House Bill No. 4090

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed February 21, 2000

In Effect from Passage
ENROLLED
H. B. 4090

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 21, 2000; in effect from passage.]

AN ACT to amend and reenact sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three-d, ten and eleven, article fifteen-a of said chapter; and to amend and reenact section seventy-four, article twenty-one of said chapter, all relating to increasing thresholds before small businesses and independent contractors must file monthly or quarterly returns under the consumers sales and service tax, use tax and employer withholding tax and pay taxes due with those returns.

Be it enacted by the Legislature of West Virginia:

That sections nine-d and twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three-d, ten and eleven, article fifteen-a of said chapter be amended and reenacted; and that section seventy-four, article twenty-one of said chapter be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.
§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person’s vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors of the personal property or services shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which shall be paid to the tax commissioner with the return, and any other information as the tax commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than two hundred fifty dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown
on the returns to be due shall be remitted on or before the
fifteenth day following the close of the calendar quarter; and if
the amount due averages less than one hundred fifty dollars per
calendar quarter, the tax commissioner may permit the filing of
an annual direct pay permit return and the amount of tax shown
on the return to be due shall be remitted on or before the last
day of January each year: Provided, however, That the tax
commissioner may, by nonemergency legislative rules promul-
gated pursuant to article three, chapter twenty-nine-a of this
code, change the minimum amounts established in this subsec-
tion. The tax commissioner, upon written request by the permit
holder, may grant a reasonable extension of time, upon such
terms as the tax commissioner may require, for the making and
filing of direct pay permit returns and paying the tax due.
Interest on the tax shall be chargeable on every extended
payment at the rate specified in section seventeen, article ten of
this chapter.

(c) A permit issued pursuant to this section is valid until
expiration of the taxpayers registration year under article twelve
of this chapter. This permit is automatically renewed when the
taxpayers business registration certificate is issued for the next
succeeding fiscal year, unless the permit is surrendered by the
holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not
been canceled are not required to pay the tax to the vendor as
otherwise provided in this article or article fifteen-a of this
chapter. They shall notify each vendor from whom tangible
personal property is purchased or leased or from whom services
are purchased their direct payment permit number and that
the tax is being paid directly to the tax commissioner. Upon
receipt of the notice, the vendor is absolved from all duties and
liabilities imposed by this chapter for the collection and
remittance of the tax with respect to sales of tangible personal
property and sales of services to the permit holder. Vendors
who make sales upon which the tax is not collected by reason
of the provisions of this section shall maintain records in such
manner that the amount involved and identity of each purchaser
may be ascertained.
(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, will thereafter apply to the person who previously held the permit, and that person shall promptly notify in writing vendors from whom tangible personal property or services are purchased or leased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for that person.

(f) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.


(a) When the total consumers sales and use tax remittance for which a person is liable does not exceed an average monthly amount over the taxable year of two hundred fifty dollars, he may pay the tax and make a quarterly return on or before the fifteenth day of the first month in the next succeeding quarter in lieu of monthly returns: Provided, That the tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(b) When the total consumers sales and use tax remittance for which a person is liable does not in the aggregate exceed six hundred dollars for the taxable year, he or she may pay the tax and make an annual return on or before the fifteenth day of the first month next succeeding the end of his taxable year: Provided, That the tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(c) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.
ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person’s vendor. This authority is not to be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of the direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with the return, and any other information the tax commissioner deems necessary: Provided, That if the amount of consumers sales and use taxes due averages less than two hundred fifty dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly
returns and the amount of tax shown thereon to be due shall be
remitted on or before the fifteenth day following the close of
the calendar quarter; and if the amount due averages less than
one hundred fifty dollars per calendar quarter, the tax commis-
ioner may permit the filing of an annual direct pay permit
return and the amount of tax shown thereon to be due are to be
remitted on or before the last day of January each year: Pro-
vided, however, That the tax commissioner may, by
nonemergency legislative rules promulgated pursuant to article
three, chapter twenty-nine-a of this code, change the minimum
amounts established in this subsection. The tax commissioner,
upon written request filed by the permit holder before the due
date of the return, may grant a reasonable extension of time,
upon the terms the tax commissioner may require, for the
making and filing of direct pay permit returns and paying the
tax due. Interest on the tax shall be chargeable on every
extended payment at the rate specified in section seventeen,
article ten of this chapter.

(c) A permit issued pursuant to this section is to be valid
until expiration of the taxpayer’s registration year under article
twelve of this chapter. This permit is automatically renewed
when the taxpayer’s business registration certificate is issued
for the next succeeding fiscal year, unless the permit is surren-
dered by the holder or canceled for cause by the tax commis-
sioner.

(d) Persons who hold a direct payment permit which has not
been canceled are not required to pay the tax to the vendor as
otherwise provided in this article or article fifteen of this
chapter. These persons shall notify each vendor from whom
tangible personal property is purchased or leased or from whom
services are purchased of their direct payment permit number
and that the tax is being paid directly to the tax commissioner.
Upon receipt of the notice, the vendor is absolved from all
duties and liabilities imposed by this chapter for the collection
and remittance of the tax with respect to sales, distributions,
leases or storage of tangible personal property and sales of
services to the permit holder. Vendors who make sales upon
which the tax is not collected by reason of the provisions of this section shall maintain records in a manner by which the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing vendors from whom tangible personal property or services are purchased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales of tangible personal property or taxable services, thereafter made to or for the person.

(f) The amendments to this section enacted in the year two thousand are effective for tax years beginning on or after the first day of January, two thousand one.

§11-15A-10. Payment to tax commissioner.

Each retailer required or authorized, pursuant to sections six or seven, to collect the tax herein imposed, is required to pay to the tax commissioner the amount of the tax on or before the fifteenth day of the month next succeeding each quarterly period. At that time, each retailer shall file with the tax commissioner a return for the preceding quarterly period in the form prescribed by the tax commissioner showing the sales price of any or all tangible personal property sold by the retailer during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the tax commissioner may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return: Provided, That where the tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each quarterly period that portion of the tax equal to six percent of
that portion of the purchase price actually received during the quarterly period. The tax commissioner, if he or she deems it necessary in order to insure payment to the state of the amount of the tax, may in any or all cases require returns and payments of the amount to be made for other than quarterly periods. The tax commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his or her duly authorized agent, and must be certified by him or her to be correct.


(a) Any person who uses any tangible personal property upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner is liable for the amount of the nonpayment, and persons required by law to hold a West Virginia business registration certificate shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax herein imposed upon all the property used by him or her during the preceding quarterly period and accompanied by returns the tax commissioner prescribes: Provided, That if the aggregate annual tax liability of any person under this article is six hundred dollars or less, the person shall, in lieu of the quarterly payment and filing, pay the tax on or before the fifteenth day of the first month next succeeding the end of his or her taxable year, and shall file the annual return as may be prescribed by the tax commissioner. The tax commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the foregoing minimum amounts.

(b) Any individual who is not required by law to hold a West Virginia business registration certificate, who uses any tangible personal property or taxable service upon which the West Virginia use tax has not been paid either to a retailer or directly to the tax commissioner is liable for the West Virginia use tax upon property or taxable services and, notwithstanding the amount of the annual aggregate annual tax liability, shall
pay the use tax imposed upon all property or taxable services
used by him or her during the taxpayer's federal taxable year on
or before the fifteenth day of April of the taxpayer's next
succeeding federal tax year, and shall file the annual return
therewith as the tax commissioner may authorize or require.

(c) All of the provisions of section ten with reference to
quarterly or annual returns and payments are applicable to the
returns and payments required under this section.

(d) The amendments to this section enacted in the year two
thousand are effective for tax years beginning on or after the
first day of January, two thousand one.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer's return and payment of withheld taxes.

(a) General.—Every employer required to deduct and
withhold tax under this article shall, for each calendar quarter,
on or before the last day of the month following the close of
such calendar quarter, file a withholding return as prescribed by
the tax commissioner and pay over to the tax commissioner the
taxes so required to be deducted and withheld. Where the
average quarterly amount so deducted and withheld by any
employer is less than one hundred fifty dollars and the aggre-
gate for the calendar year can reasonably be expected to be less
than six hundred dollars, the tax commissioner may by regula-
tion permit an employer to file an annual return and pay over to
the tax commissioner the taxes deducted and withheld on or
before the last day of the month following the close of the
calendar year: Provided, That the tax commissioner may, by
nonemergency legislative rules promulgated pursuant to article
three, chapter twenty-nine-a of this code, change the minimum
amounts established by this subsection. The tax commissioner
may, if he or she believes such action necessary for the protec-
tion of the revenues, require any employer to make the return
and pay to him or her the tax deducted and withheld at any
time, or from time to time.
(b) Monthly returns and payments of withheld tax on and after the first day of January, two thousand one. — Notwithstanding the provisions of subsection (a), on and after the first day of January, two thousand one, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate two hundred fifty dollars or more for the month; except any employer with respect to whom the tax commissioner may have by regulation otherwise in accordance with the provisions of subsection (a) of this section.

(c) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or before the thirty first day of January next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the tax commissioner and annually remit to the tax commissioner West Virginia personal income taxes deducted and withheld for the employees. The tax commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection.

(d) Deposit in trust for tax commissioner. — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the tax commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of the tax in the separate account until payment over to the tax commissioner.
The notice shall remain in effect until a notice of cancellation is served by the tax commissioner.

(e) Accelerated payment.

(1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June.

(2) For purposes of complying with subdivision (1) of this subsection (e), the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer’s election, the employer may remit an amount equal to fifty percent of the employer’s liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year, and if that amount exceeds one hundred thousand dollars, the employer shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June, as provided in subdivision (2) of this subsection (e).

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection (e) makes out its return for the month of June, which is due on the twentieth day of July, that employer may claim as
a credit against its liability under this article for tax on emp-
ployee compensation paid or payable for employee services
rendered during the month of June the amount of the advanced
payment of tax made under subdivision (1) of this subsection
(e).

(f) The amendments to this section enacted in the year two
thousand are effective for tax years beginning on or after the
first day of January, two thousand one.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 29th day of January, 2000.

Governor