WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

SENATE BILL NO. 510

(By Senator [Signature])

PASSED March 2, 1999

In Effect ninety days from Passage
ENROLLED

Senate Bill No. 510

(By Senators Prezioso, Craigo, Sprouse, Plymale, McKenzie, Mitchell, Sharpe, Ross, Bowman, Jackson, Minard, Kessler, Unger and Ball)

[Passed March 2, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter twelve of said code, all relating to payment of taxes and other amounts due state; permitting taxes to be paid by credit, charge or debit card or other commercially acceptable means; authorizing the tax commissioner to promulgate legislative rules; setting forth special provisions for the use of credit, debit or charge cards; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

That section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one,
article two, chapter twelve of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5n. Payment by commercially acceptable means.

(a) Authority to receive. — The tax commissioner may receive in payment for taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) any commercially acceptable means that the commissioner considers appropriate to the extent and under the conditions provided in rules proposed by the commissioner for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

(b) Ultimate liability. — If a check, money order or other method of payment, including payment by credit card, debit card or charge card received in payment of taxes or fees or tax stamps or crowns is not duly paid, or is paid and subsequently charged back to the tax commissioner, the person by whom the check, money order or other method of payment was tendered remains liable for payment of the tax or fee or for the tax stamps or crowns, and for all legal penalties and additions thereto, to the same extent as if the check, money order or other method of payment had not been tendered.

(c) Liability of bank and others. — If any certified, treasurer’s or cashier's check (or other guaranteed draft), any money order or any means of payment that has been guaranteed by a financial organization (such as a credit card, debit card or charge card transaction which has been guaranteed expressly by a financial organization), is received for payment of taxes or fees or tax stamps or crowns and 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:

(1) The amount of the check (or draft) upon all the assets of the financial institution on which it is drawn;

(2) The amount of the money order upon all the assets of the insurer thereof; or
(3) The guaranteed amount of any other transaction
upon all assets of the institution making the guarantee;
and the amount shall be paid out of the assets in prefer-
ence to any other claims whatsoever against the financial
institution, issuer or guaranteeing institution, except the
necessary costs and expenses of administration and
perfected liens that are prior in time.

(d) Bad check charge. — If any check or money order
tendered in payment of any amount of tax or fee or tax
stamps or crowns or any 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 the 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.

(e) Payment by other means. —

(1) Authority to prescribe rule. — The tax commissioner
shall propose rules for legislative approval, in accordance
with article three, chapter twenty-nine-a of this code, as
the tax commissioner considers necessary to receive
payment by commercially acceptable means, including
rules that:

(A) Specify which methods of payment by commercially
acceptable means are acceptable;

(B) Specify when payment by those means shall be
considered received;

(C) Identify types of nontax matters related to payment
by those means that are to be resolved by persons ulti-
mately liable for payment and financial intermediaries,
without the involvement of the tax commissioner; and

(D) Ensure that tax matters shall be resolved by the tax
commissioner, without the involvement of financial
intermediaries.
(2) Obtaining services.—The tax commissioner shall use the state treasurer's contracts and system for receiving payments by credit card, debit card, charge card or any other commercially acceptable means. The tax commissioner may not pay any fee or provide any other consideration in obtaining these services. The state treasurer may not pay any fee or provide any consideration for receiving payments of taxes or fees (or in payment for excise tax stamps and tax crowns) described in this section by credit card, debit card, charge card or any other commercially acceptable means, and any cost for processing the payment shall be included, in advance, in the amount of the transaction and assessed to the party making the payment.

(3) Special provisions for use of credit cards. — If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a):

(A) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a credit card shall not be subject to section 161 of the Truth in Lending Act (15 U.S.C. 1666), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card;

(B) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) shall not be subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any similar provisions of state law;

(C) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account.
such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card;

(D) To the extent allowed under federal law, the term “creditor” under section 103(f) of the Truth in Lending Act (15 U.S.C. 1602 (f)) shall not include the tax commissioner with respect to credit card transactions in payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns); and

(E) Notwithstanding any other provisions of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth in Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the tax commissioner is authorized to provide such amount to such person as a credit to that person’s credit card or debit card account through the applicable credit card or debit card system.

(f) Confidentiality of information. –

(1) In general. – Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit card, debit card or charge card transactions other than for purposes directly related to the processing of the transactions or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions. –

(A) Credit card, debit card or charge card issuers or others acting on behalf of the issuers may also use and disclose the information for purposes directly related to servicing an issuer’s accounts.

(B) Credit card, debit card or charge card issuers or others directly involved in the processing of credit card, debit card or charge card transactions or the billing or collection of amounts charged or debited to the credit card, debit card or charge card, may also use and disclose the information for purposes directly related to:
(i) Statistical risk and profitability assessment;
(ii) Transferring receivables, accounts or interest therein;
(iii) Auditing the account information;
(iv) Complying with federal, state or local law; and
(v) Properly authorized civil, criminal or regulatory investigation by federal, state or local authorities.

(3) Procedures. – Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the tax commissioner.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

All persons, firms and corporations shall promptly pay all taxes and other amounts due from them to the state, or to any political subdivision, official, department, board, commission or other collecting agency thereof authorized by law to collect the taxes and other amounts due by any authorized commercially acceptable means, in money, United States currency or by check, bank draft, certified check, cashier's check, post office money order or express money order payable and delivered to the official, department, board, commission or collecting agency thereof authorized by law to collect the taxes and other amounts due and having the account upon which the taxes or amounts due are chargeable against the payer of the taxes or amounts due. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the, taxes or other
amounts due, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer in and about the collection of the taxes or other amounts, but shall at all times and under all circumstances be the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which the taxes or amounts are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the same.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating 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... approved...this the... Day of... March, 1999

Governor