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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Committee Substitute for
SENATE BILL NO. 161

(By Senators *Tomblin, Mr. President, and* ~~+~~
Sprouse, By Request of the Executive)



PASSED March 11, 2000
In Effect ninety days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 161

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND
SPOUSE, BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating generally to requiring certain businesses to file information returns to be used solely to analyze the fiscal and economic effects of the recommendations of the governor's commission on fair taxation; information required and deadlines for filing returns; legislative rules; tax credit incentives for filing; penalties for failure to file; confidentiality; and providing that unauthorized disclosure of information returns or information return information is subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-22. Information returns and due date thereof.

1 (a) *Information returns required.* –The tax commissioner
2 shall develop a representative statistical sample of persons
3 who have business registration certificates under article
4 twelve of this chapter. This sample shall be broad enough
5 to reasonably predict revenues and to project how the
6 recommendations of the governor’s commission on fair
7 taxation would impact different classifications of busi-
8 nesses, as well as the various forms of doing business in
9 which those business activities are conducted. Persons
10 included in the sample shall file an information return
11 reporting information for the calendar year ending the
12 thirty-first day of December, one thousand nine hundred
13 ninety-nine, and for the calendar year ending the thirty-
14 first day of December, two thousand. When a business
15 files its federal tax returns on a fiscal year basis, the
16 business include in its information return information for
17 its fiscal years ending within the calendar years one
18 thousand nine hundred ninety-nine and two thousand,
19 respectively, except as otherwise prescribed in the rule
20 promulgated pursuant to subsection (d) of this section.

21 (b) *Due date.* –Information returns shall be due on the
22 day the federal tax return or federal informational return
23 is due during calendar year two thousand-one, determined
24 by including any extension of time to file the return. This
25 information return shall be filed with the business’s West
26 Virginia form 112, 112S, 120, 141, or, in the case of a sole
27 proprietor, form 140. When the business is not required to

28 file any of these West Virginia forms, the information
29 return shall be filed as a separate document on or before
30 the fifteenth day of the fifth month following the close of
31 its year for tax accounting or financial accounting pur-
32 poses ending the thirty-first day of December, one thou-
33 sand nine hundred ninety-nine, or ending within calendar
34 year two thousand but prior to the thirty first day of
35 December, two thousand, unless the tax commissioner
36 grants an extension of time to file the information return.
37 Information returns shall be filed in the form and pursuant
38 to instructions prescribed by the tax commissioner. These
39 returns shall require information as if the recommenda-
40 tions of the governor's commission on fair taxation were in
41 effect for the period covered by each information return.

42 (c) *Notification.* – On or before the first day of July, two
43 thousand, the tax commissioner shall notify each person
44 selected to be a member of the statistical sample of the
45 selection, and advise the person of the process by which
46 the person will be receiving forms and instructions for
47 filing an informational return after authorization of the
48 same pursuant to subsection (d) of this section.

49 (d) *Legislative rules.* – (1) The tax commissioner shall
50 propose legislative rules for promulgation pursuant to
51 article three, chapter twenty-nine-a of this code. Notwith-
52 standing any provision of article three, chapter twenty-
53 nine-a of this code to the contrary, the tax commissioner
54 shall submit finally approved proposed rules, including
55 amendments, to the legislative rule-making and review
56 committee on or before the thirty-first day of August, two
57 thousand.

58 (2) The proposed rules shall include the actual content of
59 information return to be completed and filed by each
60 person selected to be a member of the statistical sample, as
61 well as the actual content of the instructions to be used by
62 the person to complete the information return, proposed

63 by the tax commissioner. The information required to be
64 provided in the information return shall be, to the extent
65 possible, only information that can be obtained by a
66 selected member of the statistical sample from other tax or
67 regulatory filings made by the selected member.

68 (3) The proposed rules shall, for the review of the
69 Legislature, separately identify any additional information
70 not obtainable from the filings described in subdivision (2)
71 of this subsection that can be obtained from a selected
72 member of the statistical sample, in the least expensive
73 and intrusive manner for the selected person, that the tax
74 commissioner determines is necessary for an adequate
75 state fiscal analysis of the impact of the recommendations
76 of the governor's commission on fair taxation.

77 (4) The proposed rules shall, for the review of the
78 Legislature, separately identify any additional information
79 not obtainable from the filings described in subdivision (2)
80 of this subsection that can be obtained from a selected
81 member of the statistical sample, in the least expensive
82 and intrusive manner for the selected person, that the tax
83 commissioner determines is necessary for an adequate
84 state economic analysis of the impact of the recommenda-
85 tions of the governor's commission on fair taxation.

86 (e) *Incentive to file.* – To encourage the filing of com-
87 plete and accurate information returns, the tax commis-
88 sioner shall allow a two hundred dollar tax credit for each
89 required information return that is filed electronically,
90 within the meaning of article five, chapter thirty-nine of
91 this code, and a credit of one hundred fifty dollars for each
92 such paper return filed. This credit shall be claimed
93 against the person's liability for tax under article twenty-
94 three of this chapter. Unused credit may be claimed
95 against the person's liability for income tax under article
96 twenty-one or twenty-four of this chapter for the tax year
97 of the person in which the information return is filed.

98 Alternatively, the tax commissioner may refund the
99 amount of this credit to any person required to file infor-
100 mation returns under this section.

101 (f) *Civil money penalty.* – Any person required to file an
102 information return under this section who fails to file the
103 return timely, determined with regard to any authorized
104 extension of time for filing, or who files a return that is
105 materially incorrect or incomplete shall pay a money
106 penalty of one thousand dollars for each return that is not
107 filed timely or that is filed timely but is materially inaccu-
108 rate or incomplete. The tax commissioner is authorized to
109 waive this penalty. This penalty shall be collected in the
110 same manner as the penalties imposed by section nineteen
111 of this article are collected.

112 (g) *Confidentiality.* –

113 (1) Information returns and information return informa-
114 tion filed under this section shall be treated as returns and
115 return information under the provisions of section five-d
116 of this article. Such returns and return information shall
117 be open to inspection by or disclosure to officers and
118 employees of the department of tax and revenue whose
119 official duties require such inspection or disclosure for the
120 purpose of, but only to the extent necessary in, preparing
121 economic or financial forecasts, projections, analyses, and
122 statistical studies and conducting related activities.

123 (2) Persons authorized to receive information under this
124 subdivision shall be treated as officers and employees of
125 the state under the provisions of section five-d of this
126 article. Inspection or disclosure of information returns and
127 information return information shall also be permitted
128 pursuant to a contract between the proper officer of this
129 state and a university in this state when the purpose of the
130 disclosure is to prepare economic or financial forecasts,
131 projections, analyses, and statistical studies and conduct-

132 ing related activities regarding the recommendations of
133 the governor's commission on fair taxation.

134 (3) Except as otherwise provided in this section, no
135 person who receives an information return or information
136 return information under this section shall disclose the
137 return or return information to any person other than the
138 taxpayer to whom it relates except in a form which cannot
139 be associated with, or otherwise identify, directly or
140 indirectly, a particular taxpayer.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *5th*
Day of *[Handwritten Signature]* 2000.

[Handwritten Signature]
.....
Governor

PRESENTED TO :

GOVERNOR

Date 3/31/00

Time 2:45 pm