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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4303

(By Delegates Flanigan and Wright)



Passed March 14, 1998

In Effect Ninety Days from Passage

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H. B. 4303

(BY DELEGATES FLANIGAN AND WRIGHT)

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AN ACT to amend and reenact section eighteen-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; the penalty for underestimating individual quarterly tax payments; and increasing the minimum amount from two hundred fifty dollars to six hundred dollars before an addition to tax may be imposed.

*Be it enacted by the Legislature of West Virginia:*

That section eighteen-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

**§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.**

1 (a) *Additions to tax.* — Except as otherwise provided  
2 in this section, in the case of any underpayment of  
3 estimated tax, there shall be added to the tax due for the  
4 taxable year, under article twenty-one, twenty-three or  
5 twenty-four of this chapter, an amount determined by  
6 applying the rate established under section seventeen or  
7 seventeen-a of this article, as appropriate for the taxable  
8 year, to the amount of the underpayment of estimated tax,  
9 for the period of the underpayment.

10 (b) *Amount of underpayment.* — For purposes of  
11 subsection (a) of this section, the amount of the  
12 underpayment shall be the excess of the amount  
13 determined under subdivision (1) of this subsection over  
14 the amount determined under subdivision (2) of this  
15 subsection.

16 (1) The amount of the installment required to be paid  
17 on or before the due date for the installment, if the  
18 estimated tax due for the taxable year were an amount  
19 equal to ninety percent of the tax shown on the annual  
20 return for the taxable year divided by the number of  
21 installments taxpayer was required to make for the taxable  
22 year, or, if no return was filed, ninety percent of the tax  
23 for such year divided by the number of installment  
24 payments taxpayer was required to make for the taxable  
25 year.

26 (2) The amount, if any, of the installment paid on or  
27 before the last date prescribed for payment of that  
28 installment.

29 (c) *Period of underpayment.* — The period of  
30 underpayment of an installment shall run from the date  
31 the installment was required to be paid (due date) to  
32 whichever of the following dates is the earlier:

33 (1) The due date of the annual return following the  
34 close of the taxable year for which the installment was due  
35 (determined without regard to any extension of time for  
36 filing such annual return); or

37 (2) With respect to any portion of the underpayment,  
38 the date on which such portion is paid. For purposes of  
39 this subdivision, a payment of estimated tax shall be  
40 credited against unpaid required installments in the order  
41 in which such installments are required to be paid.

42 (d) *Exception.* — Notwithstanding the provisions of  
43 the preceding subsections, the additions to tax with respect  
44 to any underpayment of any installment shall not be  
45 imposed if the total amount of all payments of estimated  
46 tax made on or before the last date prescribed for the  
47 payment of such installment equals or exceeds the amount

48 which would have been required to be paid on or before  
49 such date if the estimated tax were whichever of the  
50 following is lesser:

51 (1) *Prior year's tax.* — One hundred percent of the tax  
52 shown on the return of the taxpayer for the preceding  
53 taxable year, if a return showing a liability for tax was  
54 filed by the taxpayer for the preceding taxable year and  
55 such preceding year was a taxable year of twelve months;

56 (2) *Annualized tax.* — In the case of any required  
57 installment, if the taxpayer establishes that the annualized  
58 income installment is less than the amount determined  
59 under subdivision (1) of this subsection and under  
60 subsection (b) of this section, then the amount of such  
61 required installment shall be the annualized income  
62 installment. For purposes of this subdivision, there shall  
63 be four required installments for each taxable year and the  
64 "annualized income installment" is the difference (if any)  
65 determined by subtracting the amount determined under  
66 paragraph (B) of this subdivision from the amount  
67 determined under the appropriate clause of paragraph (A)  
68 of this subdivision. When making these computations, the  
69 rules in paragraph (C) of this subdivision shall be  
70 followed:

71 (A) (i) *Corporations.* — An amount equal to the  
72 applicable percentage of the tax of a corporation for the  
73 taxable year computed by placing on an annualized basis  
74 its taxable income:

75 (I) For the first three months of the taxable year, in the  
76 case of the first installment;

77 (II) For the first three months of or the first five  
78 months of the taxable year, in the case of the second  
79 installment;

80 (III) For the first six months or the first eight months  
81 of the taxable year, in the case of the third installment; and

82 (IV) For the first nine months or for the first eleven  
83 months of the taxable year, in the case of the fourth  
84 installment.

85 (ii) *Individuals.* — An amount equal to the applicable  
 86 percentage of the tax of an individual for the taxable year  
 87 computed by placing on an annualized basis the taxable  
 88 income of the individual for months in the taxable year  
 89 ending before the due date for the installment.

90 (B) The aggregate amount of any prior required  
 91 installments for the taxable year.

92 (C) *Special rules.* — For purposes of this subdivision:

93 (i) *Annualization.* — Taxpayer's taxable income shall  
 94 be placed on an annualized basis in the same manner that  
 95 taxable income is annualized for federal income tax  
 96 purposes for the taxable year.

97 (ii) *Applicable percentage.* — The applicable  
 98 percentage shall be determined from the following table:

99 <b>In the case of the following</b>	<b>The applicable</b>
100 <b>required installments:</b>	<b>percentage is:</b>
101 1st . . . . .	22.5
102 2nd . . . . .	45
103 3rd . . . . .	67.5
104 4th . . . . .	90

105 (e) *Additional exceptions.* —

106 (1) *Where tax amount is small.* — No addition to tax  
 107 shall be imposed under subsection (a) of this section for  
 108 any taxable year if the tax shown on the return for such  
 109 taxable year (or, if no return is filed, the tax), reduced by  
 110 the credit allowable for withheld tax, is less than six  
 111 hundred dollars.

112 (2) *Where individual has no personal income tax*  
 113 *liability for preceding taxable year.* — No addition to tax  
 114 shall be imposed under subsection (a) of this section for  
 115 any taxable year if:

116 (A) The individual's preceding taxable year was a  
 117 taxable year of twelve months;

118 (B) The individual did not have any West Virginia

119 personal income tax liability for the preceding taxable  
120 year;

121 (C) The individual was a citizen or resident of the  
122 United States throughout the preceding taxable year; and

123 (D) The individual's West Virginia personal income  
124 tax liability for the current taxable year is less than five  
125 thousand dollars.

126 (3) *Waiver in certain cases.* — No addition to tax shall  
127 be imposed under subsection (a) of this section with  
128 respect to any underpayment if and to the extent the tax  
129 commissioner determines that by reason of casualty,  
130 disaster or other unusual circumstances the imposition of  
131 such addition to tax would be against equity and good  
132 conscience.

133 (f) *Tax computed after application of credits against*  
134 *tax.* — For purposes of this section, the term "tax" means  
135 the amount of any annual tax or fee administered under  
136 this article that is generally payable in two or more  
137 installment payments during the taxable year, minus the  
138 amount of credits allowable against such tax or fee, other  
139 than taxes withheld from the taxpayer under section  
140 seventy-one or seventy-one-a, article twenty-one of this  
141 chapter (relating to taxes withheld on wages, or from  
142 distributions of pass-through income to nonresident  
143 partners, S corporation shareholders or beneficiaries of an  
144 estate or trust).

145 (g) *Application of section in case of personal income*  
146 *tax withheld on wages.* —

147 (1) *In general.* — For purposes of applying this  
148 section, the amount of the credit allowed under section  
149 seventy-one, article twenty-one of this chapter, for the  
150 taxable year shall be deemed a payment of estimated tax,  
151 and an equal part of such amount shall be deemed to have  
152 been paid on each installment payment due date for such  
153 taxable year, unless the taxpayer establishes the specific  
154 dates on which all amounts were actually withheld, in  
155 which case the amounts so withheld shall be deemed  
156 payments of estimated tax on the dates on which such

157 amounts were actually withheld.

158 (2) *Separate application.* — The taxpayer may apply  
159 subdivision (1) of this subsection separately with respect  
160 to:

161 (A) Wage withholding; and

162 (B) All other amounts withheld for which credit is  
163 allowed under section seventy-one, article twenty-one of  
164 this chapter.

165 (h) *Application of section in case of income tax*  
166 *withheld by pass-through entities from distributions to*  
167 *nonresidents.* — For purposes of applying this section, the  
168 amount of credit allowed under section seventy-one-a,  
169 article twenty-one of this chapter to a nonresident  
170 distributee of a pass-through entity, shall be deemed to be  
171 a payment of estimated income tax for the taxable year of  
172 the nonresident distributee, and an equal part of such  
173 amount shall be deemed (only for purposes of this  
174 section) to have been paid on each installment due date  
175 for the taxable year of the distributee, unless the  
176 distributee establishes the dates on which all amounts were  
177 actually withheld, in which case the amounts so withheld  
178 shall be deemed payments of estimated tax on the dates on  
179 which such amounts were actually withheld.

180 (i) *Special rule where personal income tax return filed*  
181 *on or before the thirty-first day of January.* — If on or  
182 before the last day of the first month following the end of  
183 the taxable year, the taxpayer files his or her annual  
184 personal income tax return for that taxable year and pays  
185 in full the amount computed on the return as payable,  
186 then no addition to tax shall be imposed under subsection  
187 (a) of this section with respect to any underpayment of the  
188 fourth required installment for that taxable year.

189 (j) *Special rules for farmers.* — For purposes of this  
190 section, if an individual is a farmer for any taxable year:

191 (1) There is only one required installment for that  
192 taxable year;

193 (2) The due date for such installment is the fifteenth

194 day of January of the following taxable year;

195 (3) The amount of such installment shall be equal to  
196 the required annual payment determined under subsection  
197 (b) of this section by substituting "sixty-six and two-thirds  
198 percent" for "ninety percent"; and

199 (4) Subsection (h) of this section shall be applied:

200 (A) By substituting "the first day of March" for the  
201 phrase "the thirty-first day of January"; and

202 (B) By treating the required installment described in  
203 subdivision (1) of this subsection as the fourth required  
204 installment.

205 (k) *Fiscal years and short years.* —

206 (1) *Fiscal years.* — In applying this section to a  
207 taxable year beginning on any date other than the first  
208 day of January, there shall be substituted, for the months  
209 specified in this section, the months of the fiscal year that  
210 correspond thereto.

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

215 (l) *Reserved.*

216 (m) *Estates and trusts.* —

217 (1) *In general.* — Except as otherwise provided in this  
218 subsection, this section shall apply to any estate or trust.

219 (2) *Exception for certain estates and certain trusts.* —  
220 With respect to any taxable year ending before the date  
221 two years after the date of the decedent's death, this section  
222 shall not apply to:

223 (A) The estate of such decedent; or

224 (B) Any trust all of which was treated for federal  
225 income tax purposes as owned by the decedent and to  
226 which the residue of the decedent's estate will pass under  
227 his or her will (or, if no will is admitted to probate, which



228 is the trust primarily responsible for paying debts, taxes  
229 and expenses of administration).

230 (3) *Special rule for annualizations.* — In the case of  
231 any estate or trust to which this section applies, paragraph  
232 (A), subdivision (2), subsection (d) of this section shall be  
233 applied by substituting "ending before the date one month  
234 before the due date of the installment" for the phrase  
235 "ending before the due date for the installment".

236 (n) *Rules.* — The tax commissioner may prescribe  
237 such rules as the commissioner deems necessary to carry  
238 out the purpose of this section. This includes, but is not  
239 limited to, equitable rules allowing payment of adjusted  
240 seasonal installments in lieu of annualized income  
241 installments when the commissioner determines, based on  
242 known facts and circumstances, that payment of the  
243 annualized income installment will result in significant  
244 hardship to the taxpayer due to the seasonal nature of  
245 taxpayer's business, and equitable rules for payment of  
246 estimated personal income tax by an individual who is:  
247 (1) An employee; (2) employed in another state for some  
248 portion or all of the taxable year; and (3) required to pay  
249 personal income taxes to such other state on (or measured  
250 by) wages earned in that state, for which credit is allowed  
251 under section twenty, article twenty-one of this chapter.

252 (o) *Effective date.* —

253 (1) This section, as amended in the year one thousand  
254 nine hundred ninety-two, shall apply to taxable years  
255 beginning after the thirtieth day of June, one thousand  
256 nine hundred ninety-two, and this section as in effect on  
257 the first day of January, one thousand nine hundred  
258 ninety-two, is preserved and shall apply to taxable years  
259 beginning before the first day of July, one thousand nine  
260 hundred ninety-two.

261 (2) This section, as amended in the year one thousand  
262 nine hundred ninety-three, shall apply to taxable years  
263 ending after the thirtieth day of June, one thousand nine  
264 hundred ninety-three. For taxable years ending on or

265 before such dates, the provisions of this section as in effect  
266 for such years are fully preserved.

267 (3) This section, as amended in the year one thousand  
268 nine hundred ninety-eight, shall apply to taxable years  
269 ending after the thirtieth day of June, one thousand nine  
270 hundred ninety-eight. For taxable years ending on or  
271 before these dates, the provisions of this section as in  
272 effect for those years are fully preserved.

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

*Paul Moonover*  
Chairman Senate Committee

*Nick Frantasia*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Karell Bellus*  
Clerk of the Senate

*Bryan M. Gray*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*PK*  
Speaker of the House of Delegates

The within approved this the 6th  
day of April, 1998.

*Earl DeLoach*  
Governor

PRESENTED TO THE

GOVERNOR

Date.

3/31/98

Time

11:15 am