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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



# ENROLLED

## House Bill No. 3027

(By Delegates Pethtel, Stemple, Amores, Varner, Kominar and Craig)



Passed March 8, 2003

In Effect Ninety Days from Passage

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### H. B. 3027

(BY DELEGATES PETHTEL, STEMPLE, AMORES,  
VARNER, KOMINAR AND CRAIG)

[Passed March 8, 2003; 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 five-v, relating to authorizing the tax commissioner to waive tax, interest and penalties in specified circumstances which are otherwise imposed on uncompensated members of the governing board or board of directors of certain tax exempt organizations that result from liabilities of the tax exempt organization being attributed to those members; specifying manner and forum for appeals.

*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 five-v, to read as follows:

#### **ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

**§11-10-5v. Waiver of derivative tax, interest and penalty imposed on board members or directors of charitable and**

**tax exempt organizations imposed on innocent governing board resulting from defaults or delinquencies of the organization.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the tax commissioner may waive imposition of  
3 derivative tax liabilities and associated interest and penalties on  
4 one or more uncompensated members of the governing board  
5 or of the board of directors on an organization qualified and  
6 classified as a tax exempt organization under section 501 (c) (3)  
7 or section 501 (c) (4) of the Internal Revenue Code of 1986, as  
8 amended.

9 (b) (1) For purposes of this section, the term “derivative  
10 liabilities” means liabilities of the tax exempt organization for  
11 any tax administered under this article, including, but not  
12 limited to, employee personal income tax withholding trust  
13 fund tax remittance liabilities and consumers sales and service  
14 tax trust fund tax remittance liabilities, that are attributed by  
15 law to one or more members of the governing board or board of  
16 directors of the tax exempt organization so as to become  
17 personal liabilities of that member or members.

18 (2) For purposes of this section a member is uncompensated  
19 if the member is not paid or otherwise remunerated directly or  
20 indirectly:

21 (A) For service on the governing board or board of direc-  
22 tors;

23 (B) For any other service rendered to the tax exempt  
24 organization;

25 (C) For service to any entity affiliated with the tax exempt  
26 organization; or

27 (D) For any sale of real or tangible personal property or  
28 intangible personal property during the preceding calendar year  
29 to the tax exempt organization or to any person, entity or  
30 organization affiliated with the tax exempt organization.

31 (3) Reimbursement of actual expenses incurred to carry out  
32 the duties and responsibilities of board membership shall not be  
33 treated as compensation.

34 (4) Compensation paid to a person or organization having  
35 a relationship to the member that is specified in section 267(b)  
36 of the Internal Revenue Code of 1986, as amended, constitutes  
37 compensation to the member for purposes of this section.

38 (c) The tax commissioner may only issue the waiver  
39 authorized by this section if the tax commissioner determines  
40 that:

41 (1) The board member or members were misled, defrauded  
42 or deceived as to the accrual or existence of unpaid tax liabili-  
43 ties owed by the tax exempt organization, and had no reason to  
44 know of the accrual or existence of the liabilities owed;

45 (2) The board member or members took no active role in  
46 the day-to-day management of the tax exempt organization and  
47 the tax liability resulted from a computational or clerical error  
48 or good faith reliance on erroneous professional advice which  
49 the member or members could not have reasonably discovered  
50 through the exercise of due diligence; or

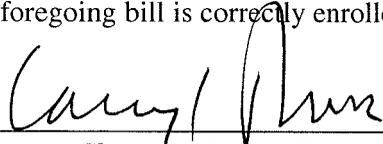
51 (3) The board member or members reasonably believed that  
52 the tax had been paid or accumulated for payment and the  
53 amounts believed to have been so paid or accumulated were in  
54 fact lost, stolen, destroyed or otherwise rendered irretrievable,  
55 without the acquiescence or consent of the member or mem-  
56 bers.

57       (d) The petition for a waiver under this section shall be  
58 made in writing and filed with the tax commissioner in that  
59 form and pursuant to those procedures as the tax commissioner  
60 may prescribe.

61       (e) Any controversy arising pursuant to this section shall be  
62 resolved through an appeal to the office of tax appeals in  
63 accordance with the provisions of article ten-a of this chapter.  
64 The issuance of a waiver under this section is within the  
65 discretion of the tax commissioner and the tax commissioner's  
66 determination shall not be overturned absent a showing of  
67 abuse of discretion.

68       (f) This section shall not be interpreted as restricting the  
69 authority of the tax commissioner to otherwise compromise,  
70 assess, correct, adjust or reassess any amount of tax, interest or  
71 penalty determined to be due under this article.

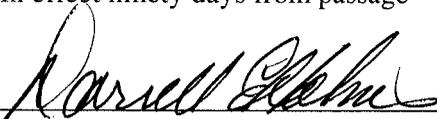
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

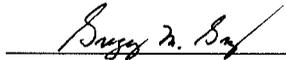
  
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Chairman Senate Committee

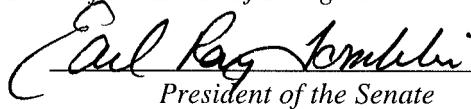
  
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Chairman House Committee

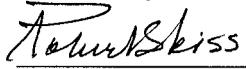
Originating in the House.

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 15<sup>th</sup>  
day of April 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/03

Time 9:45 am