WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1986

ENROLLED
Committee Substitute for
SENATE BILL NO. 4

(By Senator, Tawes, Mr. President, et al.)

PASSED May 22, 1986
In Effect July 1, 1986, Passage
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 distress 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 tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-
Provided, That all rules and regulations of the tax commissioner presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.

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

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

(b) Service. — Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or
certified mail, but a return receipt signed by the person to whom subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. Any party requesting a subpoena or subpoena duces tecum is responsible for service thereof and payment of any fee for such service. Service of other subpoenas and subpoenas duces tecum shall be the responsibility of the tax commissioner or his delegate. Any person, except a person in the employ of the state tax department, or any party, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

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

(d) Motion to quash. — Upon motion made promptly, and in an event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held or the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the “West Virginia Rules of Civil Procedure for Trial Courts of Record,” could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court.
(e) Enforcement of compliance. — In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the tax commissioner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court for a refusal to testify therein.

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

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

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

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

(a) General Rule. — Except when required in an official investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (m), it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered
under this article or by any rule or regulation of the tax
commissioner issued thereunder, or disclosed in any audit
or investigation conducted under this article.
(b) Definitions. — For purposes of this section:
(1) Background file document. — The term
"background file document," with respect to a written
determination, includes the request for that written
determination, any written material submitted in support
of the request and any communication (written or
otherwise) between the state tax department and person
outside the state tax department in connection with the
written determination received before issuance of the
written determination.
(2) Disclosure. — The term "disclosure" means the
making known to any person in any manner whatsoever a
return or return information.
(3) Inspection. — The terms "inspection" and
"inspected" mean any examination of a return or return
information.
(4) Return. — The term "return" means any tax or
information return or report, declaration of estimated tax,
claim or petition for refund or credit, or petition for
reassessment that is required by, or provided for, or
permitted, under the provisions of this article (or any article
of this chapter administered under this article) which is
filed with the tax commissioner by, on behalf of, or with
respect to any person, and any amendment or supplement
thereto, including supporting schedules, attachments, or
lists which are supplemental to, or part of, the return so
filed.
(5) Return information. — The term "return
information" means:
(A) A taxpayer's identity; the nature, source or amount
of his income, payments, receipts, deductions, exemptions,
credits, assets, liabilities, net worth, tax liability, tax
withheld, deficiencies, over assessments, or tax payments,
whether the taxpayer's return was, is being, or will be
examined or subject to other investigation or processing, or
any other data received by, recorded by, prepared by,
furnished to, or collected by the tax commissioner with
respect to a return or with respect to the determination of
the existence, or possible existence, of liability (or the
amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture, or other imposition, or offense; and

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

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

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

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

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

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

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

(c) Criminal penalty. — Any officer or employee (or former officer or employee) of this state who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one
thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

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

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

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

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

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

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

Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.
(2) Application of order. — Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in paragraph (1). Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in paragraph (1). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that:

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

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

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

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

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

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

(h) Disclosure of amount of outstanding lien. — If notice
of lien has been recorded pursuant to section twelve of this article, the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes written evidence satisfactory to the tax commissioner that such person has a right in the property subject to such lien or intends to obtain a right in such property.

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

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

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

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

- Who have a current business registration certificate.
- Who are licensed employment agencies.
- Who are licensed collection agencies.
- Who are licensed to sell drug paraphernalia.
- Who are distributors of gasoline or special fuel.
- Who are contractors.
- Who are transient vendors.
- Who are authorized by law to issue a sales or use tax exemption certificate.
- Who are required by law to collect sales or use taxes.
- Who are foreign vendors authorized to collect use tax.
- Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.
- Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).
- Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.
- Who have been convicted of a criminal violation of this state's tax laws.

Disclosure of return information to office of child advocate.

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

- Available return information from the master files of the tax department relating to the social security account number, address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by or with respect to, any individual with respect to whom child support obligations are sought to be enforced, and
(B) Available state return information reflected on any state return filed by, or with respect to any individual described in subparagraph (A), relating to the amount of such individual’s gross income, but only if such information is not reasonably available from any other source.

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

§11-10-5e. Service of notice.

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

§11-10-5f. Timely filing and paying.

1 (a) Delivery in person. — If any return, claim, statement or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, it shall be timely filed: Provided, That the tax commissioner may authorize such delivery to be made to his
agent at such other location or locations in this state, as he
may from time to time prescribe.
(b) *Timely mailing.* — If any return, claim, statement or
other document, required to be filed, or any payment
required to be made within a prescribed period or on or
before a prescribed date under authority of this article or
the provisions of any article of this chapter imposing any
tax administered under this article, is, after such period or
such date, delivered by United States mail to the tax
commissioner or the state tax department, the date of the
United States postmark stamped on the cover in which such
return, claim, statement, or other document or payment is
mailed shall be deemed to be the date of delivery or the date
of payment, as the case may be, provided the following
mailing requirements are met:
(1) The postmark date falls within the prescribed period
or on or before the prescribed date for filing (including any
extension granted for such filing) of the return, claim,
statement or other document, or for making the payment
(including any extension granted for such payment); and
(2) The return, claim, statement, other document or
payment was, within the time prescribed in subparagraph
(1), deposited in the mail in the United States in an envelope
or other appropriate wrapper, postage prepaid, properly
addressed to the tax commissioner or the state tax
department.
(c) *Postmarks.* — This section shall apply in the case of
postmarks not made by the United States postal service
only if and to the extent provided by rules or regulations
prescribed by the tax commissioner.
(d) *Registered and certified mailing.* — For purposes of
this section, if any return, claim, statement, or other
document or payment is sent by United States registered or
certified mail, the date of registration or certification shall
be deemed the postmark date.
(e) *Last date for filing or payment.* — The last date for
timely filing or timely making payment shall include any
extension of time authorized by law or regulation and any
extension of time granted in writing by the tax
commissioner.
§11-10-5g. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

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

§11-10-5h. Enforcement proceedings.

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

§11-10-5i. Enforcement powers.

Any employee of the state tax department, so designated by the tax commissioner, and who shall have attended a course of instruction at the state police academy, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of article nine of this chapter in any county or municipality of this state. Any such employee shall, before entering upon the discharge of his duties, execute a bond with security in the
The department of public safety, any county sheriff (or his deputy) or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of article nine of this chapter and the criminal penalty provisions of this article or any article of this chapter administered under this article.

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

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

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

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

§11-10-5l. Payment of estimated tax.

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

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

In the case of tax payable in installments, if the taxpayer has paid, as an installment of the tax, more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid
installments, if any for the taxable year. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due for the taxable year, the overpayment shall be credited or refunded as provided in section fourteen of this chapter.

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

(a) Check or money order unpaid.

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

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

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

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

(a) Rights and obligations of fiduciary. — Upon notice to the tax commissioner that any person is acting for another
person in a fiduciary capacity, such fiduciary shall assume that power, rights, duties and privileges of such other person in respect of any tax administered under this article (except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

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

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

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

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

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

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

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

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

(c) Compromises authorized. — The tax commissioner may compromise all or part of any civil case arising under...
the provisions of this article. In all such matters involving
issues in respect of tax liability in controversy of fifteen
thousand dollars or more for one or all of the years involved
in such matter, claim or case, the tax commissioner shall
seek the written recommendation of the attorney general
before entering into such compromise. Any liability for tax
(including any interest, additions to tax and penalties) may
be compromised upon one or more, or both, of the following
grounds:
(1) Doubt as to liability; or
(2) Doubt as to collectibility.
(d) Record of compromise. — Whenever a compromise is
made by the tax commissioner under subsection (c), there
shall be placed on file in the tax commissioner’s office the
opinion of the tax commissioner’s legal counsel (with his
reasons therefor) and any written recommendation of the
attorney general received pursuant to subsection (c) above
together with a statement of:
(1) The amount of tax assessed,
(2) The amount of interest, additions to the tax, or
assessable penalty imposed by law on the person against
whom the tax is assessed, and
(3) The amount actually paid in accordance with the
terms of compromise.
Notwithstanding the foregoing provisions of this
subsection (d), no such opinion shall be required with
respect to the compromise of any civil case in which the
amount of tax assessed (including any interest, additions to
tax or assessable penalty) is less than one thousand dollars.
(e) Report to Legislature. — The tax commissioner shall
submit to the Speaker of the House of Delegates, the
President of the Senate and the legislative auditor a
quarterly report summarizing the issues and amounts of
liabilities contained in the agreements and compromises
into which he has entered pursuant to this section. Such
report shall be in a form which preserves the confidentiality
of the identity of the taxpayers involved in such agreements
and compromises. Notwithstanding any other provision of
law to the contrary, the agreements and compromises
entered into pursuant to this section shall be subject to
audit, in their entirety, by the legislative auditor.
§11-10-5r. Technical assistance advisories.

(a) The tax commissioner may issue an informal technical assistance advisory to a person, upon written request, as to the position of his office on the tax consequences of a stated transaction or event, under existing statutes, rules or policies. However, after the issuance of an assessment to a taxpayer, a technical assistance advisory may not be issued to that taxpayer with respect to the issue or issues involved in the assessment.

(b) A technical assistance advisory shall have no precedential value except to the taxpayer who requests the advisory and then only for the specific transaction addressed in the technical assistance advisory, unless specifically stated otherwise in the advisory.

(c) Any modification of an advisory shall be prospective only.

(d) The tax commissioner may, in his discretion, promulgate rules prescribing guidelines and procedures for submission, issuance or denial of assistance, and disclosure of technical assistance advisory: Provided, That the tax commissioner shall not disclose a technical assistance advisory to any person other than the person who requested the advisory, or his authorized representative, without first deleting the name, address and other identifying details of the person to whom the technical assistance advisory was issued, unless that person executes a written waiver of confidentiality.

(e) The tax commissioner shall release copies of technical assistance advisories issued pursuant to this section to the public. Any identifying characteristics or facts about the taxpayer shall be omitted or modified in such technical assistance advisories to such an extent so as to not disclose the name or identity of the taxpayer.

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

(a) Mathematical or clerical error.— When it appears to the tax commissioner that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), or clerical error, the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency or
overpayment in tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay any such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the tax commissioner shall make an assessment of such deficiency in accordance with section seven and shall give the taxpayer written notice thereof.

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

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

(1) **Mathematical or clerical error.** — The term "mathematical or clerical error" means:

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

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

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

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

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

(i) As a specified monetary amount, or

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

(2) **Return.** — The term "return" includes any return, statement, schedule, or list, and any amendment or
supplement thereto filed with respect to any tax administered under this article.

§11-10-7. Assessment.

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

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

(c) Amendment of assessment. — The tax commissioner may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect.
Supplemental assessment. — The tax commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment whenever he ascertains that any assessment is imperfect or incomplete in any material respect.

Address for notice of assessment.

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

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

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

§11-10-7a. Abatement.

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

(1) Is void, or

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

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

(b) Small tax balances. — The tax commissioner is authorized to abate the unpaid portion of an assessment of
any tax, or any liability in respect thereof, which has become final, if the tax commissioner determines under uniform rules promulgated by him that the administration and collection costs involved would not warrant collection 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.

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

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

or

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

(b) Finality of assessment. — The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in paragraph (2), above, within sixty days after
service of notice of such assessment shall not prohibit or
otherwise bar the taxpayer from filing a claim for refund or
credit under the provisions of section fourteen of this article
within the time prescribed therein for the filing of a claim
for refund or credit.

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

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

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

(a) In general. — Notwithstanding the provisions of
section nine of this article, if the amount in dispute in any
petition for reassessment filed under section eight or in any
petition for refund or credit filed under section fourteen
does not exceed ten thousand dollars for any one taxable
year, then, at the option of the taxpayer and concurred in by
the tax commissioner before the hearing of the case,
proceedings in the case shall be conducted under this
section. Such proceedings shall be conducted in an informal
manner and in accordance with such rules of evidence and
rules of procedure as the tax commissioner may prescribe. A
decision, together with a brief summary of the reasons
therefor shall be issued by the tax commissioner.
(b) **Finality of decision.** — A decision entered in any case in which proceedings are conducted under this section shall not be subject to review, administrative or judicial, and shall not be treated as precedent for any other case.

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

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

§11-10-10. **Appeals.**

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

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

1. Wherein the activity taxed was engaged in; or
2. Wherein the taxpayer resides; or
3. Wherein the will of the decedent was probated or letters of administration granted; or
4. To the circuit court of Kanawha County.

(c) **Petition for appeal.** — The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a). The clerk of the circuit court shall, within ten days after date the petition is filed, serve the tax commissioner with a copy of the same by registered
or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections.

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

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

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

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

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

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

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

(d) Prerequisite to final settlement of contract with this state or political subdivision; penalty. — All state, county,
district and municipal officers and agents making contracts
on behalf of this state or any political subdivision thereof
shall withhold payment, in the final settlement of any such
contract, until the receipt of a certificate from the tax
commissioner to the effect that the taxes imposed by
articles thirteen, twenty-one and twenty-four of this
chapter against the contractor have been paid or provided
for. If the transaction embodied in such contract or the
subject matter of the contract is subject to county or
municipal business and occupation tax, then such payment
shall also be withheld until receipt of a release from such
county or municipality to the effect that all county or
municipal business and occupation taxes levied or accrued
against the contractor have been paid. Any official
violating this section shall be subject to a civil penalty of
one thousand dollars, recoverable as a debt in a civil action
brought by the tax commissioner.

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

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

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

(2) The successor in business of any person who sells out
his or its business or stock of goods, or ceases doing
business, shall be personally liable for the payment of tax,
additions to tax, penalties and interest unpaid after
expiration of the thirty-day period allowed for payment:
Provided, That if the business is purchased in an arms-
length transaction, and if the purchaser withholds so much
of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt form the tax commissioner evidencing the payment thereof, the purchaser shall not be personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of such taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable shall be a lien on the property of the successor, which shall be enforced by the tax commissioner as provided in this article.

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

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

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

(j) Refunds; credits; right to offset. — Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the tax
commissioner may reduce the amount of such refund or
credit by the amount of any tax administered under this
article, whether it be the same tax or any other tax, which is
owed by the same taxpayer, and collectible as provided in
subsection (a) of this section.

(k) Spouse relieved of liability in certain cases.

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

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

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

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

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

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

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

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

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

(4) Understatement must exceed specified percentage of
spouse’s income.

(A) Adjusted gross income of $20,000 or less. — If the
spouse’s adjusted gross income for the preadjustment year
is twenty thousand dollars or less, this subsection shall
apply only if the liability described in paragraph (1) is greater than ten percent of such adjusted gross income.

(B) Adjusted gross income of more than twenty thousand dollars. — If the spouse’s adjusted gross income for the preadjustment year is more than twenty thousand dollars, subparagraph (A) shall be applied by substituting “twenty-five percent” for “ten percent”.

(C) Preadjustment year. — For purposes of this paragraph, the term “preadjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

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

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

(5) Adjusted gross income. — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.

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

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

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

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

(d) Release or subordination. — The tax commissioner, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant
to this section when the debt is adequately secured by bond
or other security. He shall issue his certificate of release
when the debt secured has been satisfied. The certificate of
release shall be issued in duplicate. One copy shall be
forwarded to the taxpayer, and the other copy shall be
forwarded to the clerk of the county commission of the
county wherein the lien is recorded. The clerk of the county
commission shall record the release without payment of any
fee and such recordation shall constitute a release and full
discharge of the lien. The tax commissioner may issue his
certificate of release of any such lien as to all or any part of
the property subject to the lien, or may subordinate such
lien to any other lien or interest, but only if there is paid to
the state an amount not less than the value of the interest of
the state in such property, or if the interest of the state in
such property has no value.

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

(f) Discharge of lien. — A sale of property against which
the state has a lien under this section, made pursuant to an
instrument creating a lien on such property, or made
pursuant to a statutory lien on such property, or made
pursuant to a judicial order to enforce any judgment in any
civil action, shall be made subject to and without disturbing
the state tax lien if the state tax lien was recorded more than
thirty days before such sale, unless:

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

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

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


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

(b) "Levy" defined. — The term "levy" as used in this section includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the tax commissioner, or his delegate, may levy upon property or rights to property, he may seize and sell such property or rights to property, whether such property be real or personal, tangible or intangible.
(c) Successive seizures. — Whenever any property or a right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the state of West Virginia for which levy is made, the tax commissioner may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

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

(e) Requirement of notice before levy.

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

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

(3) Continuing levy on salary and wages. — The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the tax commissioner shall promptly
release such levy and notify the person upon whom such levy was made that such levy has been released.

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

(a) Enumeration. — There shall be exempt from levy:

(1) Wearing apparel and school books. — Items of wearing apparel and school books that are necessary for the taxpayer or for members of his or her family.

(2) Fuel, provisions, furniture and personal effects. — If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in his household and of the arms for personal use, livestock and poultry of the taxpayer, as does not exceed one thousand five hundred dollars in value; if the taxpayer is an individual who is not the head of a household, this exemption shall not exceed one thousand dollars.

(3) Books and tools of a trade, business or profession. — So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate one thousand dollars in value.

(4) Unemployment benefits. — Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of this state or any other state.

(5) Undelivered mail. — Mail, addressed to any person, which has not been delivered to the addressee.

(6) Annuity and pension payments. — Annuity or pension payments under any pension or retirement plan, including social security payments.

(7) Workers' compensation. — Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of this state or any other state.

(8) Judgments for support of minor children. — If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his other minor children, so much of his or her salary, wages or other income as is necessary to comply with such judgment.

(9) Public assistance. — Any amount payable to any
person from a public assistance or relief fund created under
the law of the United States or of this state or of any other
state.
(10) Minimum exemption for wages, salary and other
income. — Any amount payable to or receivable by an
individual as wages or salary for services provided by an
employee to his or her employer, or as income derived from
other sources, during any period, to the extent that the total
of such amounts payable to or received by him or her during
such period does not exceed the applicable exempt amount
determined under subsection (d).
(11) Homestead. — If the taxpayer owns a homestead
located in this state, the first five thousand dollars thereof
shall be exempt from levy.
(b) Appraisal. — The officer seizing property of the type
described in subsection (a) shall appraise and set aside to
the owner the amount of such property declared to be
exempt. If the taxpayer objects at the time of the seizure to
the valuation fixed by the office making the seizure, the tax
commissioner shall summon three disinterested individuals
who shall make the valuation.
(c) No other property exempt. — Notwithstanding any
other law of this state, no property or rights to property
shall be exempt from levy other than property specifically
made exempt by subsection (a).
(d) Exempt amount of wages, salary or other income.
(1) In the case of an individual who is paid or receives all
of his wages, salary and other income on a weekly basis, the
amount of the wages, salary and other income payable to or
receivable by the person during any week which is exempt
from levy under paragraph (1), subsection (a) shall be:
(A) Thirty times the state minimum wage per hour, plus
(B) Twenty-five dollars for each additional dependent
of the taxpayer.
§11-10-13b. Surrender of property subject to levy.
(a) Requirement. — Any person in possession of (or
obligated with respect to) property or rights to property
subject to levy upon which a levy has been made shall, upon
demand of the tax commissioner, surrender such property
or rights (or discharge such obligation) to the tax
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.
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.

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

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

(c) Sale of indivisible property. — If any property liable to levy is not divisible, so as to enable the tax commissioner by sale of a part thereof to raise the whole amount of the tax and expense of making the levy and sale, the whole of such property shall be sold. However, where the property sold is
co-owned or jointly-owned by the taxpayer and an innocent
third party, the proceeds of sale shall be divided, based on
the respective interests of the persons owning the property
immediately prior to the levy and sale, and the proceeds
attributable to the interest of the innocent owner or owners
shall be distributed to them: Provided, That where the
property to be sold is so co-owned or jointly-owned by an
innocent third party, having no delinquent tax liability
attempted to be collected under such levy and sale, such
innocent party may petition the circuit court of the county
in which the property is located for relief, including
postponement of the sale, in order that the court can
determine if the property can be partitioned, so as to avoid
sale of the innocent party's portion or grant and afford
other relief by the court protective of the rights and
interests of such innocent party.

§11-10-13d. Sale of perishable goods.

1 If the tax commissioner determines that any property
seized is liable to perish or become greatly reduced in price
or value by keeping, or that such property cannot be kept
without great expense, he shall appraise the value of such
property and:
2 (a) Return to owner. — If the owner of the property can
be readily found, the tax commissioner shall give him notice
of such determination of the appraised value of the property.
3 The property shall be returned to the owner if, within such
time as may be specified in the notice, the owner either:
4 (1) Pays to the tax commissioner an amount equal to the
appraised value; or
5 (2) Gives bond in such form, with such sureties, and in
such amount as the tax commissioner shall prescribe, to pay
the appraised amount at such time as the tax commissioner
determines to be appropriate under the circumstances.
6 (b) Immediate sale. — If the owner does not pay such
amount or furnish such bond in accordance with this
subsection, the tax commissioner shall, as soon as
practicable, make public sale of the property in accordance
with such regulations as may be prescribed by the tax
commissioner.

§11-10-13e. Redemption of property.

1 (a) Before sale. — Any person whose property has been
levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the tax commissioner at any time prior to the sale thereof, and upon such payment, the tax commissioner shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of real estate after sale.

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

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

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

(d) Subrogation to state lien. — Any person redeeming the interest of another shall be subrogated to the lien of the state on such interest. Such person shall lose his right to this lien, however, unless within thirty days after receiving the certificate of sale of personal property or the tax commissioner's deed of real property, he shall file with the clerk of the county in which the real property is located or of the county in which the personal property is located or where the delinquent taxpayer resides or has his business location, or if neither be in this state, the clerk of Kanawha County, his claim against the delinquent taxpayer and a copy of the certificate of sale of personal property or deed to real property.
§11-10-13f. Certificate of sale; deed to real property.

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

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

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

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

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

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

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

(3) As authority for transfer of corporate stock. — If such property consists of stocks, shall be notice, when received, to any corporation, company or association of such transfer, and shall be authority to such corporation,
company or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

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

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

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

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

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

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

§11-10-13h. Records of sale.

(a) Requirement. — The tax commissioner shall, for each county, keep a record of all sales of real property under
section thirteen-c and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers and the date of the deed.

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

§11-10-13i. Expense of levy and sale.

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

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

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

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

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

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

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

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

(b) Return of property. — If the tax commissioner determines that property has been wrongfully levied upon,
it shall be lawful for the tax commissioner to return:

(1) The specific property levied upon;
(2) An amount of money equal to the amount of money levied upon; or
(3) An amount of money equal to the amount of money received by the state of West Virginia from a sale of such property. Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of nine months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the state of West Virginia at a sale pursuant to section thirteen-c (relating to manner and conditions to sale), the state of West Virginia shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the state of West Virginia from the resale of such property.

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

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

(1) In a case described in subsection (b)(2), from the date the tax commissioner receives the money to a date (to be determined by the tax commissioner) preceding the date of return by not more than thirty days; or
(2) In a case described in subsection (b)(3), from the date of the sale of the property to a date (to be determined by the tax commissioner) preceding the date of return by not more than thirty days.

§11-10-15. **Limitations on assessment.**

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

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

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

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

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

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

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

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

(5) *Certain credit carrybacks.* — In the case of a
deficiency attributable to the application to the taxpayer of
a credit carryback (including that attributable to a
mathematical or clerical error in application of the credit
carryback) such deficiency may be assessed at any time
before expiration of the period within which a deficiency
for the taxable year of the unused credit which results in
such carryback may be assessed, or with respect to any
portion of a credit carryback from a taxable year
attributable to a net operating loss carryback, capital loss
carryback, or other credit carryback from a subsequent
taxable year, at any time before expiration of the period
within which a deficiency for such subsequent taxable year
may be assessed. The term "credit carryback" means any
carryback allowed under section eight, article one, chapter
five-e of this code;

(6) *Overpayment of tax credited against payment of
another tax.* — In the event of a final determination that a
taxpayer owes less tax than the amount paid by the
taxpayer, and the amount paid was allowed as a credit
against a tax administered under this article, the period of
limitation upon assessment of a deficiency in the payment
of such other tax due to the overstating of the allowable
credit, shall not expire until ninety days after the tax
commissioner receives written notice from the taxpayer
advising the tax commissioner of the final determination
reducing the taxpayer's liability for a tax allowed as a
credit against a tax administered under this article, or until
the period of limitations upon assessment provided in
subsection (a) has expired, whichever expires the later, and
regardless of the tax year of the deficiency.
(d) Cases under bankruptcy code. — The running of limitations provided in subsection (a), on the making of assessments, or provided in section sixteen, on collection, shall, in a case under title eleven of the United States code, be suspended for the period during which the tax commissioner is prohibited by reason of such case from making the assessment or from collecting the tax and:

(1) For assessment, sixty days thereafter; and

(2) For collection, six months thereafter.

§11-10-17. Interest.

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

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

(c) Erroneous refund or credit. — If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the annual rate established under section seventeen-a shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.
(d) Overpayments. — Interest shall be allowed and paid at the annual rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of each tax administered under this article except the taxes imposed by articles twelve, fourteen and fourteen-a of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-six, interest on overpayments shall be paid at the annual rate established under section seventeen-a from said first day of July, or the date the claim for refund or credit is filed, whichever is the later, regardless of when the tax was paid. Such interest shall be allowed and paid for the period commencing with the date of the filing by the taxpayer of a claim for refund or credit with the tax commissioner and ending with the date of a final administrative or judicial determination of overpayment. The tax commissioner shall, within thirty days after such determination of entitlement to refund, issue his requisition or establish a credit as requested by the taxpayer. Whenever the tax commissioner fails or refuses to issue any such requisition or establish such credit within said thirty-day period, the interest provided herein shall commence to accrue until performance by the tax commissioner. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

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

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

2. No interest payable where personal income tax and corporation net income tax refunded or credited within six months after claim for refund or credit is filed. — In the event of the overpayment of the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax
commissioner issues his requisition or establishes a credit
as requested by the taxpayer within six months after the
date of the filing by the taxpayer of a claim for refund or
credit, no interest shall be allowed under this section.

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

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

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

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

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

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

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

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

(b) *Adjustments of interest rate.*

(1) *Establishment of adjusted rate.* — If the adjusted
prime rate charged by banks (rounded to the nearest full
percent):
(A) During the six-month period ending on the thirtieth day of September of any calendar year; or

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

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

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

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

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

(d) Application of change in interest rate.

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

(2) To overpayments. — The interest rate in effect at the time an overpayment of tax is refunded, or a credit therefor is established, by the tax commissioner, shall not be applied retroactively to the date the claim for refund or credit was filed with the tax commissioner. Interest on moneys owed to taxpayers shall be the sum of the interest amounts calculated for each year or part thereof from date the claim for refund or credit was filed with the tax commissioner until date the refund is paid or a credit therefor is established (such dates determined as provided in section
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52 seventeen) using the interest rate in effect for each
53 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
aggregate: Provided, That this addition to tax shall be imposed only on the net amount of tax due.

(b) Limitation and special rule.

(1) Additions under more than one paragraph:

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

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

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

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

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

(d) False or fraudulent return. — In the case of the filing of any false or fraudulent return with intent to evade any
such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided for in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the tax commissioner. In the case of a joint personal income tax return under article twenty-one of this chapter, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse. 

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

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

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

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

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

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

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

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

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment
shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision (1), subsection (b) for such installment date.

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

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

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

(3) Annualized tax.

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

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

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

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

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

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

(i) Multiplying by twelve the taxable income referred to in subparagraph (A); and
(ii) Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (A).

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

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

§11-10B-1. Legislative intent.

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

§11-10B-2. Definitions.

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

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

(1) "Additions to tax" shall mean that amount imposed
by section eighteen, or eighteen-a, article ten of this chapter, for failure to file a return or pay tax due, or for negligence or intentional disregard of rules and regulations of the tax commissioner, for filing a false or fraudulent return, or for failure to pay estimated tax, and includes "additions to tax" imposed by articles fourteen, fourteen-a, seventeen, nineteen, twenty-one and twenty-four of this chapter, as in effect on the thirtieth day of June, one thousand nine hundred seventy-eight, and preserved in section twenty, article ten of this chapter, for periods ending on or before that date;

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

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

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

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

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

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

The tax commissioner shall establish a three-month tax penalty and additions to tax amnesty program to be conducted during the calendar year, one thousand nine hundred eighty-six. The program shall apply to payments and returns required pursuant to any tax specified in section three, article ten of this chapter, but only if the
obligation for payment or filing of a return, or both, arose prior to, is delinquent as of, or is due and payable as of the first day of January, one thousand nine hundred eighty-six.

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

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

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

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

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

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

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

(c) No refund or credit may be granted for any penalty or addition to tax paid prior to the time the taxpayer files his application for tax penalty and additions to tax amnesty pursuant to section six below. Additionally, no refund or credit shall be granted for any specified taxes plus interest paid under this program unless the tax commissioner, on his
own motion, redetermines the amount of tax and accrued
interest thereon.
(d) The taxpayer shall not be eligible for amnesty for
any tax liability if the taxpayer has other liabilities
outstanding for a tax listed in section three, article ten of
this chapter, for which he has not applied for amnesty.
§11-10B-6. Application for amnesty; requirements; deficiency
assessment.
(a) The provisions of this article apply to any taxpayer
who, on or after the date of commencement of the tax
penalty and additions to tax amnesty program and on or
before the termination date designated by the tax
commissioner, files an application for tax penalty and
additions to tax amnesty on or before the last day of the
third calendar month of the amnesty program and does the
following:
(1) Voluntarily completes, signs and files amended tax
returns to report transactions and other material matters
not included on original returns and pays in full all
additional taxes and interest shown to be due thereon;
(2) Voluntarily completes, signs and files all delinquent
tax returns and pays in full all taxes and interest shown to
be due thereon;
(3) Voluntarily completes, signs and files amended tax
returns to correct all incorrect, deficient or incomplete
original returns and pays in full all taxes and interest shown
to be due thereon; and
(4) Voluntarily pays in full all previously assessed tax
liabilities and other taxes legally collectible under section
eleven, article ten of this chapter, and interest due thereon.
(b) Except as provided in subsection (d) below, all taxes
for which tax penalty and additions to tax amnesty is
sought plus accrued interest shall be paid not later than the
last day of the month next succeeding the termination of the
amnesty program. Interest on the amount of tax due shall be
calculated at the rate prescribed in article ten of this
chapter, which continues to accrue until the tax liability is
paid.
(c) Payments made by the taxpayer under this tax
penalty and additions to tax amnesty program shall be in
money, United States currency or by certified check,
cashier's check or post office money order, payable to the
tax commissioner of this state.

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

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

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

§11-10B-7. Publicity efforts.

The tax commissioner shall cause the tax penalty and
additions to tax amnesty program to be adequately
§11-10B-8. Disposition of revenue collected.

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

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-1. Short title.

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

§11-12-2. Definitions.

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

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

(1) "Agriculture and farming" shall mean and include the production of food, fiber, or woodland products (but not timbering activity) by means of cultivation or tillage of the soil, or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, or by horticulture, or by any other plant or animal production, and all farm practices related (usual or incidental) thereto, including the storage,
packing, shipping and marketing thereof, but not including
any manufacturing, milling, processing or selling of such
products by person other than the producer thereof.
For the purposes of this article:
(2) “Business activity” shall mean and include all
purposeful revenue-generating activity engaged in or
causeto be engaged in with the object of gain or economic
benefit, either direct or indirect, and all activities of this
state and its political subdivisions which involve the sale of
tangible personal property or the rendering of service when
such service activities compete with or may compete with
the activities of another person. “Business activity” shall
not include:
(A) Judicial sales directed by law or court order.
(B) Sales for delinquent taxes of real or personal
property.
(C) The conduct of charitable bingo by any person
licensed under article twenty, chapter forty-seven of this
code.
(D) The conduct of a charitable raffle by any person.
(E) The conduct of a horse or dog race meeting by any
racing association licensed under article twenty-three,
chapter nineteen of this code.
(F) The operation or maintenance of the pari-mutuel
system of wagering during the conduct of a licensed horse or
dog race meeting.
(G) The sale of any commodity during the conduct of a
licensed horse or dog race meeting.
(H) The services of owners, trainers or jockeys which are
essential to the effective conduct of a licensed horse or dog
race meeting.
(I) Occasional or casual sales of property or services.
(3) “Business registration certificate” shall mean a
certificate issued by the tax commissioner authorizing a
person to conduct business within the state of West
Virginia; and when referred to in this chapter as a
certificate of registration or a business franchise
registration certificate, it shall mean a business registration
certificate.
(4) “Occasional sale” or “casual sale” shall mean a sale
of tangible personal property not held or used by a seller in
the course of an activity for which a business registration
certificate is required, including the sale or exchange of all
or substantially all the assets of any business and the
reorganization or liquidation of any business: Provided,
That such sale or exchange is not one of a series of sales or
exchanges sufficient in number, scope and character to
consistute a business activity requiring the holding of a
business registration certificate.
(5) "Person" or "company" shall mean and include any
individual, firm, copartnership, joint venture, association,
corporation, estate, trust, business trust, receiver,
syndicate, club, society, or other group or combination
acting as a unit, or body politic or political subdivision
(whether public or private, or quasi-public) and in the
plural thereof as well as the singular, and when used in
connection with the penalties imposed by section nine of
this article shall mean and include the officers, directors,
trustees, or members of any firm, copartnership, joint
venture, association, corporation, trust, business trust,
syndicate or any other groups or combinations acting as a
unit.
(6) "Registration year" shall mean a period of twelve
calendar months beginning the first day of July and ending
the thirtieth day of the following June.
(7) "Registrant" shall mean any person who has been
issued a business registration certificate under this article
for the current registration year.
(8) "Tax commissioner" shall mean the tax
commissioner or his agent.
§11-12-3. Business registration certificate required; tax levied;
exemption from tax.
(a) Registration required. — No person shall, without a
business registration certificate, engage in or prosecute, in
the state of West Virginia, any business activity without
first obtaining a business registration certificate from the
tax commissioner of the state of West Virginia.
Additionally, before beginning business in this state, such
person:
(1) If a transient vendor, shall comply with the
provisions of sections twenty through twenty-five of this
article.
(2) If a collection agency, shall comply with the
provisions of article sixteen, chapter forty-seven of this code.
(3) If an employment agency, shall comply with the provisions of article two, chapter twenty-one of this code.
(4) If selling drug paraphernalia, as defined in section three, article nineteen, chapter forty-seven of this code, shall comply with the provisions of article nineteen, chapter forty-seven of this code.

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

(b) Tax levied. — The business registration tax hereby levied shall be fifteen dollars for each business registration certificate.
(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.
(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.
(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.
(4) A business registration certificate is required by subsection (a) for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is
required for each such activity conducted by the licensee at each business location. However, if in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

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

1. Any person who had gross income from business activity of four thousand dollars or less during that person's tax year for state income tax purposes immediately preceding the registration year for which a registration certificate is required under this article.
2. Any organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1954, as amended.
3. Activities of this state and its political subdivisions which involve sales of tangible personal property, admissions or services, when those service activities compete with or may compete with the activities of another person.
4. Activities of the United States, its agencies or instrumentalities which are exempt from taxation by the states.
5. Any person engaged in the business of agriculture and farming.
6. Any foreign retailer who is not a "retailer engaging in business in this state" as defined in section one, article fifteen-a of this chapter, who enters into an agreement with the tax commissioner to voluntarily collect and remit use 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.

(a) **General rule.** — Except as otherwise provided in this article, a person shall register with the tax commissioner prior to engaging in or prosecuting any business activity in this state. The application for business registration shall be in such form and contain such information as the tax
commissioner may require; and the applicant shall set forth
truthfully and accurately the information required by the
tax commissioner. Upon receipt of a complete and properly
executed application form, accompanied by payment of (or
claim of exemption from) the tax levied by section three for
each business registration certificate, the tax commissioner
shall, if he determines to his satisfaction that all of the
conditions precedent to the granting of such certificate
have been fulfilled by the applicant, issue such business
registration certificate or certificates.

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

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

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

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

(b) Revocation or suspension of certificate.

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

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

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

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

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

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant’s purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business, or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.
(2) Before canceling or suspending any such certificate, the tax commissioner shall give written notice of his intent to suspend or cancel the business registration certificate of the taxpayer, the reason for the suspension or cancellation, the effective date of the cancellation or suspension, and the date, time and place where the taxpayer may appear and show cause why such business registration certificate should not be canceled or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the hearing date. Such hearing shall be held as provided in section nine of said article ten, and the provisions of section ten of said article ten shall apply to any appeal of the administrative decision issued under section nine of that article: Provided, That the filing of a petition for appeal with a court having jurisdiction to hear the appeal shall not stay the effective date of the suspension or cancellation. A court may order a stay, after a hearing is held on any motion to stay filed by the registrant, upon finding that the state revenues will not be jeopardized by the granting of the stay. The tax commissioner may, in his discretion and upon such terms as he may specify, agree to stay the effective date of the cancellation or suspension until another date certain. (c) Refusal to renew. — The tax commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the tax commissioner under article ten of this chapter or the corporate license tax imposed by this article, until the registrant pays in full all such delinquent taxes including interest and applicable additions to tax and penalties. In his discretion and upon such terms as he may specify, the tax commissioner may enter into an installment payment agreement with such taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the tax commissioner may suspend or cancel the business registration certificate in the manner hereinbefore provided.

§11-12-19. Contractors.

(a) General. — Every person who engages in this state in
any contracting business or activity shall have a copy of his
business registration certificate available at every
construction site in this state until his work at such site is
completed.

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

(1) "Contracting business or activity" means and
includes the furnishing of work, or both work and materials
for the erecting, building, constructing, altering, repairing,
removing or demolishing of any building or other structure,
or other improvement appurtenant to any such building or
other structure, or for altering, improving or developing of
property, under and by virtue of a contract with the owner
for an agreed lump sum or upon any other basis of
settlement and payment agreed to by the parties, whether
such contract be an oral agreement or in writing. The term
"contracting business or activity" shall also include the
furnishing of work or both work and materials or
equipment under and by virtue of a subcontract with a
general contractor for an agreed contract price, or by day,
or by piece, or by other basis of payment agreed to by
parties, whether such contract be an oral agreement or in
writing.

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

(3) "Construction site" means the area in which the
contractor is working or beginning to work when engaging
in contracting activity.

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

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

(a) Prior to conducting business or otherwise
commencing operations within this state, a transient
vendor shall obtain a business registration certificate from
the tax commissioner and pay the tax imposed by this
article.
(b) Upon receipt of the application for business
registration and the posting of the bond required by section
twenty-one, the tax commissioner shall issue to the
transient vendor a business registration certificate, which
shall be valid for the current registration year, if the
application is complete and the transient vendor is not
delinquent in the payment of any tax imposed by this
chapter. Upon renewal of the registration, the tax
commissioner shall issue a new certificate, valid for the
next ensuing registration year, provided he is satisfied that
the transient vendor has complied with the provisions of
this article and is not delinquent in the payment of any tax
imposed by this article.
(c) The transient vendor shall keep the business
registration certificate in his possession at all times when
conducting business within this state. He shall publicly
display the certificate whenever conducting business in this
state and shall exhibit the certificate upon the request of an
authorized employee of the tax commissioner or any law-
enforcement officer.
(d) The business registration certificate issued by the
tax commissioner shall constitute notice that the transient
vendor named therein has registered with the tax
commissioner, and shall provide notice to the transient
vendor that:
(1) Before entering this state to conduct business the
transient vendor must notify the tax commissioner, in
writing, of the location or locations in this state where he
intends to conduct business, and the date or dates on which
he intends to conduct such business.
(2) Failure to notify, or the giving of false information to
the tax commissioner is grounds for suspension or
revocation of the transient vendor's business registration
certificate.
(3) Conducting business in this state without having a
valid business registration certificate after such certificate
has been suspended or revoked, may result in criminal
prosecution or the imposition of fines, or other penalties, or
both for violation of this article.
(e) Definitions. — For purposes of this section:
(1) "Transient vendor" means any person who:
(A) Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the tax commissioner under article ten of this chapter;

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

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

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

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

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

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

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


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

(b) A transient vendor may file with the tax commissioner a request for voluntary suspension of its business registration certificate. If the tax commissioner is satisfied that the transient vendor has complied with the provisions of this article and has relinquished to the tax commissioner possession of the transient vendor's business registration certificate, the tax commissioner shall return to the transient vendor the bond it posted.
§11-12-22. Notification to department.

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

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

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

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

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

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

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

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

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

1 (a) If a transient vendor conducting business within this state fails to exhibit a valid business registration certificate upon demand by an authorized employee of the tax commissioner, such employee or any peace officer of this state at the request of such employee shall have authority to seize, without warrant, the tangible personal property and automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate
forfeiture proceedings instituted by the tax commissioner
under procedures adopted by regulation, except as
otherwise provided by this section.
(b) Property seized under subsection (a) shall be
released upon:
(1) Presentation of a valid business registration
certificate to an authorized employee of the tax
commissioner; or
(2) Registration by the transient vendor with the tax
commissioner and the posting of a bond in the amount of
five hundred dollars, either immediately or within fifteen
days after the property is seized.

§11-12-25. Severability.

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

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

None of the provisions of the preceding sections in this
article shall affect any of the sections of this article dealing
with the corporation land holding tax or the corporation
license tax; and none of the sections of this article dealing
with such taxes shall affect any of the sections of this article
dealing with the business registration tax.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Wilson
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

J. Fred Yager
Clerk of the Senate

Donald J. Kaye
Clerk of the House of Delegates

Sanford M. Calhoun
President of the Senate

Joseph P. Alleva
Speaker House of Delegates

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

Rhoda M. Massa
Governor