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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 554

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

PASSED April 14, 2001

In Effect From **Passage**

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Senate Bill No. 554

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

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend and reenact section twenty-two, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the time for filing information returns to gather information to reasonably predict revenues and how recommendations of governor's commission on fair taxation would impact different businesses; and extending the time period for the tax commissioner to file legislative rules.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

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

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1 (a) *Information returns required.* — The tax commis-
2 sioner shall develop a representative statistical sample of
3 persons who have business registration certificates under
4 article twelve of this chapter. This sample shall be broad
5 enough to reasonably predict revenues and to project how
6 the 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, or for the calendar
15 year ending the thirty-first of December, two thousand,
16 and for the calendar year ending the thirty-first day of
17 December, two thousand one, as determined by the
18 commissioner. When a business files its federal tax returns
19 on a fiscal year basis, the business include in its informa-
20 tion return information for its fiscal years ending within
21 the calendar years one thousand nine hundred ninety-nine
22 and two thousand, respectively, or for the calendar year
23 ending the thirty-first of December, two thousand, and for
24 the calendar year ending the thirty-first day of December,
25 two thousand one, respectively as determined by the
26 commissioner except as otherwise prescribed in the rule
27 promulgated pursuant to subsection (d) of this section:

28 (b) *Due date.* — Information returns are due on the day
29 the federal tax return or federal informational return is
30 due during calendar year two thousand one, determined by
31 including any extension of time to file the return: *Pro-*
32 *vided,* That the information returns are not due until the
33 first day of September, two thousand one: *Provided,*
34 *however,* That if the commissioner determines that the
35 informational returns are to report information for the
36 calendar year ending on the thirty-first day of December,
37 two thousand, and for the calendar year ending the thirty-
38 first day of December, two thousand one, the informa-

39 tional returns are due on the day the federal tax return or
40 federal informational return is due during calendar year
41 two thousand two, determined by including any extension
42 of time to file the return. This information return shall be
43 filed with the business's West Virginia form 112, 112S,
44 120, 141, or, in the case of a sole proprietor, form 140.
45 When the business is not required to file any of these West
46 Virginia forms, the information return shall be filed as a
47 separate document on or before the fifteenth day of the
48 fifth month following the close of its year for tax account-
49 ing or financial accounting purposes ending the thirty-first
50 day of December, one thousand nine hundred ninety-nine,
51 or ending within calendar year two thousand but prior to
52 the thirty-first day of December, two thousand, unless the
53 tax commissioner grants an extension of time to file the
54 information return: *Provided further*, That the informa-
55 tion returns are not due until the first day of September,
56 two thousand one: *And provided further*, That if the
57 commissioner determines that the informational returns
58 are to report information for the calendar year ending on
59 the thirty-first day of December, two thousand, and for the
60 calendar year ending the thirty-first day of December, two
61 thousand one, the informational returns shall be filed as a
62 separate document on or before the fifteenth day of the
63 fifth month following the close of its year for tax account-
64 ing or financial accounting purposes ending the thirty-first
65 day of December, two thousand, or ending within calendar
66 year two thousand one, but prior to the thirty-first day of
67 December, two thousand one, unless the tax commissioner
68 grants an extension of time to file the information return.
69 Information returns shall be filed in the form and pursuant
70 to instructions prescribed by the tax commissioner. These
71 returns shall require information as if the recommenda-
72 tions of the governor's commission on fair taxation were in
73 effect for the period covered by each information return.

74 (c) *Notification*. — On or before the first day of July, two
75 thousand, the tax commissioner shall notify each person
76 selected to be a member of the statistical sample of the

77 selection, and advise the person of the process by which
78 the person will be receiving forms and instructions for
79 filing an informational return after authorization of the
80 same pursuant to subsection (d) of this section.

81 (d) *Legislative rules.* —

82 (1) The tax commissioner shall propose legislative rules
83 for promulgation pursuant to article three, chapter
84 twenty-nine-a of this code. Notwithstanding any provi-
85 sion of article three, chapter twenty-nine-a of this code to
86 the contrary, the tax commissioner shall submit finally
87 approved proposed rules, including amendments, to the
88 legislative rule-making review committee on or before the
89 thirty-first day of August, two thousand one.

90 (2) The proposed rules shall include the actual content
91 of information return to be completed and filed by each
92 person selected to be a member of the statistical sample, as
93 well as the actual content of the instructions to be used by
94 the person to complete the information return, proposed
95 by the tax commissioner. The information required to be
96 provided in the information return shall be, to the extent
97 possible, only information that can be obtained by a
98 selected member of the statistical sample from other tax or
99 regulatory filings made by the selected member.

100 (3) The proposed rules shall, for the review of the
101 Legislature, separately identify any additional information
102 not obtainable from the filings described in subdivision (2)
103 of this subsection that can be obtained from a selected
104 member of the statistical sample, in the least expensive
105 and intrusive manner for the selected person, that the tax
106 commissioner determines is necessary for an adequate
107 state fiscal analysis of the impact of the recommendations
108 of the governor's commission on fair taxation.

109 (4) The proposed rules shall, for the review of the
110 Legislature, separately identify any additional information
111 not obtainable from the filings described in subdivision (2)

112 of this subsection that can be obtained from a selected
113 member of the statistical sample, in the least expensive
114 and intrusive manner for the selected person, that the tax
115 commissioner determines is necessary for an adequate
116 state economic analysis of the impact of the recommenda-
117 tions of the governor's commission on fair taxation.

118 (e) *Incentive to file.* — To encourage the filing of com-
119 plete and accurate information returns, the tax commis-
120 sioner shall allow a two hundred dollar tax credit for each
121 required information return that is filed electronically,
122 within the meaning of article five, chapter thirty-nine of
123 this code, and a credit of one hundred fifty dollars for each
124 such paper return filed. This credit shall be claimed
125 against the person's liability for tax under article twenty-
126 three of this chapter. Unused credit may be claimed
127 against the person's liability for income tax under article
128 twenty-one or twenty-four of this chapter for the tax year
129 of the person in which the information return is filed.
130 Alternatively, the tax commissioner may refund the
131 amount of this credit to any person required to file infor-
132 mation returns under this section.

133 (f) *Civil money penalty.* — Any person required to file an
134 information return under this section who fails to file the
135 return timely, determined with regard to any authorized
136 extension of time for filing, or who files a return that is
137 materially incorrect or incomplete shall pay a money
138 penalty of one thousand dollars for each return that is not
139 filed timely or that is filed timely but is materially inaccu-
140 rate or incomplete. The tax commissioner is authorized to
141 waive this penalty. This penalty shall be collected in the
142 same manner as the penalties imposed by section nineteen
143 of this article are collected.

144 (g) *Confidentiality.* —

145 (1) Information returns and information return informa-
146 tion filed under this section shall be treated as returns and
147 return information under the provisions of section five-d

148 of this article. Such returns and return information shall
149 be open to inspection by or disclosure to officers and
150 employees of the department of tax and revenue whose
151 official duties require such inspection or disclosure for the
152 purpose of, but only to the extent necessary in, preparing
153 economic or financial forecasts, projections, analyses and
154 statistical studies and conducting related activities.

155 (2) Persons authorized to receive information under this
156 subdivision shall be treated as officers and employees of
157 the state under the provisions of section five-d of this
158 article. Inspection or disclosure of information returns
159 and information return information shall also be permitted
160 pursuant to a contract between the proper officer of this
161 state and a university in this state when the purpose of the
162 disclosure is to prepare economic or financial forecasts,
163 projections, analyses, and statistical studies and conduct-
164 ing related activities regarding the recommendations of
165 the governor's commission on fair taxation.

166 (3) Except as otherwise provided in this section, no
167 person who receives an information return or information
168 return information under this section shall disclose the
169 return or return information to any person other than the
170 taxpayer to whom it relates except in a form which cannot
171 be associated with, or otherwise identify, directly or
172 indirectly, a particular taxpayer.

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

Gay I. Davis
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Russell G. Thomas
.....
Clerk of the Senate

Bayes M. Smith
.....
Clerk of the House of Delegates

Carl Key Tomlin
.....
President of the Senate

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

The within *disapproved bill* this the *2*
Day of *May*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/01

Time 3:55 pm