WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED

(Revised Committee Substitute for)
SENATE BILL NO. 57

(By Senator

PASSED March 1, 1986
In Effect from Passage

1986
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 penalty and additions to tax amnesty program, as provided by this article, to improve compliance with this state's tax

[Passed March 1, 1986; in effect from passage.]
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 under-
paid tax liabilities which accrued prior to or are delin-
quent as of January one, one thousand nine hundred
eighty-six. The benefits gained by this program include,
among other things, accelerated receipt of certain cur-
rently owed taxes, permanently bringing into the tax
system taxpayers who have been evading tax, and pro-
viding an opportunity for taxpayers to clear their rec-
ords and satisfy tax obligations. It is further the intent of
the Legislature in enacting this article that the tax pen-
alty 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 to-
day.

§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, article ten of this chapter, for failure
to file a return or pay tax due, or for negligence or inten-
tional disregard of rules and regulations of the tax com-
misssioner, or for filing a false or fraudulent return, 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 pre-
served 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 section:

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

(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 tax 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 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 at the time the application for amnesty is filed. 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 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 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.

1 The tax commissioner shall cause the tax penalty and additions to tax amnesty program to be adequately publicized so as to maximize public awareness of and participation in this program.
§11-10B-8. Disposition of revenue collected.

1 All revenue 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 a special "disaster recovery fund," which is hereby created in the state treasury 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 Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill passed this the 26th day of March, 1986.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/5/86
Time 5:30 p.m.