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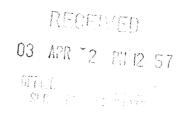
OFFICE OF SCOT VIRGINEAL SECRETARY NE STATE

WEST VIRGINIA LEGISLATURE Regular Session, 2003

ENROLLED

SENATE BILL NO. 485		
(By Senator	Minard, et al)
PASSED	March 8, 2003	

In Effect ninety days Gem_Passage



ENROLLED

Senate Bill No. 485

(By Senators Minard, Jenkins, Minear, Sharpe and Ross)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend article forty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the granting of authority to the insurance commissioner to enter into agreements and compromises relating to taxes, interest, penalties and other charges; and imposing conditions upon such authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-4a. Agreements and compromises.

- 1 (a) Prior to commencing any civil action, the commis-
- 2 sioner may compromise any claim relating to the liability

- 3 of a person with respect to any tax, including any sur-
- 4 charge, interest, additional tax, fee, fine or penalty,
- 5 administered by the commissioner under this chapter for
- 6 any taxable period. The following conditions apply to any
- 7 agreement entered into under this subsection:
- 8 (1) The agreement must be in writing;
- 9 (2) In the absence of a showing of fraud, malfeasance or
- 10 misrepresentation of a material fact, then:
- 11 (A) The agreement shall be final and conclusive;
- (B) The agreement and the matters so agreed upon shall
- 13 not be reopened or the agreement modified by any officer,
- 14 employee or agent of this state; and
- 15 (C) In any civil action or administrative proceeding, the
- 16 compromise agreement or any determination, assessment,
- 17 collection, payment, abatement, refund or credit made in
- 18 accordance therewith may not be annulled, modified, set
- 19 aside or disregarded.
- 20 (b) The commissioner may compromise all or part of any
- 21 civil case arising under the provisions of this article. The
- 22 following conditions apply to any agreement entered into
- 23 under this subsection:
- 24 (1) Any liability for tax, including any surcharge,
- 25 interest, additional tax, fee, fine or penalty, may be
- 26 compromised upon consideration of the terms and condi-
- 27 tions of the compromise agreement in light of any or all of
- 28 the following:
- 29 (A) Doubt as to liability;
- 30 (B) Doubt as to the ability to collect;
- 31 (C) Strength of the taxpayer's defenses to the assessment
- 32 of the tax, surcharge, interest, additional tax, fee, fine or
- 33 penalty;
- 34 (D) Age of the dispute;

- 35 (E) The anticipated time and resources which will be required to develop the civil action for adjudication; and
- 37 (F) Any other factors relevant to the determination of 38 whether citizens of the state of West Virginia are best 39 served by entering into a compromise agreement.
- 40 (2) In all matters involving issues in respect of a tax 41 liability in controversy of fifteen thousand dollars or more 42 for one or all of the years involved in claim or case, the 43 commissioner shall seek the written recommendation of 44 the attorney general before entering into the compromise 45 agreement. The written recommendation of the attorney 46 general shall be placed in the commissioner's file.
- 47 (c) Whenever a compromise agreement is made by the 48 commissioner under subsections (a) or (b) of this section, 49 there shall be placed on file in the commissioner's office an 50 opinion from the commissioner's legal counsel. The 51 opinion must include the following:
- 52 (1) The amount of tax, surcharge, additional tax, fee and interest assessed;
- 54 (2) The anticipated fine or penalty imposed by law on the 55 person against whom the tax, surcharge, additional tax, 56 fee and interest was assessed; and
- 57 (3) The amount actually paid in accordance with the terms of the compromise agreement;
- 60 (4) The reasons underlying the decision to enter into a compromise agreement: *Provided*, That the requirements of this subsection do not apply with respect to any agreement in which the amount of the tax assessed, including any surcharge, interest, additional tax, fee, fine or penalty, is less than one thousand dollars.
- 65 (d) Report to Legislature. The commissioner shall 66 submit to the speaker of the House of Delegates, the 67 president of the Senate and the legislative auditor a 68 quarterly report summarizing the issues and amounts of

- 69 liabilities contained in the agreements and compromises
- 70 into which he or she has entered pursuant to this section.
- 71 The report shall be in a form which preserves the confiden-
- 72 tiality of the identity of the taxpayers involved in the
- 73 agreements and compromises. Notwithstanding any other
- 74 provision of law to the contrary, the agreements and
- 75 compromises entered into pursuant to this section shall be
- 76 subject to audit, in their entirety, by the legislative audi-
- 77 tor.

The Joint Committee on Enrolled Bills hereby certithe foregoing bill is correctly enrolled.	fies that
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Originated in the Senate.	
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President of the Senate	
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PRESENTED TO THE

GOVERNOR

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