ENROLLED

House Bill No. 3009

(By Delegates Beane, Browning and G. White)

Passed April 12, 2001

In Effect Ninety Days from Passage
AN ACT to repeal section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three, chapter twenty-nine of said code; to amend and reenact section fifteen, article two, chapter thirty-three of said code; to amend and reenact sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter; to amend and reenact section five, article thirty-two of said chapter; and to amend said chapter by adding thereto a new article, designated article forty-three, all relating to the procedures for administering taxes and fees required to be paid or remitted to the commissioner of insurance; the tax on insurers pursuant to the fire prevention and control act; the commissioner’s annual report to the governor on the condition of insurers; the filing of annual financial statements and premium tax returns; the computation and payment of taxes to the insurance commissioner; fire and casualty insurance premium tax; the surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund; the premium tax imposed upon risk retention
groups; the enactment of an insurance tax procedures act; the power of the commissioner to conduct hearings and impose penalties for failure to comply with tax statutes and rules; authority of the commissioner to bring or join suit; the obligation to file tax returns; imposition of penalties for taxpayer's failure to file or pay tax liability; the issuance of tax assessments; the right to hearing and appeal; the procedure for claiming tax refunds and credits; the imposition of interest on unpaid assessments; the allocation of payments; notice of overpayments and underpayments; and retroactive monetary relief for unconstitutional taxes.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-two, article three, chapter twenty-nine of said code be amended and reenacted; that section fifteen, article two, chapter thirty-three of said code be amended and reenacted; that sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter be amended and reenacted; that section five, article thirty-two of said chapter be amended and reenacted; and that said chapter be amended by adding thereto a new article, designated article forty-three, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers' mutual fire insurance companies, shall pay to the state insurance commissioner annually on or before the first day of March, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reason-
ably applicable to insurance against the hazard of fire which are
included in other coverages, and received by it for insurance on
property or risks in this state during the calendar year next
preceding as shown by their annual statement under oath to the
insurance department. The money so received by the state
insurance commissioner is paid by him or her into the treasury
and credited to the state general revenue fund.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.


The commissioner shall annually, on or before the first day
of November, submit to the governor a report for the previous
calendar year of his or her official acts, and of the condition of
insurers doing business in this state, with a condensed statement
of their reports to him or her, abstracts of all accounts rendered
to any court by receivers of insolvent insurers, abstracts or
reports to the commissioner by the receivers, together with a
statement of all assessments, fees, taxes and related charges
received from insurers and other licensees and paid by him or
her into the state treasury.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return;
remittance by insurer of premium tax, less certain
deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia
shall file with the commissioner, on or before the first day of
March, each year, a financial statement made under oath of its
president or secretary and on a form prescribed by the commis-
sioner. The insurer shall also, on or before the first day of
March of each year subject to the provisions of section
fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under section fourteen-a of this article.

(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all taxes received by the commissioner not allocated to another fund, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds
available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. Each month a lien on the revenues generated from the insurance premium tax, the annuity tax and the minimum tax, provided in this section and sections fifteen and seventeen of this article, up to a maximum amount equal to one twelfth of the projected annual principal and return is granted to the investment management board to secure the investment made with the regional jail and correctional facility authority pursuant to section twenty, article six, chapter twelve of this code. The treasurer shall, no later than the last business day of each month, transfer amounts the treasurer determines are not necessary for making refunds under this article to meet the requirements of subsection (d), section twenty-one, article six, chapter twelve of this code, to the credit of the general revenue fund.

(d) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight, is effective on the first day of July, one thousand nine hundred ninety-eight.

§33-3-14a. Additional premium tax.

For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one percent of taxable premiums. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of the additional tax. All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and
for costs of administration, shall be received by the commis-
peror and shall be paid by him or her into the state treasury for
the benefit of the state fund.

§33-3-14c. Computation and payment of tax.

The taxes levied hereunder shall be due and payable in
quarterly installments on or before the twenty-fifth day of the
month succeeding the end of the quarter in which they accrue,
except for the fourth quarter, for which taxes shall be due and
payable on or before the first day of March of the succeeding
year. The insurer subject to making the payments shall, by the
due date, prepare an estimate of the tax based on the estimated
amount of taxable premium during the preceding quarter, and
mail the estimate together with a remittance of the amount of
tax to the office of the commissioner.

§33-3-14d. Additional fire and casualty insurance premium tax;
allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for
municipal policemen’s and firemen’s pension and relief funds
and the teachers retirement system reserve fund and for
volunteer and part volunteer fire companies and departments,
there is hereby levied and imposed an additional premium tax
equal to one percent of taxable premiums for fire insurance and
casualty insurance policies. For purposes of this section,
casualty insurance does not include insurance on the life of a
debtor pursuant to or in connection with a specific loan or other
credit transaction or insurance on a debtor to provide indemnity
for payments becoming due on a specific loan or other credit
transaction while the debtor is disabled as defined in the policy.

All moneys collected from this additional tax shall be
received by the commissioner and paid by him or her into a
special account in the state treasury, designated the municipal
pensions and protection fund. The net proceeds of this tax after
appropriation thereof by the Legislature is distributed in accordance with the provisions of this section.

(b) (1) Before the first day of August of each calendar year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund has been established shall report to the state treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension systems during the preceding fiscal year.

(2) Before the first day of September of each calendar year, the state treasurer shall allocate and authorize for distribution the revenues in the municipal pensions and protection fund which were collected during the preceding calendar year for the purposes set forth in this section. Sixty-five percent of the revenues are allocated to municipal policemen's and firemen's pension and relief funds; twenty-five percent of the revenues shall be allocated to volunteer and part volunteer fire companies and departments; and ten percent of such allocated revenues are allocated to the teachers retirement system reserve fund created by section eighteen, article seven-a, chapter eighteen of this code: Provided, That in any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the municipal pensions and protection fund to that fund. The revenues from the municipal pensions and protection fund shall then be allocated to all other pension funds which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the municipal pensions and protection fund allocated to volunteer and part volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire compa-
nies and departments. Before each distribution date, the state
fire marshal shall report to the state treasurer the names and
addresses of all volunteer and part volunteer fire companies and
departments within the state which meet the eligibility require-
ments established in section eight-a, article fifteen, chapter
eight of this code.

(c) (1) Each municipal pension and relief fund shall have
allocated and authorized for distribution a pro rata share of the
revenues allocated to municipal policemen’s and firemen’s
pension and relief funds based upon the corresponding munici-
pality’s average monthly number of members who worked at
least one hundred hours per month during the preceding fiscal
year. On and after the first day of July, one thousand nine
hundred ninety-seven, from the growth in any moneys collected
pursuant to the tax imposed by this section there shall be
allocated and authorized for distribution to each municipal
pension and relief fund, a pro rata share of the revenues
allocated to municipal policemen’s and firemen’s pension and
relief funds based upon the corresponding municipalities
average number of members who worked at least one hundred
hours per month and average monthly number of retired
members. For the purposes of this subsection, the growth in
moneys collected from the tax collected pursuant to this section
is determined by subtracting the amount of the tax collected
during the fiscal year ending the thirtieth day of June, one
thousand nine hundred ninety-six, from the tax collected during
the fiscal year for which the allocation is being made. All
moneys received by municipal pension and relief funds under
this section may be expended only for those purposes described
in sections sixteen through twenty-eight, inclusive, article
twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall
receive an equal share of the revenues allocated for volunteer
and part volunteer fire companies and departments.
(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of the fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments, certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after the first day of July, one thousand nine hundred ninety-two, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not
be subject to premium taxes, agent commissions or any other assessment against premiums.

(b) The policy surcharge shall be collected and remitted to the commissioner by the insurer or in the case of excess lines coverage, by the resident excess lines broker, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before the first day of March of the succeeding year.

(c) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to one hundred dollars for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer, broker or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.

(d) One half of all money from the policy surcharge shall be collected by the commissioner who shall disburse the money received from the surcharge into a special account in the state treasury, designated the “fire protection fund.” The net proceeds of this portion of the tax, and the interest thereon after appropriation by the Legislature shall be distributed quarterly on the first day of the months of January, April, July and October to each volunteer fire company or department on an equal share basis by the state treasurer.

(1) Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments
within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(2) The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

e) The allocation, distribution and use of revenues provided in the fire protection fund are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on premiums collected.

(a) Each risk retention group shall pay to the commissioner, on the first day of March of each year, a tax at the rate of two percent of the taxable premiums on policies or contracts of insurance covering property or risks in this state and on risk and property situated elsewhere upon which no premium tax is otherwise paid during the previous year. Each risk retention group shall also be subject to the additional premium taxes levied by sections fourteen-a and fourteen-d of article three of this chapter and the examination assessment fee levied by section nine of article two of this chapter.

(b) The taxes provided for in this section shall constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state
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or any county, city or municipality within this state, except ad
valorem taxes. Each risk retention group shall be subject to the
same interests, additions, fines and penalties for nonpayment as
are generally applicable to insurers.

(c) To the extent that a risk retention group utilizes insur-
ce agents, each agent shall keep a complete and separate
record of all policies procured from each risk retention group,
which record shall be open to examination by the commis-
sioner, as provided in section nine, article two of this chapter.
These records shall, for each policy and each kind of insurance
provided thereunder, include the following:

1. The limit of liability;
2. The time period covered;
3. The effective date;
4. The name of the risk retention group which issued the
   policy;
5. The gross premium charged; and
6. The amount of return premiums, if any.

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-1. Short title.

This article shall be known and may be referred to as the
“Insurance Tax Procedures Act.”


(a) The provisions of this article applies to all taxes,
surcharges, assessments, penalties and fees, however denomi-
nated, which are remitted to the commissioner.
(b) This article supersedes any provisions in this code which concern the matters addressed in this article, but only to the extent that those other provisions are inconsistent with this article.


For the purposes of this article and where not otherwise defined in this chapter:

(a) “Assessment” means a written notice by the commissioner of an amount due by a taxpayer for payment of any tax, fee, penalty or related charge administered under this article.

(b) “Days” means calendar days.

(c) “Filing date” for a return means the date prescribed by the Legislature for the filing of a return, or if no date is prescribed, the payment date for the tax which is the subject of the return.

(d) “Final decision” means a decision for which the availability of an appeal has been exhausted, either because the time for filing a petition has elapsed or because the petition has been denied.

(e) “Payment date” for a tax means the date prescribed by the Legislature for the payment of the tax, or if no date is prescribed, on the first day of March next following the end of the taxable year for the tax.

(f) “Related charges” includes fees, and additions and interest called for by this article.

(g) “Surcharge” means a tax payable by a policyholder but collected and remitted to the commissioner by the insurer.

(h) “Tax” means any tax to which this article applies.
(i) “Taxable premium” means the amount of the gross direct premiums, annuity considerations or dividends on participating policies applied in reduction of premiums less premiums returned to policyholders due to cancellation of policies.

(j) “Taxpayer” includes any legal entity which is liable for the remittance of a tax to the commissioner in a particular taxable year, and any legal entity that is required to file a return under this article.


(a) All powers granted to the commissioner by this article are in addition to those powers granted to the commissioner elsewhere in this code, and no provision of this article may be construed to eliminate or diminish the other powers.

(b) The commissioner may prescribe any forms as he or she considers necessary for the fair, uniform and efficient administration of taxes. All forms now used by the commissioner shall be prescribed until the commissioner requires otherwise.

(c) The commissioner may propose rules for legislation approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which he or she considers necessary for the fair, uniform and efficient administration of taxes. All currently existing rules remain in effect until amended or repealed.

(d) For the purpose of ascertaining the application of this article to a taxpayer, the commissioner may:

(1) Examine any books, papers, records, memoranda or property of the taxpayer, legal entity, or any other person which may be relevant in determining its tax liability, compliance or taxpayer status;
(2) Require the attendance for the purpose of giving testimony of the taxpayer or legal entity, or of an employee, officer or agent of the taxpayer or legal entity who reasonably is believed to possess knowledge which may be relevant in determining its tax liability, compliance or taxpayer status;

(3) Exercise any of the powers conferred by sections four through eight of article two of this chapter.

(e) If the commissioner determines, after notice and hearing, that a person has failed or refused to comply with the provisions of this article, or of any legislative rule proposed by the commissioner and approved by the Legislature pursuant to this article, the commissioner may order that the person comply with the provisions and that the person take any other steps as are reasonably necessary to allow the provisions to be enforced. If the person holds a license issued by the commissioner, the commissioner may revoke that license upon the person’s failure or refusal to obey an order issued under this subsection or in the commissioner’s discretion may in the alternative assess a penalty against the person in an amount up to five thousand dollars per occurrence.

(f) The commissioner has exclusive authority to bring or join suit in a court of competent jurisdiction, or to pursue any other action allowed by law, to enforce the provisions of this article, or of legislative rules proposed pursuant to this article and approved by the Legislature, or to enforce any order, subpoena or other directive issued by the commissioner pursuant to this article to best promote the fair, uniform and efficient administration of taxes.

§33-43-5. Limitation on actions.

The commissioner has exclusive authority to bring or join suit in a court of competent jurisdiction, or pursue any other action allowed by law, to obtain the payment of taxes and
related charges: Provided, That the commissioner must so act within ten years following the date upon which the assessment or order establishing the taxpayer’s liability becomes final.

§33-43-6. Returns.

(a) Any person who is subject to a tax in a given taxable year shall file a return for that tax and that taxable year, even if the person has no tax liability for that taxable year.

(1) Each return shall be filed by the applicable filing date. The commissioner at his or her discretion may accept a return after the filing date.

(2) Should a taxpayer file more than one return for the same tax, only the return last filed shall be effective. The commissioner at his or her discretion may approve the withdrawal of a return by the taxpayer.

(b) Each return shall be executed by the taxpayer in a manner prescribed by the commissioner. Each return so executed shall constitute a sworn statement by the signatory that to the best of his or her knowledge and belief, the information provided in the return or in any supporting materials which accompany the return is true and accurate.

(c) All returns shall be prepared on forms prescribed by the commissioner. If no form has been prescribed for a particular tax, the return may be in a form chosen by the taxpayer but shall clearly set forth the following information: The taxpayer’s name, address and telephone number; the identification number used by the taxpayer in filing federal income tax returns; the tax and taxable year to which the return applies; and all information used to calculate the tax liability of the taxpayer.

(d) For purposes of this article, a return is not regarded as filed if:
(1) It is not filed by the applicable filing date, unless the commissioner accepts the return; or

(2) It has not been received by the commissioner; or

(3) It has not been properly executed by the taxpayer; or

(4) It is not in the proper form; or

(5) It is incomplete or inaccurate in any material respect; or

(6) It is not accompanied by supporting material required by the commissioner; or

(7) It is withdrawn by the taxpayer with the approval of the commissioner; or

(8) It is not accompanied by the payment for any tax due.

(e) If a tax is to be paid in installments, the taxpayer shall file an appropriate return for each period for which an installment payment is calculated, even if the taxpayer is not required to make an installment payment for that period. The returns shall satisfy all requirements established for annual returns by this section except that the filing date for an installment return is the date prescribed for the installment payment for the period described by the return.

(f) If a taxpayer has failed to file a return by the applicable filing date, or has filed a false or fraudulent return, the commissioner may use any information which is available to him or her to determine the taxpayer’s tax liability: Provided, That a determination of tax liability by the commissioner pursuant to this subsection does not relieve the taxpayer of the duty to file a true, accurate and complete return and does not reduce or preclude any penalty based upon the taxpayer’s failure to file.
(g) A taxpayer to whom a credit has been issued may apply the credit as payment for any like tax due to be remitted by the taxpayer upon written notice to the commissioner stating the amount of the credit to be so applied.

§33-43-7. Penalties.

(a) If any taxpayer fails to file a return by the applicable filing date, then for each day throughout which the taxpayer fails to file, the taxpayer is liable for a penalty of twenty-five dollars.

(b) If a taxpayer fails to pay a tax liability in full by the applicable payment date, then for each day throughout which a portion of the liability remains unpaid, the taxpayer is liable for a penalty in an amount equal to one percent of the unpaid portion: Provided, That the sum of the penalties imposed under this subsection may not exceed one hundred percent of the tax liability.

(c) A penalty imposed under this section may be waived or reduced by the commissioner if the taxpayer establishes, to the satisfaction of the commissioner, that the failure upon which the penalty is based was not, in whole or in part, willful or due to the neglect of the taxpayer.

(d) The assessment of a penalty under this section is automatic unless a waiver or reduction of the penalty is agreed to by the commissioner in writing.


(a) The commissioner may issue assessments for tax liabilities and related charges, or any portions thereof, which are due and payable but unpaid. At any time before an assessment becomes final, the commissioner may amend the assessment, in whole or in part. Except as otherwise provided in this
article, an assessment which is amended by the commissioner shall be regarded as a new assessment.

(b) The commissioner shall give the taxpayer notice of every assessment or amendment thereto. The date upon which the notice is sent to the taxpayer shall be regarded as the date upon which the assessment is issued.

(c) The notice of assessment shall specify the amount of each tax liability or related charge which is the subject of the assessment: Provided, That the notice may list interest and penalties which accrue or are imposed from the time that the assessment is issued to the time that the assessment is paid.

(d) Notwithstanding any other provisions of this article, assessments may be issued only within the following time periods:

(1) For tax liabilities, if the taxpayer has filed a return for the tax and taxable year at issue, within three years of the filing date for the return or the date upon which the return actually was filed, whichever comes later;

(2) For fees, within three years of the date prescribed for payment of the fee;

(3) For penalties based upon a failure to pay a tax, at any time.

(e) The commissioner shall, within ninety days of a written request by a taxpayer, issue an assessment: Provided, That the commissioner may refuse to issue an assessment until the taxpayer has provided the commissioner with all information necessary to determine or verify the taxpayer’s outstanding liabilities for taxes and related charges.
(f) If the taxpayer does not timely request a hearing on an assessment pursuant to section nine of this article, the assessment shall become final. A final assessment is conclusive of the liability of the taxpayer and is not subject to either administrative or judicial review.

§33-43-9. Hearing and appeal; judicial review.

(a) Within sixty days of the issuance of an assessment or imposition of a penalty, a taxpayer may request a hearing before the commissioner on the amount or validity of the assessment or penalty. Except as otherwise provided in this article or in legislative rules proposed and approved by the Legislature thereto, the hearings are subject to the requirements established in sections thirteen and fourteen, article two of this chapter.

(b) A request for a hearing shall be in writing and shall set forth with reasonable particularity the taxpayer’s objections to the assessment or penalty and the factual basis therefore. At any time prior to the hearing, the commissioner may allow a taxpayer to amend the request.

(c) The taxpayer’s request shall be executed by the taxpayer in a manner prescribed by the commissioner, and a request so executed shall constitute a sworn statement by the signatory that to the best of his or her knowledge and belief, the information provided in the request is true and accurate.

(d) Assessments issued by the commissioner shall be presumed correct, and the taxpayer shall bear the burden of proving, by a preponderance of the evidence, that the assessment is incorrect or contrary to law.

(e) If the taxpayer does not timely appeal the commissioner’s order, that order shall become final as of the expiration of the period during which the taxpayer may have brought an
appeal. Upon becoming final, an order shall be conclusive of the liability of the taxpayer and is not subject to either administrative or judicial review.

(f) An agreed order signed by the taxpayer and the commissioner is final and shall constitute a waiver of the taxpayer’s right to a hearing or appeal under this chapter.

§33-43-10. Refunds and credits.

(a) This section is the sole method of receiving a refund or credit for any tax or related charge administered under this article.

(b) Any taxpayer claiming to be due a refund or credit for overpayment of any tax or related charge administered under this article may, within five years from the date of the filing of the return under which the tax was imposed or within four years from the date the tax was paid, whichever term expires later, file with the commissioner a petition in writing requesting a refund of the tax or any part thereof:

1. If the petition and the proofs filed in support thereof persuades the commissioner that the payment of the tax or related charges or any part thereof was improperly required, he or she shall refund or issue a credit to the taxpayer for the improper amounts;

2. If the commissioner is in doubt as to whether or not the taxes or related charges were proper, or if the commissioner is of the opinion that the payment of the tax collected, or any part thereof was proper, then the commissioner shall within thirty days hold a hearing to determine the issue;

3. If a taxpayer is considered to be due a credit or refund, the commissioner shall, if the amount exceeds one thousand dollars, at his or her discretion, pay the amount in equal, annual
installments over not more than three years. The commissioner may issue a credit against future taxes in lieu of a refund payment, whether lump sum or installment;

(4) The payment of refunds or issuance of credits to a taxpayer pursuant to this section shall constitute a complete and final settlement of all of the taxpayer’s claims for which the refunds or credits are paid. No cause of action or liability, whether for damages, attorney’s fees, costs or of any other nature, shall arise against the commissioner or against his or her agents for administering or litigating the constitutionality of a tax subsequently determined to be unconstitutional.

§33-43-11. Interest.

A taxpayer shall be liable for interest on any unpaid final assessment or penalty or portion thereof: Provided, That interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the tax commissioner pursuant to section seventeen-a of article ten, chapter eleven of this code and shall accrue daily.


(a) Payments made by a taxpayer, other than installment payments of a tax liability which is required to be paid in installments, shall be allocated to the taxpayer’s outstanding liabilities as follows:

(1) First, to any assessment which has become final;

(2) Next, to any fee which has not yet been assessed;

(3) Next, to any tax or related charge which has not yet been assessed;
(4) Finally, to any assessment which has not yet become final.


(a) Upon discovering that a taxpayer has made payments in excess of the taxpayer’s outstanding liabilities, the commissioner shall give notice of the overpayment to the taxpayer.

(b) Payments by a taxpayer in excess of the amounts required to satisfy the taxpayer’s liabilities for taxes and related charges shall give rise to a credit against the taxpayer’s future liabilities unless the taxpayer, within thirty days of receiving the notice, either requests a refund under this article and is granted the refund, or establishes to the satisfaction of the commissioner that no future liabilities will be incurred by the taxpayer.

(c) Upon discovering that a taxpayer has made payments less than the taxpayer’s outstanding liabilities, or that the taxpayer has made no payments, the commissioner shall give notice of the underpayment to the taxpayer, which notice will be considered an assessment of the amount due.


(a) The remedies provided by this article are exclusive and shall be in lieu of any and all remedies provided by common law or by other provisions of this code.

(b) Retroactive monetary relief for an unconstitutional tax shall be granted only at the express order of a court of competent jurisdiction which appears in a final decision of that court. Notwithstanding any other provision of this code, a final decision ordering retroactive monetary relief may not be considered to override any statute of limitations contained within this article, or to require relief for any claim which is res judicata.
(c) Retroactive monetary relief shall comprise only a refund of the unconstitutional tax, or of the portion thereof that the court has ordered refunded, which actually has been paid by the taxpayer, together with any penalties or interest which are based upon the taxpayer’s failure to pay the unconstitutional tax and which actually have been paid by the taxpayer.

(1) Except as otherwise provided in this section, retroactive monetary relief shall be paid to the taxpayer in a lump sum within one hundred eighty days of the final decision which orders the relief.

(2) If the amount of retroactive monetary relief due to any individual taxpayer exceeds one thousand dollars or the aggregate amount of the relief due to all taxpayers exceeds one hundred thousand dollars, the commissioner at his or her discretion may pay all refunds issued pursuant to the final decision in equal, annual installments over not more than three years. For purposes of this subsection, a year shall be a period of twelve calendar months measured from the date upon which the final decision which orders the relief is entered.

(3) With the approval of the taxpayer, the commissioner may issue a credit against future taxes in lieu of a refund payment due pursuant to this section, whether lump sum or installment.

(d) The payment of refunds or issuance of credits to a taxpayer pursuant to this section shall constitute a complete and final settlement of all of the taxpayer’s claims which are based upon the unconstitutional tax for which the refunds are paid or the credits issued. No cause of action or liability, whether for damages, attorney’s fees, costs or of any other nature, shall arise against the commissioner or against his or her agents for administering or litigating the constitutionality of a tax subsequently determined to be unconstitutional.
§33-43-15. Taxes collected on behalf of the commissioner.

When a person is required to collect a tax or surcharge from another and remit the amount thus collected to the commissioner, the moneys collected are considered to be held by that person in trust for the state of West Virginia. With respect to the filing of returns, assessments and interest, taxes that are collected by a person to be remitted to the commissioner are treated as would a tax paid directly by that person to the commissioner. The person collecting the tax shall return to the policyholder or person paying the tax or surcharge any refund made for overpayment of the amount collected.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved, this the 30th day of April, 2001.

Governor