false or
13 fraudulent.

14 (B) The registrant willfully refused or neglected to file
15 any tax return or to report information required by the tax
16 commissioner for any tax imposed by or pursuant to this
17 chapter.

18 (C) The registrant willfully refused or neglected to pay
19 any tax, additions to tax, penalties or interest, or any part
20 thereof, when they become due and payable under this
21 chapter, determined with regard to any authorized
22 extension of time for payment.

23 (D) The registrant neglected to pay over to the tax
24 commissioner on or before its due date, determined with
25 regard to any authorized extension of time for payment, any
26 tax imposed by this chapter which the registrant collects
27 from any person and holds in trust for this state.

28 (E) The registrant abused the privilege afforded to it by
29 article fifteen or fifteen-a of this chapter to be exempt from
30 payment of the taxes imposed by such articles on some or all
31 of the registrant's purchases for use in business upon
32 issuing to the vendor a properly executed exemption
33 certificate, by failing to timely pay use tax on taxable
34 purchase for use in business, or by failing to either pay the
35 tax or give a properly executed exemption certificate to the
36 vendor.

37 (2) Before canceling or suspending any such certificate,
38 the tax commissioner shall give written notice of his intent
39 to suspend or cancel the business registration certificate of
40 the taxpayer, the reason for the suspension or cancellation,
41 the effective date of the cancellation or suspension, and the
42 date, time and place where the taxpayer may appear and
43 show cause why such business registration certificate
44 should not be canceled or suspended. This written notice
45 shall be served on the taxpayer in the same manner as a
46 notice of assessment is served under article ten of this
47 chapter, not less than twenty days prior to the hearing date.
48 Such hearing shall be held as provided in section nine of
49 said article ten, and the provisions of section ten of said
50 article ten shall apply to any appeal of the administrative
51 decision issued under section nine of that article: *Provided*,
52 That the filing of a petition for appeal with a court having
53 jurisdiction to hear the appeal shall not stay the effective
54 date of the suspension or cancellation. A court may order a
55 stay, after a hearing is held on any motion to stay filed by
56 the registrant, upon finding that the state revenues will not
57 be jeopardized by the granting of the stay. The tax
58 commissioner may, in his discretion and upon such terms as
59 he may specify, agree to stay the effective date of the
60 cancellation or suspension until another date certain.

61 (c) *Refusal to renew.* — The tax commissioner may
62 refuse to issue or renew a business registration certificate if
63 the registrant is delinquent in the payment of any tax
64 administered by the tax commissioner under article ten of
65 this chapter or the corporate license tax imposed by this
66 article, until the registrant pays in full all such delinquent
67 taxes including interest and applicable additions to tax and
68 penalties. In his discretion and upon such terms as he may
69 specify, the tax commissioner may enter into an installment
70 payment agreement with such taxpayer in lieu of the
71 complete payment. Failure of the taxpayer to fully comply
72 with the terms of the installment payment agreement shall
73 render the amount remaining due thereunder immediately
74 due and payable and the tax commissioner may suspend or
75 cancel the business registration certificate in the manner
76 hereinbefore provided.

§11-12-19. Contractors.

1 (a) *General.* — Every person who engages in this state in

2 any contracting business or activity shall have a copy of his
3 business registration certificate available at every
4 construction site in this state until his work at such site is
5 completed.

6 (b) *Definitions.* — For purposes of this section:

7 (1) “Contracting business or activity” means and
8 includes the furnishing of work, or both work and materials
9 for the erecting, building, constructing, altering, repairing,
10 removing or demolishing of any building or other structure,
11 or other improvement appurtenant to any such building or
12 other structure, or for altering, improving or developing of
13 property, under and by virtue of a contract with the owner
14 for an agreed lump sum or upon any other basis of
15 settlement and payment agreed to by the parties, whether
16 such contract be an oral agreement or in writing. The term
17 “contracting business or activity” shall also include the
18 furnishing of work or both work and materials or
19 equipment under and by virtue of a subcontract with a
20 general contractor for an agreed contract price, or by day,
21 or by piece, or by other basis of payment agreed to by
22 parties, whether such contract be an oral agreement or in
23 writing.

24 (2) “Contractor” means every person, including a
25 subcontractor, who agrees by a written or oral contract to
26 engage in contracting activity.

27 (3) “Construction site” means the area in which the
28 contractor is working or beginning to work when engaging
29 in contracting activity.

30 (c) *Penalty for failure to post.* — In addition to other
31 penalties provided by law, any contractor who fails to have
32 available at the construction site during the time he is
33 furnishing contracting activity at such site, his business
34 registration certificate or a copy thereof, shall not be
35 entitled to enforce the mechanics’ lien created by section
36 one or two, article two, chapter thirty-eight of this code, for
37 contracting activity provided by him at such construction
38 site.

§11-12-20. Registration of transient vendors.

1 (a) Prior to conducting business or otherwise
2 commencing operations within this state, a transient
3 vendor shall obtain a business registration certificate from

4 the tax commissioner and pay the tax imposed by this
5 article.

6 (b) Upon receipt of the application for business
7 registration and the posting of the bond required by section
8 twenty-one, the tax commissioner shall issue to the
9 transient vendor a business registration certificate, which
10 shall be valid for the current registration year, if the
11 application is complete and the transient vendor is not
12 delinquent in the payment of any tax imposed by this
13 chapter. Upon renewal of the registration, the tax
14 commissioner shall issue a new certificate, valid for the
15 next ensuing registration year, provided he is satisfied that
16 the transient vendor has complied with the provisions of
17 this article and is not delinquent in the payment of any tax
18 imposed by this article.

19 (c) The transient vendor shall keep the business
20 registration certificate in his possession at all times when
21 conducting business within this state. He shall publicly
22 display the certificate whenever conducting business in this
23 state and shall exhibit the certificate upon the request of an
24 authorized employee of the tax commissioner or any law-
25 enforcement officer.

26 (d) The business registration certificate issued by the
27 tax commissioner shall constitute notice that the transient
28 vendor named therein has registered with the tax
29 commissioner, and shall provide notice to the transient
30 vendor that:

31 (1) Before entering this state to conduct business the
32 transient vendor must notify the tax commissioner, in
33 writing, of the location or locations in this state where he
34 intends to conduct business, and the date or dates on which
35 he intends to conduct such business.

36 (2) Failure to notify, or the giving of false information to
37 the tax commissioner is grounds for suspension or
38 revocation of the transient vendor's business registration
39 certificate.

40 (3) Conducting business in this state without having a
41 valid business registration certificate after such certificate
42 has been suspended or revoked, may result in criminal
43 prosecution or the imposition of fines, or other penalties, or
44 both for violation of this article.

45 (e) *Definitions.* — For purposes of this section:

46 (1) "Transient vendor" means any person who:

47 (A) Brings into this state, by automobile, truck or other
48 means of transportation, or purchases in this state, tangible
49 personal property the sale or use of which is subject to one
50 or more taxes administered by the tax commissioner under
51 article ten of this chapter;

52 (B) Offers or intends to offer such tangible personal
53 property for sale to consumers in this state; and

54 (C) Does not maintain an established office,
55 distribution house, sales house, warehouse, service
56 enterprise, residence from which business is conducted, or
57 other place of business within this state.

58 (2) The term "transient vendor" shall not include any
59 person who:

60 (A) Is a commercial traveler or selling agent who sells
61 only to persons who purchase tangible personal property
62 for purposes of resale to others;

63 (B) Only sells goods, wares or merchandise by sample
64 catalog or brochure for future delivery;

65 (C) Only sells or offers for sale crafts or other handmade
66 items that were made by the seller; or

67 (D) Only sells agricultural and farming products,
68 except nursery products and foliage plants.

§11-12-21. Bond of transient vendors.

1 (a) With its application for a business registration
2 certificate, a transient vendor shall post a bond with the tax
3 commissioner in the amount of five hundred dollars as
4 surety for compliance with the provisions of this article.
5 After a period of demonstrated compliance with these
6 provisions, the tax commissioner may reduce the amount of
7 the bond required of a transient vendor or may eliminate
8 the bond entirely.

9 (b) A transient vendor may file with the tax
10 commissioner a request for voluntary suspension of its
11 business registration certificate. If the tax commissioner is
12 satisfied that the transient vendor has complied with the
13 provisions of this article and has relinquished to the tax
14 commissioner possession of the transient vendor's business
15 registration certificate, the tax commissioner shall return
16 to the transient vendor the bond it posted.

§11-12-22. Notification to department.

1 Prior to entering this state to conduct business, a
2 transient vendor shall notify the tax commissioner, in
3 writing, of the location or locations where he intends to
4 conduct business and the date or dates when he intends to
5 conduct such business.

§11-12-23. Revocation of certificate of transient merchant.

1 The tax commissioner may suspend or revoke a business
2 registration certificate issued to a transient vendor if the
3 transient vendor:

4 (1) Fails to notify the tax commissioner as required by
5 section twenty-two of this article.

6 (2) Provides the tax commissioner with false
7 information regarding the conduct of his business by it
8 within this state.

9 (3) Fails to collect and timely pay over consumers sales
10 and service tax or use tax with regard to all sales of tangible
11 personal property and services sold by him that are subject
12 to the taxes imposed by article fifteen or fifteen-a of this
13 section.

14 (4) Fails to timely file with the tax commissioner any tax
15 return required to be filed by law or regulation for any tax
16 administered by article ten of this chapter, or fails to timely
17 pay the amount of tax shown thereon to be due.

18 (5) Fails to comply with the provisions of section eight,
19 article five of this chapter, providing for assessment and
20 payment of ad valorem property taxes on any goods or
21 merchandise of a transient vendor to be offered or furnished
22 for sale in this state.

§11-12-24. Seizure of property of transient vendor.

1 (a) If a transient vendor conducting business within this
2 state fails to exhibit a valid business registration certificate
3 upon demand by an authorized employee of the tax
4 commissioner, such employee or any peace officer of this
5 state at the request of such employee shall have authority to
6 seize, without warrant, the tangible personal property and
7 automobile, truck or other means of transportation used to
8 transport or carry that property. All property seized shall
9 be deemed contraband and shall be subject to immediate

10 forfeiture proceedings instituted by the tax commissioner
11 under procedures adopted by regulation, except as
12 otherwise provided by this section.

13 (b) Property seized under subsection (a) shall be
14 released upon:

15 (1) Presentation of a valid business registration
16 certificate to an authorized employee of the tax
17 commissioner; or

18 (2) Registration by the transient vendor with the tax
19 commissioner and the posting of a bond in the amount of
20 five hundred dollars, either immediately or within fifteen
21 days after the property is seized.

§11-12-25. Severability.

1 If any provision of this article or the application thereof
2 shall for any reason be adjudged by any court of competent
3 jurisdiction to be invalid, such judgment shall not affect,
4 impair or invalidate the remainder of this article, but shall
5 be confined in its operation to the provision thereon directly
6 involved in the controversy in which such judgment shall
7 have been rendered, and the applicability of such provision
8 to other person or circumstances shall not be affected
9 thereby.

§11-12-31. Interpretation of preceding sections.

1 None of the provisions of the preceding sections in this
2 article shall affect any of the sections of this article dealing
3 with the corporation land holding tax or the corporation
4 license tax; and none of the sections of this article dealing
5 with such taxes shall affect any of the sections of this article
6 dealing with the business registration tax.



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

Ernest O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Isaac C. Stubs
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Sam Tankership
.....
President of the Senate

Joseph P. Albright
.....
Speaker House of Delegates

The within *approved* this the *28th*
May
day of 1986.

Arthur A. Maness Jr.
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 5/23/86

Time 4:44 pm

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SECRETARY OF STATE