

Veto-59



WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

Revised Committee Substitute for

SENATE BILL NO. 59

(By Senators *Rock and Tupper*)



PASSED March 1 1986

In Effect from Passage



ENROLLED
REVISED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 59
(SENATORS LOEHR AND TUCKER, *original sponsors*)

[Passed March 1, 1986; in effect from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-b, relating to providing a one-time only tax penalty and additions to tax amnesty program for delinquent taxpayers who file returns for taxable periods ending or transactions or uses occurring prior to January one, one thousand nine hundred eighty-six; disposition of revenue collected.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-b, to read as follows:

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

§11-10B-1. Legislative intent.

1 It is the intent of the Legislature in enacting the tax pen-
2 alty and additions to tax amnesty program, as provided by
3 this article, to improve compliance with this state's tax

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

§11-10B-2. Definitions.

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

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

8 (1) “Additions to tax” shall mean that amount imposed
9 by section eighteen, article ten of this chapter, for failure
10 to file a return or pay tax due, or for negligence or inten-
11 tional disregard of rules and regulations of the tax com-
12 missioner, or for filing a false or fraudulent return, and
13 includes “additions to tax” imposed by articles fourteen,
14 fourteen-a, seventeen, nineteen, twenty-one and twenty-
15 four of this chapter, as in effect on the thirtieth day of
16 June, one thousand nine hundred seventy-eight, and pre-
17 served in section twenty, article ten of this chapter, for
18 periods ending on or before that date.

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

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

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

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

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

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

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

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

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

4 (1) The tax commissioner shall waive all penalties, as

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

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

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

17 (1) The taxpayer is the subject of a criminal investiga-
18 tion by any agency of this state; or

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

30 (c) No refund or credit may be granted for any penalty
31 or addition to tax paid prior to the time the taxpayer
32 files his application for tax penalty and additions to tax
33 amnesty pursuant to section six below. Additionally, no
34 refund or credit shall be granted for any specified taxes
35 plus interest paid under this program unless the tax com-
36 missioner, on his own motion, redetermines the amount
37 of tax and accrued interest thereon.

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

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

1 (a) The provisions of this article apply to any taxpayer
2 who, on or after the date of commencement of the tax
3 penalty and additions to tax amnesty program and on or
4 before the termination date designated by the tax com-
5 missioner, files an application for tax penalty and addi-
6 tions to tax amnesty and does the following:

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

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

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

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

22 (b) Except as provided in subsection (d) below, all
23 taxes for which tax penalty and additions to tax amnesty
24 is sought plus accrued interest shall be paid at the time
25 the application for amnesty is filed. Interest on the amount
26 of tax due shall be calculated at the rate prescribed in
27 article ten of this chapter, which continues to accrue until
28 the tax liability is paid.

29 (c) Payments made by the taxpayer under this tax
30 penalty and additions to tax amnesty program shall be in
31 money, United States currency or by certified check,
32 cashier's check or post-office money order, payable to the
33 tax commissioner of this state.

34 (d) The tax commissioner may, at his discretion and
35 upon such terms and conditions as he may prescribe,
36 enter into an installment payment agreement with the
37 taxpayer, such installment payment agreement to be in

38 lieu of the full immediate payment by subsection (b) of
39 this section. Any such agreement shall include interest on
40 the outstanding amount due. Failure of the taxpayer to
41 fully comply with the terms of the installment payment
42 agreement shall render the waiver of penalties and addi-
43 tions to tax under this amnesty program null and void,
44 unless the tax commissioner determines that the failure
45 was due to reasonable cause, and, in the event of such
46 unexcused noncompliance with the terms of the install-
47 ment payment agreement, the total amount of tax, inter-
48 est and all additions to tax and penalties shall be imme-
49 diately due and payable.

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

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

§11-10B-7. Publicity efforts.

1 The tax commissioner shall cause the tax penalty and
2 additions to tax amnesty program to be adequately publi-
3 cized so as to maximize public awareness of and participa-
4 tion in this program.

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

1 All revenue collected by the tax commissioner under
2 the provisions of this article, the disposition of which is
3 not otherwise dedicated by constitutional provision or
4 prior statutory enactment, shall be paid by him into a
5 special "disaster recovery fund," which is hereby created
6 in the state treasury to be used as appropriated by the
7 Legislature for the recovery of losses occurring in the
8 November, one thousand nine hundred eighty-five flood
9 disaster, in twenty-nine counties of this state.

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

James O. Desjardis

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originated in the Senate.

In effect from passage.

Judd C. Welch

Clerk of the Senate

Donald J. Hogg

Clerk of the House of Delegates

Sanford

President of the Senate

Joseph P. Allright

Speaker House of Delegates

The within *disappeared* this the *26th*
day of *March*, 1986.

Arthur A. Maness

Governor

PRESENTED TO THE
GOVERNOR

Date 3/5/86

Time 5:21 p.m.

RECEIVED

1936 MAR 29 PM 4:23

STATE SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86