WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4630

(By Delegate Michael)

Passed March 9, 2006

In Effect Ninety Days from Passage
AN ACT to amend and reenact §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all relating to creating a voluntary disclosure program; requiring disclosure of certain tax shelters used to avoid paying state income taxes; extending the statute of limitations for issuing assessments related to failures to disclose a listed transaction; and imposing penalties for promoting abusive tax shelters relative to failing to report listed transactions, reportable transaction understatements, failing to participate in the voluntary disclosure program, and for failing to register a tax shelter or maintain required list.

Be it enacted by the Legislature of West Virginia:
That §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-15. Limitations on assessment.

(a) General rule. — The amount of any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing): Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return was filed, the assessment may be made at any time: Provided, however, That if a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's state or federal income tax return, an assessment may be made at any time not later than six years after the due date of the return required under article twenty-one or article twenty-four of this chapter for the same taxable year or after such return was filed, or not later than three years after an amended return is filed, whichever is later.

(b) Time return deemed filed. —

(1) Early return. — For purposes of this section, a return filed before the last day prescribed by law, or by rules promulgated by the Tax Commissioner for filing thereof, shall be considered as filed on such last date;

(2) Returns executed by Tax Commissioner. — The execution of a return by the Tax Commissioner pursuant to the
authority conferred by section five-c of this article, shall not start the running of the period of limitations on assessment and collection.

(c) Exceptions. — Notwithstanding subsection (a):

(1) Extension by agreement. — The Tax Commissioner and the taxpayer may enter into written agreements to extend the period within which the Tax Commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) Deficiency in federal tax. — Notwithstanding subsection (a), in the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation, upon assessment of a deficiency reflecting such final determinations in the net income tax imposed by article twelve-a and the taxes imposed by articles twenty-one and twenty-four of this chapter, shall not expire until ninety days after the Tax Commissioner is advised of the determination by the taxpayer as provided in section six-a of said article twelve-a, section fifty-nine of said article twenty-one and section twenty of said article twenty-four, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless of the tax year of the deficiency.

(3) Special rule for certain amended returns. — Where, within the sixty-day period ending on the day on which the time prescribed in this section for the assessment of any tax for any taxable year would otherwise expire, the Tax Commissioner receives a written document signed by the taxpayer showing
that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day sixty days after the day on which the Tax Commissioner receives such document;

(4) *Net operating loss or capital loss carrybacks.* — In the case of a deficiency attributable the application by the taxpayer of a net operating loss carryback or a capital loss carryback (including that attributable to a mathematical or clerical error in application of the loss carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed;

(5) *Certain credit carrybacks.* — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term "credit carryback" means any carryback allowed under section eight, article one, chapter five-e of this code;

(6) *Overpayment of tax credited against payment of another tax.* — In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered
under this article, the period of limitation upon assessment of
a deficiency in the payment of such other tax due to the
overstating of the allowable credit, shall not expire until ninety
days after the Tax Commissioner receives written notice from
the taxpayer advising the Tax Commissioner of the final
determination reducing the taxpayer's liability for a tax allowed
as a credit against a tax administered under this article, or until
the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless
of the tax year of the deficiency.

(d) Cases under bankruptcy code. — The running of
limitations provided in subsection (a), on the making of
assessments, or provided in section sixteen, on collection, shall,
in a case under title eleven of the United States code, be
suspended for the period during which the Tax Commissioner
is prohibited by reason of such case from making the assess-
ment or from collecting the tax and:

(1) For assessment, sixty days thereafter; and

(2) For collection, six months thereafter.

§11-10-18. Additions to tax.

(a) Failure to file tax return or pay tax due. —

(1) In the case of failure to file a required return of any tax
administered under this article on or before the date prescribed
for filing such return (determined with regard to any extension
of time for filing), unless it is shown that such failure is due to
reasonable cause and not due to willful neglect, there shall be
added to the amount required to be shown as tax on such return
five percent of the amount of such tax if the failure is for more
than one month, with an additional five percent for each
additional month or fraction thereof during which such failure
continues, not exceeding twenty-five percent in the aggregate:
Provided, That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That the addition to tax shall be imposed only on the net amount of tax due;

(3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in paragraph (1) which is not so shown within fifteen days of the date of notice and demand therefore, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, That this addition to tax shall be imposed only on the net amount of tax due.

(b) Limitation and special rule. —

(1) Additions under more than one paragraph:

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for
any month to which an addition to tax applies under both paragraphs (1) and (2);

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.

(2) Amount of tax shown more than amount required to be shown. — If the correct amount of tax due is less than the amount shown on the return, paragraphs (1) and (2) of subsection (a) shall only apply to the lower amount.

(3) Exception for estimated tax. — Subsection (a) shall not apply to any failure to pay any estimated tax.

(c) Negligence or intentional disregard of rules and regulations. — If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: Provided, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided in subsection (a), and the Tax Commissioner shall state in his or her notice of assessment the reason or reasons for imposing this addition to tax with sufficient particularity to put the taxpayer on notice regarding why it was assessed.
(d) False or fraudulent return. — In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the Tax Commissioner. In the case of a joint personal income tax return under article twenty-one of this chapter, this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse.

(e) Additions to tax treated as tax. — Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.

(f) Penalties for promoting abusive tax shelters and for failure to report listed transactions. —

(1) A penalty is hereby imposed on every person who engages in activities promoting abusive tax shelters described in Section 6700(a) of the Internal Revenue Code of 1986, or any subsequent corresponding provisions of the Internal Revenue Code, as from time to time amended, and who is subject to a penalty imposed thereunder, whether or not such penalty has been imposed, where such activities affect tax returns required to be filed with the Tax Commissioner. The amount of the penalty imposed hereunder shall be equal to fifty percent of the gross income derived from activities by such person which are subject to that penalty under paragraph (2)(A) of said section 6700(a) for making a false or fraudulent statement; and shall be the lesser of one thousand dollars or one hundred percent of such gross income when the activity is subject to that penalty under paragraph (1) of said section 6700(a).
(2) For audits of returns commencing on or after the first day of July, two thousand six, when it appears that any part of the deficiency for which an assessment is made is due to failure to disclose a listed transaction or a reportable transaction other than a listed transaction, as the terms are defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding provision of the Internal Revenue Code, as from time to time amended, on the taxpayer’s federal income tax return, there shall be imposed a penalty. In the case of a listed transaction the amount of the penalty shall be equal to seventy percent of the amount of the deficiency, and in the case of other reportable transactions the amount of the penalty shall be equal to thirty-five percent of the amount of the deficiency.

(g) Coordination with other penalties. — Unless provided otherwise by rules, the penalties imposed by this section are in addition to any other penalty imposed by this article or article ten-e of this chapter.

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-1. Short title.

This article may be cited as the “Tax Shelter Voluntary Compliance Act.”

§11-10E-2. Tax shelter voluntary compliance program.

(a) In general. — The Tax Commissioner shall establish and administer a tax shelter voluntary compliance program for eligible taxpayers subject to tax under article twenty-one and article twenty-four of this chapter. The program shall be conducted from the first day of August, two thousand six, through the first day of November, two thousand six, and shall apply to personal income tax and corporation net income tax liabilities attributable to the use of tax avoidance transactions
for taxable years beginning before the first day of January, two
10 thousand six.

(b) The department is authorized to adopt rules (including
interpretive and emergency rules), issue forms and instructions,
issue administrative notices, and take such other actions as it
deems necessary to implement the provisions of this article.

(c) Election. — An eligible taxpayer that meets the require-
ments of subsection (d) of this section with respect to any
taxable year to which this article applies may elect to partici-
pate in the program under either method below for any particu-
lar tax avoidance transaction period. Such election shall be
made separately for each taxable year in the form and manner
prescribed by the Tax Commissioner, and once made shall be
irrevocable.

(1) Voluntary compliance without appeal. — If an eligible
taxpayer elects to participate under this paragraph: (i) The Tax
Commissioner shall abate and not seek to collect any penalty
that may be applicable to the underreporting or underpayment
of West Virginia income tax attributable to the use of tax
avoidance transactions for such taxable year; (ii) except as
otherwise provided in this article, the Tax Commissioner shall
not seek civil or criminal prosecution against the taxpayer for
such taxable year with respect to tax avoidance transactions;
and (iii) the taxpayer may not file a claim for credit or refund
with respect to the tax avoidance transaction for such taxable
year. Nothing in this subsection shall preclude a taxpayer from
filing a claim for credit or refund for the same taxable year in
which a tax avoidance transaction was reported if such credit or
refund is not attributable to the tax avoidance transaction. No
penalty may be waived or abated under this article if the penalty
imposed relates to an amount of West Virginia income tax
assessed prior to the first day of August, two thousand six.
(2) Voluntary compliance with appeal. — If an eligible taxpayer elects to participate under this paragraph, then: (i) The Tax Commissioner shall abate and not seek to collect the penalties for failure to report listed transactions, with respect to such taxable year; (ii) except as otherwise provided in this article, the Tax Commissioner shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions; and (iii) the taxpayer may file a claim for credit or refund as provided in article ten of this chapter with respect to such taxable year. Notwithstanding any other provision of the code to the contrary, the taxpayer may not file an appeal until after either of the following: (i) The Tax Commissioner issues a notice of denial; or (ii) the earlier of: (1) The date which is one hundred eighty days after the date of a final determination by the Internal Revenue Service with respect to the transactions at issue; or (2) the date that is three years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest. No penalty may be waived or abated under this article if the penalty imposed relates to an amount of West Virginia income tax assessed prior to the first day of August, two thousand six.

(d) Eligible taxpayer. — (1) The tax shelter voluntary compliance program applies to any eligible taxpayer who, during the period from the first day of August, two thousand six, to the first day of November, two thousand six, does both of the following: (1) Files an amended return for the taxable year for which the taxpayer used a tax avoidance transaction to underreport the taxpayer’s West Virginia income tax liability, reporting the total West Virginia taxable income and income tax for such taxable year computed without regard to any tax avoidance transactions; and (2) makes full payment of the additional income tax and interest due for such taxable year that is attributable to the use of the tax avoidance transaction. For purposes of this subsection (d), if the Tax Commissioner subsequently determines that the correct amount of West
Virginia income tax was not paid for the taxable year, then the penalty relief under this section shall not apply to any portion of the underpayment not paid to the state that is attributable to a tax avoidance transaction.

An "eligible taxpayer" is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person as described in the tax law, who or which has a tax liability relating to income tax imposed under article twenty-one or article twenty-four of this chapter. However, an otherwise eligible taxpayer would be prohibited from participating in the voluntary compliance initiative if:

(a) The taxpayer is a party to any federal or state criminal investigation for underreporting or underpayment of tax;

(b) As of the taxpayer’s application date under the voluntary compliance initiative, the taxpayer is a party to any pending administrative proceeding or civil or criminal litigation relating to the designated taxes under the voluntary compliance initiative. An administrative proceeding or civil litigation shall be deemed not to be pending on the application date if the taxpayer withdraws from that proceeding or litigation before the Tax Commissioner's penalty waiver under the voluntary compliance initiative;

(c) The taxpayer has a criminal conviction concerning the tax on which penalty relief is sought; or

(d) The taxpayer was eligible to participate in the amnesty program under article ten-d of this chapter but did not do so, and the taxpayer participated in the voluntary compliance programs of any other state.
§11-10E-3. "Tax avoidance transaction" defined.

For purposes of this article, the term "tax avoidance transaction" means a plan or arrangement devised for the principal purpose of avoiding federal or state income tax or both. Tax avoidance transactions include, but are not limited to, "listed transactions" as defined in Treasury Regulations Section 1.6011-4(b)(2).

§11-10E-4. Use of evidence of participation in the program.

The fact of a taxpayer's participation in the tax shelter voluntary compliance program shall not be considered evidence that the taxpayer in fact engaged in a tax avoidance transaction.

§11-10E-5. Reportable transactions.

(a) For each taxable year in which a taxpayer is required to make a disclosure statement under Treasury Regulations Section 1.6011-4 (26 CFR 1.6011-4) (including any taxpayer that is a member of a consolidated group required to make such disclosure) with respect to a reportable transaction (including a listed transaction) in which the taxpayer participated in a taxable year for which a return is required, such taxpayer shall file a copy of such disclosure with the Tax Commissioner.

Disclosure under this subsection is required to be made by any taxpayer that is a member of a unitary business group that includes any person required to make a disclosure statement under Treasury Regulations Section 1.6011-4. Disclosure under this subsection is required with respect to any transaction entered into after the twenty-eighth day of February, two thousand, that becomes a listed transaction at any time, and shall be made in the manner prescribed by the Tax Commissioner. With respect to transactions in which the taxpayer participated for taxable years ending before the thirty-first day of December, two thousand four, disclosure shall be made by
the due date (including extensions) of the first annual return due
after the effective date of this article. With respect to transac-
tions in which the taxpayer participated for taxable years ending
on and after the thirty-first day of December, two thousand
four, disclosure shall be made in the time and manner pre-
scribed in Treasury Regulations Section 1.6011-4(e). Notwith-
standing the above, no disclosure is required for transactions
entered into after the twenty-eighth day of February, two
thousand, and before the first day of January, two thousand
five: (i) If the taxpayer has filed an amended West Virginia
income tax return which reverses the tax benefits of the
potential tax avoidance transaction; or (ii) as a result of a
federal audit the Internal Revenue Service has determined the
tax treatment of the transaction and a West Virginia amended
return has been filed to reflect the federal treatment.

(b) Reportable transaction understatement penalty. — If a
taxpayer has a reportable transaction understatement for any
taxable year, there shall be added to the tax an amount equal to
twenty percent of the amount of that understatement. This
penalty shall be deemed assessed upon the assessment of the tax
to which such penalty relates and shall be collected and paid on
notice and demand in the same manner as the tax.

(1) Reportable transaction understatement. — For purposes
of this section, the term "reportable transaction understatement"
means the product of: (i) The amount of the increase (if any) in
taxable income, as determined by reference to the amount of
post-apportioned income that results from a difference between
the proper tax treatment of an item to which this subsection
applies and the taxpayer's treatment of that item as shown on
the taxpayer's return, including an amended return filed prior
to the date the taxpayer is first contacted by the Tax Commiss-
ioner regarding the examination of the return; and (ii) the
applicable tax rates.
(2) Items to which subsection (b) applies. — This subsection shall apply to any item which is attributable to either of the following: (i) any listed transaction as defined in Treasury Regulations Section 1.6011-4; and (ii) any reportable transaction as defined in Treasury Regulations Section 1.6011-4 (other than a listed transaction) if a significant purpose of the transaction is the avoidance or evasion of federal income tax.

(3) Subsection (b) shall be applied by substituting thirty percent for twenty percent with respect to the portion of any reportable transaction understatement with respect to which the requirements of this subsection are not met.

(4) Reasonable cause exception. —

(A) In general. — No penalty shall be imposed under this subsection with respect to any portion of a reportable transaction understatement if it is shown by clear and convincing evidence that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(B) Special rules. — Subparagraph (A) does not apply to any reportable transaction (including a listed transaction) unless all of the following requirements are met:

(C) The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with this article. A taxpayer failing to adequately disclose shall be treated as meeting the requirements of this subparagraph: (i) If the penalty for that failure was rescinded; (ii) there is or was substantial authority for such treatment; and (iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

(c) One hundred percent interest penalty for failure to participate. — If an eligible taxpayer who fails to participate in
the program is contacted by the Internal Revenue Service or the
Tax Commissioner regarding the potential use of a tax avoid-
ance transaction with respect to a taxable year and has a
deficiency with respect to such taxable year or years, there shall
be added to the tax attributable to the potential tax avoidance
transaction an amount equal to one hundred percent of the
interest due under article ten of this chapter for the period
beginning with the statutory due date of the return (determined
without regard to extensions) on which the income should have
been reported to the date of the notice of assessment. Such
penalty shall be deemed assessed upon the assessment of the
interest to which such penalty relates and shall be collected and
paid in the same manner as such interest. The penalty imposed
by this subsection is in addition to any other penalty imposed
by this article or article ten. This subsection shall apply to
taxable years ending on and after the thirty-first day of Decem-
ber, two thousand five.

(d) Coordination with other penalties. — Unless provided
otherwise by rules, the penalties imposed by this section are in
addition to any other penalty imposed by this article or article
ten of this chapter.

§11-10E-6. Failure to register tax shelter or maintain list.

(a) Penalty imposed. — Any person that fails to comply
with the requirements of section eight or section nine of this
article shall incur a penalty as provided in subsection (b). A
person shall not be in compliance with the requirements of
section eight unless and until the required registration has been
filed and contains all of the information required to be included
with such registration under such section eight or Section 6111
of the Internal Revenue Code. A person shall not be in compli-
ance with the requirements of section nine unless, at the time
the required list is made available to the Tax Commissioner,
such list contains all of the information required to be main-
tained under such section nine or Section 6112 of the Internal
Revenue Code.

(b) Amount of penalty. — The following penalties apply:

(1) In the case of each failure to comply with the require-
ments of subsection (a), subsection (b) or subsection (d) of
section eight, the penalty shall be ten thousand dollars;

(2) If the failure is with respect to a listed transaction under
subsection (c) of section eight, the penalty shall be one hundred
thousand dollars;

(3) In the case of each failure to comply with the require-
ments of subsection (a) or subsection (b) of section nine, the
penalty shall be ten thousand dollars; and

(4) If the failure is with respect to a listed transaction under
subsection (c) of section nine, the penalty shall be one hundred
thousand dollars.

(c) Authority to rescind penalty. — The office of tax
appeals, with the written approval of the Tax Commissioner,
may rescind all or any portion of any penalty imposed by this
section with respect to any violation only if one or more of the
following apply: (1) It is determined that failure to comply did
not jeopardize the best interests of the state and is not due to
any willful neglect or any intent not to comply; (2) it is shown
that the violation is due to an unintentional mistake of fact; (3)
rescinding the penalty would promote compliance with the
requirements of this article and effective tax administration; or
(4) the taxpayer can show that there was reasonable cause for
the failure to disclose and that the taxpayer acted in good faith.

(d) Coordination with other penalties. — The penalty
imposed by this section is in addition to any penalty imposed by
this article or article ten of this chapter.
§11-10E-7. Promoting tax shelters.

Except as herein provided, the provisions of Section 6700 of the Internal Revenue Code shall apply for purposes of this article as if such section applied to a West Virginia deduction, credit, exclusion from income, allocation or apportionment rule, or other West Virginia tax benefit. Notwithstanding Section 6700(a) of the Internal Revenue Code, if an activity with respect to which a penalty imposed under Section 6700(a) of the Internal Revenue Code, as applied for purposes of this article, involves a false or fraudulent statement as described in Section 6700(a)(2)(A) of the Internal Revenue Code, as applied for purposes of this article, the amount of the penalty imposed under this section shall be fifty percent of the gross income derived (or to be derived) from such activity by the person upon which the penalty is imposed.

§11-10E-8. Registration of tax shelters.

(a) Federal tax shelter. — Any tax shelter organizer required to register a tax shelter under Section 6111 of the Internal Revenue Code shall send a duplicate of the federal registration information to the Tax Commissioner not later than the day on which registration is required under federal law. Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within thirty days after request by the Tax Commissioner, file a statement of that registration number with the Tax Commissioner.

(b) Additional requirements for listed transactions. — In addition to the requirements of subsection (a), for any transactions entered into on or after the twenty-eighth day of February, two thousand, that become listed transactions (as defined under Treasury Regulations Section 1.6011-4) at any time, those transactions shall be registered with the Tax Commissioner (in
the form and manner prescribed by the Tax Commissioner) by
the later of: (i) Sixty days after entering into the transaction; (ii)
sixty days after the transaction becomes a listed transaction; or
(iii) the first day of July, two thousand six.

(c) **Tax shelters subject to this section.** — The provisions of
this section apply to any tax shelter herein described in which
a person:

(1) Organizes or participates in the sale of an interest in a
partnership, entity or other plan or arrangement; and

(2) Makes or causes another person to make a false or
fraudulent statement with respect to securing a tax benefit or a
gross valuation as to any material matter, and which is or was
one or more of the following: (A) Organized in this state; (B)
doing business in this state; or (C) deriving income from
sources in this state.

(d) **Tax shelter identification number.** — Any person
required to file a return under this article and required to
include on the person’s federal income tax return a tax shelter
identification number pursuant to Section 6111 of the Internal
Revenue Code shall furnish such number when filing the
person’s West Virginia return.

§11-10E-9. **Investor lists.**

(a) **Federal abusive tax shelter.** — Any person required to
maintain a list under Section 6112 of the Internal Revenue Code
and Treasury Regulations Section 301.6112-1 with respect to a
potentially abusive tax shelter shall furnish such list to the Tax
Commissioner not later than the time such list is required to be
furnished to the Internal Revenue Service under federal income
tax law. The list required under this section shall include the
same information required with respect to a potentially abusive
tax shelter under Treasury Regulations Section 301.6112-1 and any other information that the Tax Commissioner may require.

(b) Additional requirements for listed transactions. — For transactions entered into on or after the twenty-eighth day of February, two thousand, that become listed transactions (as defined under Treasury Regulations Section 1.6011-4) at any time thereafter, the list shall be furnished to the Tax Commissioner by the later of sixty days after entering into the transaction or sixty days after the transaction becomes a listed transaction.

(c) Tax shelters subject to this section. — The provisions of this section apply to any tax shelter herein described in which a person:

(1) Organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement; and

(2) Makes or causes another person to make a false or fraudulent statement with respect to securing a tax benefit or a gross valuation as to any material matter; and which is or was one or more of the following: (A) Organized in this state; (B) doing business in this state; or (C) deriving income from sources in this state.

§11-10E-10. Suspension of inconsistent code provisions.

All provisions of article ten, chapter eleven of this code and all provisions of tax statutes administered under said article ten of this chapter that are inconsistent with the provisions of this article are suspended to the extent necessary to carry out the provisions of this article.
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 28th day of May, 2006.

Governor