WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 626

(By Senators Helmick and Minard)

PASSED March 9, 2006

In Effect 90 days from Passage
AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating to personal income tax; requiring employers to submit copy of employee's withholding statement with an annual reconciliation of income tax withheld; and requiring employer with two hundred fifty or more employees to submit withholding statements electronically.

Be it enacted by the Legislature of West Virginia:

That §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.
(a) General. – Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes so required to be deducted and withheld. Where the average quarterly amount so deducted and withheld by any employer is less than one hundred fifty dollars and the aggregate for the calendar year can reasonably be expected to be less than six hundred dollars, the Tax Commissioner may by regulation permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established by this subsection. The Tax Commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make the return and pay to him or her the tax deducted and withheld at any time, or from time to time.

(b) Monthly returns and payments of withheld tax on and after the first day of January, two thousand one. – Notwithstanding the provisions of subsection (a) of this section, on and after the first day of January, two thousand one, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate two hundred fifty dollars or more for the month, except any employer with respect to whom the Tax Commissioner may have by regulation
provided otherwise in accordance with the provisions of subsection (a) of this section.

(c) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or before the thirty-first day of January next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner and annually remit to the Tax Commissioner West Virginia personal income taxes deducted and withheld for the employees. The Tax Commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection.

(d) Deposit in trust for Tax Commissioner. — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(e) Accelerated payment. — (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under subsection (b) of this section exceeded
one hundred thousand dollars shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June.

(2) For purposes of complying with subdivision (1) of this subsection, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer's election, the employer may remit an amount equal to fifty percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year, and if that amount exceeds one hundred thousand dollars, the employer shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of June, as provided in subdivision (2) of this subsection.

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on the twentieth day of July, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(f) The amendments to this section enacted in the year two thousand six are effective for tax years beginning on or after the first day of January, two thousand six.
An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer on or before the twenty-eighth day of February following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of twenty-five dollars per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to reasonable cause and not due to willful neglect.
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 3rd Day of April, 2006.

Governor