

RECEIVED  
00 FEB 20 10 4 29  
WEST VIRGINIA LEGISLATURE  
BOWLING GREEN, KY

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

## 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

RECEIVED  
00 FEB 20 11 4: 25

LEGISLATIVE  
SERVICES

**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.**

1           (a) Notwithstanding any other provision of this article, the  
2 tax commissioner may, pursuant to rules promulgated by him  
3 or her in accordance with article three, chapter twenty-nine-a of  
4 this code, authorize a person that is a user, consumer, distribu-  
5 tor or lessee to which sales or leases of tangible personal  
6 property are made or services provided, to pay any tax levied by  
7 this article or article fifteen-a of this chapter directly to the tax  
8 commissioner and waive the collection of the tax by that  
9 person's vendor. No such authority shall be granted or exer-  
10 cised except upon application to the tax commissioner and after  
11 issuance by the tax commissioner of a direct pay permit. Each  
12 direct pay permit granted pursuant to this section is valid until  
13 surrendered by the holder or canceled for cause by the commis-  
14 sioner. The commissioner shall prescribe by rules promulgated  
15 in accordance with article three, chapter twenty-nine-a of this  
16 code, those activities which will cause cancellation of a direct  
17 pay permit issued pursuant to this section. Upon issuance of a  
18 direct pay permit, payment of the tax imposed or assertion of  
19 the exemptions allowed by this article or article fifteen-a of this  
20 chapter on sales and leases of tangible personal property and  
21 sales of taxable services from the vendors of the personal  
22 property or services shall be made directly to the tax commis-  
23 sioner by the permit holder.

24           (b) On or before the fifteenth day of each month, every  
25 permit holder shall make and file with the tax commissioner a  
26 consumers sales and use tax direct pay permit return for the  
27 preceding month in the form prescribed by the tax commis-  
28 sioner showing the total value of the tangible personal property  
29 used, the amount of taxable services purchased, the amount of  
30 consumers sales and use taxes due from the permit holder,  
31 which shall be paid to the tax commissioner with the return, and  
32 any other information as the tax commissioner considers  
33 necessary: *Provided*, That if the amount of consumers sales and  
34 use taxes due averages less than two hundred fifty dollars per  
35 month, the tax commissioner may permit the filing of quarterly  
36 returns in lieu of monthly returns and the amount of tax shown

37 on the returns to be due shall be remitted on or before the  
38 fifteenth day following the close of the calendar quarter; and if  
39 the amount due averages less than one hundred fifty dollars per  
40 calendar quarter, the tax commissioner may permit the filing of  
41 an annual direct pay permit return and the amount of tax shown  
42 on the return to be due shall be remitted on or before the last  
43 day of January each year: *Provided, however,* That the tax  
44 commissioner may, by nonemergency legislative rules promul-  
45 gated pursuant to article three, chapter twenty-nine-a of this  
46 code, change the minimum amounts established in this subsec-  
47 tion. The tax commissioner, upon written request by the permit  
48 holder, may grant a reasonable extension of time, upon such  
49 terms as the tax commissioner may require, for the making and  
50 filing of direct pay permit returns and paying the tax due.  
51 Interest on the tax shall be chargeable on every extended  
52 payment at the rate specified in section seventeen, article ten of  
53 this chapter.

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

60 (d) Persons who hold a direct payment permit which has not  
61 been canceled are not required to pay the tax to the vendor as  
62 otherwise provided in this article or article fifteen-a of this  
63 chapter. They shall notify each vendor from whom tangible  
64 personal property is purchased or leased or from whom services  
65 are purchased of their direct payment permit number and that  
66 the tax is being paid directly to the tax commissioner. Upon  
67 receipt of the notice, the vendor is absolved from all duties and  
68 liabilities imposed by this chapter for the collection and  
69 remittance of the tax with respect to sales of tangible personal  
70 property and sales of services to the permit holder. Vendors  
71 who make sales upon which the tax is not collected by reason  
72 of the provisions of this section shall maintain records in such  
73 manner that the amount involved and identity of each purchaser  
74 may be ascertained.

75 (e) Upon the expiration, cancellation or surrender of a  
76 direct payment permit, the provisions of this chapter, without  
77 regard to this section, will thereafter apply to the person who  
78 previously held the permit, and that person shall promptly  
79 notify in writing vendors from whom tangible personal property  
80 or services are purchased or leased of the cancellation or  
81 surrender. Upon receipt of the notice, the vendor is subject to  
82 the provisions of this chapter, without regard to this section,  
83 with respect to all sales, distributions, leases or storage of  
84 tangible personal property, thereafter made to or for that person.

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

#### **§11-15-20. Quarterly and annual returns.**

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

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

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

**ARTICLE 15A. USE TAX.****§11-15A-3d. Direct pay permits.**

1           (a) Notwithstanding any other provision of this article, the  
2 tax commissioner may, pursuant to rules promulgated by him  
3 or her in accordance with article three, chapter twenty-nine-a of  
4 this code, authorize a person (as defined in section two of  
5 article fifteen) that is a user, consumer, distributor or lessee to  
6 which sales or leases of tangible personal property are made or  
7 services provided to pay any tax levied by this article or article  
8 fifteen of this chapter directly to the tax commissioner and  
9 waive the collection of the tax by that person's vendor. This  
10 authority is not to be granted or exercised except upon applica-  
11 tion to the tax commissioner and after issuance by the tax  
12 commissioner of a direct pay permit. Each direct pay permit  
13 granted pursuant to this section shall continue to be valid until  
14 surrendered by the holder or canceled for cause by the commis-  
15 sioner. The commissioner shall prescribe by rules promulgated  
16 in accordance with article three, chapter twenty-nine-a of this  
17 code, those activities which will cause cancellation of a direct  
18 pay permit issued pursuant to this section. Upon issuance of the  
19 direct pay permit, payment of the tax imposed or assertion of  
20 the exemptions allowed by this article or article fifteen of this  
21 chapter on sales and leases of tangible personal property and  
22 sales of taxable services from the vendors thereof shall be made  
23 directly to the tax commissioner by the permit holder.

24           (b) On or before the fifteenth day of each month, every  
25 permit holder shall make and file with the tax commissioner a  
26 consumers sales and use tax direct pay permit return for the  
27 preceding month in the form prescribed by the tax commis-  
28 sioner showing the total value of the tangible personal property  
29 so used, the amount of taxable services purchased, the amount  
30 of tax due from the permit holder, which amount shall be paid  
31 to the tax commissioner with the return, and any other informa-  
32 tion the tax commissioner deems necessary: *Provided*, That if  
33 the amount of consumers sales and use taxes due averages less  
34 than two hundred fifty dollars per month, the tax commissioner  
35 may permit the filing of quarterly returns in lieu of monthly

36 returns and the amount of tax shown thereon to be due shall be  
37 remitted on or before the fifteenth day following the close of  
38 the calendar quarter; and if the amount due averages less than  
39 one hundred fifty dollars per calendar quarter, the tax commis-  
40 sioner may permit the filing of an annual direct pay permit  
41 return and the amount of tax shown thereon to be due are to be  
42 remitted on or before the last day of January each year: *Pro-*  
43 *vided, however,* That the tax commissioner may, by  
44 nonemergency legislative rules promulgated pursuant to article  
45 three, chapter twenty-nine-a of this code, change the minimum  
46 amounts established in this subsection. The tax commissioner,  
47 upon written request filed by the permit holder before the due  
48 date of the return, may grant a reasonable extension of time,  
49 upon the terms the tax commissioner may require, for the  
50 making and filing of direct pay permit returns and paying the  
51 tax due. Interest on the tax shall be chargeable on every  
52 extended payment at the rate specified in section seventeen,  
53 article ten of this chapter.

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

61 (d) Persons who hold a direct payment permit which has not  
62 been canceled are not required to pay the tax to the vendor as  
63 otherwise provided in this article or article fifteen of this  
64 chapter. These persons shall notify each vendor from whom  
65 tangible personal property is purchased or leased or from whom  
66 services are purchased of their direct payment permit number  
67 and that the tax is being paid directly to the tax commissioner.  
68 Upon receipt of the notice, the vendor is absolved from all  
69 duties and liabilities imposed by this chapter for the collection  
70 and remittance of the tax with respect to sales, distributions,  
71 leases or storage of tangible personal property and sales of  
72 services to the permit holder. Vendors who make sales upon

73 which the tax is not collected by reason of the provisions of this  
74 section shall maintain records in a manner by which the amount  
75 involved and identity of each purchaser may be ascertained.

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

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

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

1 Each retailer required or authorized, pursuant to sections six  
2 or seven, to collect the tax herein imposed, is required to pay to  
3 the tax commissioner the amount of the tax on or before the  
4 fifteenth day of the month next succeeding each quarterly  
5 period. At that time, each retailer shall file with the tax commis-  
6 sioner a return for the preceding quarterly period in the form  
7 prescribed by the tax commissioner showing the sales price of  
8 any or all tangible personal property sold by the retailer during  
9 the preceding quarterly period, the use of which is subject to the  
10 tax imposed by this article, and any other information the tax  
11 commissioner may deem necessary for the proper administra-  
12 tion of this article. The return shall be accompanied by a  
13 remittance of the amount of the tax, for the period covered by  
14 the return: *Provided*, That where the tangible personal property  
15 is sold under a conditional sales contract, or under any other  
16 form of sale wherein the payment of the principal sum, or a part  
17 of the sum is extended over a period longer than sixty days  
18 from the date of the sale, the retailer may collect and remit each  
19 quarterly period that portion of the tax equal to six percent of



20 that portion of the purchase price actually received during the  
21 quarterly period. The tax commissioner, if he or she deems it  
22 necessary in order to insure payment to the state of the amount  
23 of the tax, may in any or all cases require returns and payments  
24 of the amount to be made for other than quarterly periods. The  
25 tax commissioner may, upon request and a proper showing of  
26 the necessity to do so, grant an extension of time not to exceed  
27 thirty days for making any return and payment. Returns shall be  
28 signed by the retailer or his or her duly authorized agent, and  
29 must be certified by him or her to be correct.

**§11-15A-11. Liability of user.**

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

19 (b) Any individual who is not required by law to hold a  
20 West Virginia business registration certificate, who uses any  
21 tangible personal property or taxable service upon which the  
22 West Virginia use tax has not been paid either to a retailer or  
23 directly to the tax commissioner is liable for the West Virginia  
24 use tax upon property or taxable services and, notwithstanding  
25 the amount of the annual aggregate annual tax liability, shall

26 pay the use tax imposed upon all property or taxable services  
27 used by him or her during the taxpayer's federal taxable year on  
28 or before the fifteenth day of April of the taxpayer's next  
29 succeeding federal tax year, and shall file the annual return  
30 therewith as the tax commissioner may authorize or require.

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

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

#### ARTICLE 21. PERSONAL INCOME TAX.

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

1 (a) *General.*—Every employer required to deduct and  
2 withhold tax under this article shall, for each calendar quarter,  
3 on or before the last day of the month following the close of  
4 such calendar quarter, file a withholding return as prescribed by  
5 the tax commissioner and pay over to the tax commissioner the  
6 taxes so required to be deducted and withheld. Where the  
7 average quarterly amount so deducted and withheld by any  
8 employer is less than one hundred fifty dollars and the aggregate  
9 for the calendar year can reasonably be expected to be less  
10 than six hundred dollars, the tax commissioner may by regulation  
11 permit an employer to file an annual return and pay over to  
12 the tax commissioner the taxes deducted and withheld on or  
13 before the last day of the month following the close of the  
14 calendar year: *Provided*, That the tax commissioner may, by  
15 nonemergency legislative rules promulgated pursuant to article  
16 three, chapter twenty-nine-a of this code, change the minimum  
17 amounts established by this subsection. The tax commissioner  
18 may, if he or she believes such action necessary for the protection  
19 of the revenues, require any employer to make the return  
20 and pay to him or her the tax deducted and withheld at any  
21 time, or from time to time.

22           (b) *Monthly returns and payments of withheld tax on and*  
23 *after the first day of January, two thousand one.* — Notwith-  
24 standing the provisions of subsection (a), on and after the first  
25 day of January, two thousand one, every employer required to  
26 deduct and withhold tax under this article shall, for each of the  
27 first eleven months of the calendar year, on or before the  
28 twentieth day of the succeeding month and for the last calendar  
29 month of the year, on or before the last day of the succeeding  
30 month, file a withholding return as prescribed by the tax  
31 commissioner and pay over to the tax commissioner the taxes  
32 so required to be deducted and withheld, if such withheld taxes  
33 aggregate two hundred fifty dollars or more for the month;  
34 except any employer with respect to whom the tax commis-  
35 sioner may have by regulation provided otherwise in accor-  
36 dance with the provisions of subsection (a) of this section.

37           (c) *Annual returns and payments of withheld tax of certain*  
38 *domestic and household employees.* — Employers of domestic  
39 and household employees whose withholdings of federal  
40 income tax are annually paid and reported by the employer  
41 pursuant to the filing of Schedule H of federal form 1040,  
42 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or  
43 before the thirty first day of January next succeeding the end of  
44 the calendar year for which withholdings are deducted and  
45 withheld, file an annual withholding return with the tax  
46 commissioner and annually remit to the tax commissioner West  
47 Virginia personal income taxes deducted and withheld for the  
48 employees. The tax commissioner may promulgate legislative  
49 or other rules pursuant to article three, chapter twenty-nine-a of  
50 this code for implementation of this subsection.

51           (d) *Deposit in trust for tax commissioner.* — Whenever any  
52 employer fails to collect, truthfully account for, or pay over the  
53 tax, or to make returns of the tax as required in this section, the  
54 tax commissioner may serve a notice requiring the employer to  
55 collect the taxes which become collectible after service of the  
56 notice, to deposit the taxes in a bank approved by the tax  
57 commissioner, in a separate account, in trust for and payable to  
58 the tax commissioner, and to keep the amount of the tax in the  
59 separate account until payment over to the tax commissioner.

60 The notice shall remain in effect until a notice of cancellation  
61 is served by the tax commissioner.

62 (e) *Accelerated payment.*

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

72 (2) For purposes of complying with subdivision (1) of this  
73 subsection (e), the employer shall remit an amount equal to the  
74 withholding tax due under this article on employee compensa-  
75 tion subject to withholding tax payable or paid to employees for  
76 the first fifteen days of June or, at the employer's election, the  
77 employer may remit an amount equal to fifty percent of the  
78 employer's liability for withholding tax under this article on  
79 compensation payable or paid to employees for the preceding  
80 month of May.

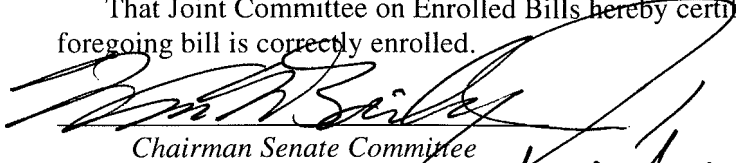
81 (3) For an employer which has not been in business for a  
82 full calendar year, the total amount the employer was required  
83 to deduct and withhold under subsection (b) of this section for  
84 the prior calendar year shall be divided by the number of  
85 months, including fractions of a month,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

91 (4) When an employer required to make an advanced  
92 payment of withholding tax under subdivision (1) of this  
93 subsection (e) makes out its return for the month of June, which  
94 is due on the twentieth day of July, that employer may claim as

95 a credit against its liability under this article for tax on em-  
96 ployee compensation paid or payable for employee services  
97 rendered during the month of June the amount of the advanced  
98 payment of tax made under subdivision (1) of this subsection  
99 (e).

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

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



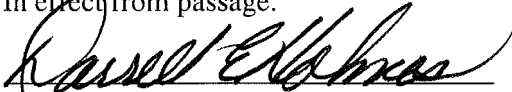
Chairman Senate Committee



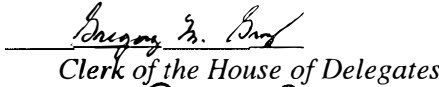
Chairman House Committee

Originating in the House.

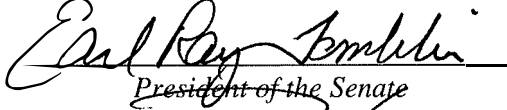
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

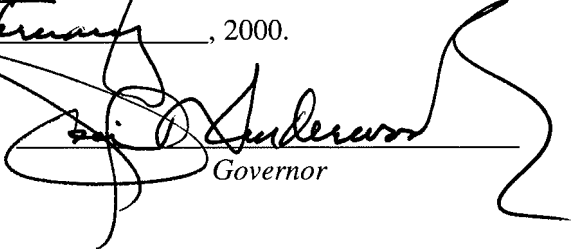


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE

GOVERNOR

Date 2/24/00

Time 10:05 Am