WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 430
(Originating in the Committee)
(By Senator on the Judiciary)

PASSED April 10, 1993
In Effect 120 Days from Passage
AN ACT to amend and reenact section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code, all relating to taxation procedure and administration; permitting disclosure of certain business registration information to the state treasurer for recovery and disposition of unclaimed property; defining due diligence; reducing the time period for a presumption of abandonment of property from seven years to five years; clarifying state's authority to take custody of abandoned property; requiring the holder of unclaimed property to exercise due diligence to locate the whereabouts of the owner of the property; and definitions.

Be it enacted by the Legislature of West Virginia:

That section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

(a) Purpose. — The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality. —

(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g and thirteen-h of this chapter and article one, chapter five-e of this code for any tax year beginning on or after the first day of July, one thousand nine hundred ninety-one. The categories by dollar amount of credit received shall be as follows:

(A) More than $1.00, but not more than $50,000;
(B) More than $50,000, but not more than $100,000;
(C) More than $100,000, but not more than $250,000;
(D) More than $250,000, but not more than $500,000;
(E) More than $500,000, but not more than $1,000,000; and
(F) More than $1,000,000.

(2) Notwithstanding any provision in this code to the
contrary, the tax commissioner shall publish in the state register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the tax commissioner is required to seek the written recommendation of the attorney general and the attorney general has not recommended acceptance of such compromise or when the tax commissioner compromises any civil tax case for an amount that is more than two hundred fifty thousand dollars less than the assessment of tax owed made by the tax commissioner:

(A) The names and addresses of taxpayers that are parties to such compromise;

(B) A summary of such compromise;

(C) Any written advice or recommendation rendered by the attorney general regarding such compromise; and

(D) Any written advice or recommendation rendered by the tax commissioner's staff.

Under no circumstances may the tax return of the taxpayer nor any other information which would otherwise be confidential under any other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the tax commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by such information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the tax commissioner may enter into written exchange of information agreements with the commissioners of labor, employment security and workers' compensation to disclose and receive return information: Provided, That the tax commissioner may promulgate rules pursuant to chapter twenty-nine-a of
this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the tax commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. Such agreements shall be published in the state register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information so disclosed shall remain confidential in the hands of such other division to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the tax commissioner may enter into a written agreement with the state treasurer to disclose to the state treasurer the following business registration information: (1) The names, addresses, and federal employer identification numbers of businesses which have registered to do business in West Virginia; and (2) the type of business activity and organization of those businesses. Disclosure of such information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder shall otherwise remain confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. — Beginning on the fifteenth day of January, one thousand nine hundred
ninety-two and every fifteenth day of January thereafter, the governor shall submit to the president of the Senate and the speaker of the House of Delegates a tax expenditure report. Such report shall expressly identify all tax expenditures. Within three-year cycles, such reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the tax commissioner. For purposes of this section, the term "tax expenditure" shall mean a provision in the tax laws administered under this article, including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances:

Provided, That the tax commissioner shall promulgate rules setting forth the procedure by which he or she will compile such reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. — Notwithstanding any other provisions of this section or of this code, no return information made available to the tax commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in any manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of such other states' confidentiality laws.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions and use of terms.

As used in this article, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company or a private banker engaged in business in this state, or a banking institution as defined in section one, article four, chapter thirty-one of this code.
(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership or any association for business purposes of two or more individuals.

(c) "Due diligence" shall include, but not be limited to, the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

(d) "Financial organization" means any savings and loan association, building and loan association, industrial loan company, credit union, business association which issues travelers' checks or investment company engaged in business in this state.

(e) "Holder" means any person in possession of property subject to this article belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this article.

(f) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(g) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this article or his legal representative.

(h) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity; but shall not include any retirement system supported entirely or in part by the state of West Virginia.

(i) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water,
steam or gas.

§36-8-2. Property held by banking or financial organizations.

1 The following property held or owing by a banking or financial organization is presumed abandoned:

3 (a) Any noninterest bearing demand, savings or matured time deposit made in this state with a banking organization, or other financial organization, excluding any charges which may lawfully be withheld, if the owner has not within the immediately preceding five years increased or decreased the amount of the deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the deposit within the five-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

14 (1) Corresponded in writing with the organization concerning the deposit; or

16 (2) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization.

19 In any case where the owner has taken any of the actions specified in paragraph (1) or (2) of this subdivision there shall thereafter be no presumption of abandonment unless and until another five years have passed without any increase or decrease in the amount of the deposit and without any of such actions having been taken in the last year of such further five-year period.

27 (b) Any interest bearing demand, savings or matured time deposit made in this state with a banking organization or other financial organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding fifteen years increased or decreased the amount of the deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the deposit within the fifteen-year period, there shall be no presumption of abandonment if the owner
has within the immediately preceding year:

(1) Presented the passbook or other similar evidence of deposit for the crediting of interest; or

(2) Corresponded in writing with the organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization.

In any case where the owner has taken any of the actions specified in paragraph (1), (2) or (3) of this subdivision there shall thereafter be no presumption of abandonment unless and until another fifteen years have passed without any increase or decrease in the amount of the deposit and without any of such actions having been taken in the last year of such further fifteen-year period.

(c) Any noninterest bearing funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding five years increased or decreased the amount of the funds or deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the funds or deposit within said five-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Corresponded in writing with the financial organization concerning the funds or deposit; or

(2) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

In any case where the owner has taken any of the actions specified in paragraph (1) or (2) of this subdivision there shall thereafter be no presumption of abandonment unless and until another five years have passed without any increase or decrease in the amount
of the funds or deposit and without any of such actions having been taken in the last year of such further five-year period.

(d) Any interest bearing funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding fifteen years increased or decreased the amount of the funds or deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the funds or deposit within said fifteen-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

In any case where the owner has taken any of the actions specified in paragraph (1), (2) or (3) of this subdivision there shall thereafter be no presumption of abandonment unless and until another fifteen years have passed without any increase or decrease in the amount of the funds or deposit and without any of such actions having been taken in the last year of such further fifteen-year period.

(e) Any sum payable on any check certified in this state or on any written instrument issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, a certificate of deposit and draft that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within the
preceeding year corresponded in writing with the 
banking or financial organization concerning it, or 
otherwise indicated an interest as evidenced by a 
memorandum on file with the banking or financial 
oraganization.

(f) Any funds or other personal property, tangible or 
intangible, removed from a safe-deposit box or any 
other safekeeping depository in this state on which the 
lease or rental period has expired due to nonpayment 
of rental charges or other reason, or any surplus 
amounts arising from the sale thereof pursuant to law, 
that have been unclaimed by the owner for more than 
five years from the date on which the lease or rental 
period expired.

(g) No holder may impose with respect to property 
described in this section any charges due to dormancy 
or inactivity or cease payment of interest unless there 
is an enforceable written contract between the holder 
and the owner of the property pursuant to which the 
holder may impose those charges or cease payment of 
interest.

(h) Any amount held or owing by any organization 
for the payment of a travelers check on which such 
organization is directly liable shall be presumed 
abandoned if such amount is held or owing for pay-
ment of a travelers check which shall have been 
outstanding for more than fifteen years from the date 
of its sale.

§36-8-3. Unclaimed funds held by life insurance 
corporations.

(a) Unclaimed funds, as defined in this section, held 
and owing by a life insurance corporation shall be 
presumed abandoned if the last-known address, 
according to the records of the corporation, of the 
person entitled to the funds is within this state. If a 
person other than the insured or annuitant is entitled 
to the funds and no address of such person is known 
to the corporation or if it is not definite and certain 
from the records of the corporation what person is 
entitled to the funds, it is presumed that the last-
known address of the person entitled to the funds is the same as the last-known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds", as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than five years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five years: (1) Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan; or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

§36-8-4. Deposits and refunds held by utilities.

The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made subsequent to the year one thousand nine hundred fifty-seven, by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than five years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received subsequent to the year one thousand nine hundred fifty-seven, for utility services rendered in this state, together with any
interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than five years after the date it became payable in accordance with the final determination or order providing for the refund.

§36-8-5. Undistributed dividends and distributions of business associations.

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder or other security holder, or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it, within five years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state and the records of the business association indicate that the last-known address of the person entitled thereto is in this state.

§36-8-7. Property held by fiduciaries.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after the final date for distribution of such property and the cessation of all active fiduciary duties as required by law or the instrument under which the fiduciary is acting, increased or decreased the principal, accepted payment of principal or income, corresponded in writing with the fiduciary concerning the property, or otherwise indicated an interest as evidence by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization
or a financial organization, or by a business association
organized under the laws of or created in this state; or
(b) If it is held by a business association, doing
business in this state, but not organized under the laws
of or created in this state, and the records of the
business association indicate that the last-known
address of the person entitled thereto is in this state;
or
(c) If it is held in this state by any other person.
§36-8-8. Property held by courts and public officers and
agencies.
(a) All intangible personal property held for the
owner by any state or federal court, public corpora-
tion, public authority, or public officer in this state, or
a political subdivision thereof, that has remained
unclaimed by the owner for more than five years is
presumed abandoned: Provided, That this provision
shall in no way affect such property in the custody or
control of any state or federal court in any pending
action: Provided, however, That if any federal statute
provides for the distribution of any unclaimed proper-
ty subject to the jurisdiction of a federal court, this
statute shall not apply.
(b) Notwithstanding the provisions of subsection (a)
of this section, all intangible personal property in the
custody or control of a general receiver of a state court
of record appointed pursuant to the provisions of
article six, chapter fifty-one of this code, that has
remained unclaimed by the owner for more than five
years is presumed abandoned: Provided, That any
such property in the custody or control of any such
general receiver in which there is any contingent
remainder interest, or any vested remainder interest
which is subject to open to let in persons not yet in
being or to open to let in members of any class, or any
executory interest, or executory devise interest, or any
base, qualified, conditional, or limited fee estate or
interest, or any other qualified, conditional, limited or
determinable estate or interest, shall not be presumed
abandoned until such property has remained
unclaimed for more than five years after such estate
or interest has vested or any such class has closed and
the persons entitled to such property have been
determined.

§36-8-8a. Providing for recovery of abandoned property.

With respect to property originating or issued by this
state, any political subdivision, thereof or any entity
incorporated, organized, created or otherwise located
therein, the following provision shall apply:

(a) Unless presumed abandoned and subject to the
custody of this state by any other provision of law, all
intangible property, including, but not limited to, any
interest, dividend, or other earnings thereon, less any
lawful charges, that is held by a business association,
federal, state or local government or person or entity,
regardless of where the holder may be found, is
presumed abandoned and subject to the custody of this
state as unclaimed property if:

(1) The address of the owner was never known or
the last known address of the owner is unknown; and

(2) The entity originating or issuing the intangible
property is in this state or any of its political subdivi-
sions or is incorporated, organized, created or other-
wise located in this state.

(b) Subsection (a) of this section shall apply to all
property held at the time of enactment or at anytime
thereafter regardless of when such property became
or becomes presumptively abandoned.

§36-8-8b. Presumption of abandonment of personal property
held by federal government.

(a) All tangible personal property or intangible
personal property, including choses in action in
amounts certain, and all debts owed, entrusted funds
or other property held by any federal, state or local
government or governmental subdivision, agency,
entity, officer or appointee thereof, shall be presumed
abandoned in this state if the last-known address of
the owner of the property is in this state and the
property has remained unclaimed for five years:
Provided, That if another provision of law provides for a presumption of abandonment and custodial taking of the subject property by this state upon the passage of a longer period of time, such longer period of time shall control.

(b) This section shall apply to all abandoned property held by any federal, state or local government or governmental subdivision, agency, entity, officer or appointee thereof, at the time of enactment, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

§36-8-9. Miscellaneous personal property held for another person; exception; prohibiting the levying of charges on inactive savings account.

All personal property not otherwise covered by this article, including any income or increment thereon and after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned: Provided, That this section shall not apply to such property held or owing by a utility prior to the year one thousand nine hundred fifty-seven: Provided, however, That notwithstanding the provisions of section two of this article, no banking or other financial organization or institution shall, after the effective date of this section, demand, collect, charge or contract to receive any charge due to dormancy or inactivity on any interest bearing savings or time deposit for any period of time prior to the withdrawal of such funds by the depositor, his personal agent or representative, or the accrual under this article of the right of the state to deposit or sell as abandoned property any such deposit. For purposes of this proviso, any interest bearing savings or time deposit shall be deemed to be dormant or inactive if the depositor, his personal agent or representative has not within the immediately preceding two years increased or decreased the amount of the deposit.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this article shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned under this article;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(4) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this article.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before the thirty-first day of March of each year as of the thirty-first day of December next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.
(e) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. All holders shall exercise due diligence, as defined in subdivision (i), section one of this article, at least sixty days but no more than 120 days prior to submission of the report to ascertain the whereabouts of the owner if: (1) The holder has in its records and address for the apparent owner which the holder's records do not disclose to be inaccurate; and (2) the property has a value of fifty dollars or more.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this article shall include all items of property which, under the provisions hereof, would have been presumed abandoned on the effective date of this article had this article been in effect on the first day of July, one thousand nine hundred fifty-two.

(h) The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that the person has failed to report property that should have been reported pursuant to this section.

(i) Every person filing a report shall deliver or pay to the state treasurer all abandoned property specified in the report, at the time of the report.

If an examination of the records of a person results in disclosure of property reportable and deliverable under this section, the treasurer may assess the cost of the examination against the holder at a rate established by administrative regulation promulgated pursuant to chapter twenty-nine-a of this code, but in no case may the charges exceed the value of the property found to be reportable and deliverable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is appointed this the 12th day of May, 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/23/93
Time 9:10 AM