WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 485

(By Senator Minard, et al.)

PASSED March 8, 2003

In Effect Ninety days from Passage
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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-
of a person with respect to any tax, including any sur-
charge, interest, additional tax, fee, fine or penalty,
administered by the commissioner under this chapter for
any taxable period. The following conditions apply to any
agreement entered into under this subsection:

(1) The agreement must be in writing;

(2) In the absence of a showing of fraud, malfeasance or
misrepresentation of a material fact, then:

(A) The agreement shall be final and conclusive;

(B) The agreement and the matters so agreed upon shall
not be reopened or the agreement modified by any officer,
employee or agent of this state; and

(C) In any civil action or administrative proceeding, the
compromise agreement or any determination, assessment,
collection, payment, abatement, refund or credit made in
accordance therewith may not be annulled, modified, set
aside or disregarded.

(b) The commissioner may compromise all or part of any
civil case arising under the provisions of this article. The
following conditions apply to any agreement entered into
under this subsection:

(1) Any liability for tax, including any surcharge,
interest, additional tax, fee, fine or penalty, may be
compromised upon consideration of the terms and condi-
tions of the compromise agreement in light of any or all of
the following:

(A) Doubt as to liability;

(B) Doubt as to the ability to collect;

(C) Strength of the taxpayer’s defenses to the assessment
of the tax, surcharge, interest, additional tax, fee, fine or
penalty;

(D) Age of the dispute;
(E) The anticipated time and resources which will be required to develop the civil action for adjudication; and

(F) Any other factors relevant to the determination of whether citizens of the state of West Virginia are best served by entering into a compromise agreement.

(2) In all matters involving issues in respect of a tax liability in controversy of fifteen thousand dollars or more for one or all of the years involved in claim or case, the commissioner shall seek the written recommendation of the attorney general before entering into the compromise agreement. The written recommendation of the attorney general shall be placed in the commissioner’s file.

(c) Whenever a compromise agreement is made by the commissioner under subsections (a) or (b) of this section, there shall be placed on file in the commissioner’s office an opinion from the commissioner’s legal counsel. The opinion must include the following:

(1) The amount of tax, surcharge, additional tax, fee and interest assessed;

(2) The anticipated fine or penalty imposed by law on the person against whom the tax, surcharge, additional tax, fee and interest was assessed; and

(3) The amount actually paid in accordance with the terms of the compromise agreement;

(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.

(d) Report to Legislature. – The commissioner shall submit to the speaker of the House of Delegates, the president of the Senate and the legislative auditor a quarterly report summarizing the issues and amounts of
liabilities contained in the agreements and compromises into which he or she has entered pursuant to this section. The report shall be in a form which preserves the confidentiality of the identity of the taxpayers involved in the agreements and compromises. Notwithstanding any other provision of law to the contrary, the agreements and compromises entered into pursuant to this section shall be subject to audit, in their entirety, by the legislative auditor.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of April, 2003.

Governor