

SB591

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 591

(By Senator Helmick)

PASSED March 8, 2006

In Effect 90 days from Passage

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Senate Bill No. 591

(BY SENATOR HELMICK)

[Passed March 8, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Tax Division to collect the cost of federal refund offset fees from the tax debtor; creating fund; and authorizing expenditure of proceeds in the fund by the Tax Division in the administration of its office.

Be it enacted by the Legislature of West Virginia:

That §11-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-11. Collection of tax.

1 (a) *General.* - The Tax Commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by
3 this article or any of the other articles of this chapter that
4 which this article is applicable. In addition to all other
5 remedies available for the collection of debts due the

6 state, the Tax Commissioner may proceed by foreclosure
7 of the lien provided in section twelve, or by levy and
8 distraint under section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.* –

11 (1) Any person contracting with a nonresident contractor
12 subject to the taxes imposed by articles thirteen, twenty-
13 one and twenty-four of this chapter, shall withhold
14 payment, in the final settlement of the contract, of a
15 sufficient amount, not exceeding six percent of the con-
16 tract price, as will in the person's opinion be sufficient to
17 cover the taxes, until the receipt of a certificate from the
18 Tax Commissioner to the effect that the above referenced
19 taxes imposed against the nonresident contractor have
20 been paid or provided for.

21 (2) If any person shall fail to withhold as provided in
22 subdivision (1) of this subsection, that person is personally
23 liable for the payment of all taxes attributable to the
24 contract, not to exceed six percent of the contract price.
25 The taxes attributable shall be recoverable by the Tax
26 Commissioner by appropriate legal proceedings, which
27 may include issuance of an assessment under this article.

28 (c) *Prerequisite for issuance of certificate of dissolution*
29 *or withdrawal of corporation.* – The Secretary of State
30 shall withhold the issuance of any certificate of dissolution
31 or withdrawal in the case of any corporation organized
32 under the laws of this state, or organized under the laws of
33 another state and admitted to do business in this state,
34 until the receipt of a certificate from the Tax Commis-
35 sioner to the effect that every tax administered under this
36 article imposed against any corporation has been paid or
37 provided for, or that the applicant is not liable for any tax
38 administered under this article.

39 (d) *Prerequisite to final settlement of contract with this*
40 *state or political subdivision; penalty.* – All state, county,

41 district and municipal officers and agents making con-
42 tracts on behalf of this state or any political subdivision
43 thereof shall withhold payment, in the final settlement of
44 any contract, until the receipt of a certificate from the Tax
45 Commissioner to the effect that the taxes imposed by
46 articles thirteen, twenty-one and twenty-four of this
47 chapter against the contractor have been paid or provided
48 for. If the transaction embodied in the contract or the
49 subject matter of the contract is subject to county or
50 municipal business and occupation tax, then the payment
51 shall also be withheld until receipt of a release from the
52 county or municipality to the effect that all county or
53 municipal business and occupation taxes levied or accrued
54 against the contractor have been paid. Any official
55 violating this section is subject to a civil penalty of one
56 thousand dollars, recoverable as a debt in a civil action
57 brought by the Tax Commissioner.

58 (e) *Limited effect of Tax Commissioner's certificates.* -
59 The certificates of the Tax Commissioner provided in
60 subsections (b), (c) and (d) of this section shall not bar
61 subsequent investigations, assessments, refunds and
62 credits with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *liability of successor; lien.* -

65 (1) If any person subject to any tax administered under
66 this article sells out his, her or its business or stock of
67 goods, or ceases doing business, any tax, additions to tax,
68 penalties and interest imposed by this article or any of the
69 other articles of this chapter to which this article is
70 applicable shall become due and payable immediately and
71 that person shall, within thirty days after selling out his,
72 her or its business or stock of goods or ceasing to do
73 business, make a final return or returns and pay any tax or
74 taxes which are due. The unpaid amount of any tax is a
75 lien upon the property of that person.

76 (2) The successor in business of any person who sells out
77 his, her or its business or stock of goods, or ceases doing
78 business, is personally liable for the payments of tax,
79 additions to tax, penalties and interest unpaid after
80 expiration of the thirty-day period allowed for payment:
81 *Provided*, That if the business is purchased in an arms-
82 length transaction, and if the purchaser withholds so much
83 of the consideration for the purchase as will satisfy any
84 tax, additions to tax, penalties and interest which may be
85 due until the seller produces a receipt from the Tax
86 Commissioner evidencing the payment thereof, the pur-
87 chaser is not personally liable for any taxes attributable to
88 the former owner of the business unless the contract of
89 sale provides for the purchaser to be liable for some or all
90 of the taxes. The amount of tax, additions to tax, penalties
91 and interest for which the successor is liable is a lien on
92 the property of the successor, which shall be enforced by
93 the Tax Commissioner as provided in this article.

94 (g) *Priority in distribution of estate or property in*
95 *receivership; personal liability of fiduciary.* – All taxes due
96 and unpaid under this article shall be paid from the first
97 money available for distribution, voluntary or compulsory,
98 in receivership, bankruptcy or otherwise, of the estate of
99 any person, firm or corporation, in priority to all claims,
100 except taxes and debts due the United States which under
101 federal law are given priority over the debts and liens
102 created by this article. Any trustee, receiver, administra-
103 tor, executor or person charged with the administration of
104 an estate who violates the provisions of this section is
105 personally liable for any taxes accrued and unpaid under
106 this article, which are chargeable against the person, firm
107 or corporation whose estate is in administration.

108 (h) *Injunction.* – If the taxpayer fails for a period of
109 more than sixty days to fully comply with any of the
110 provisions of this article or of any other article of this
111 chapter to which this article is applicable, the Tax Com-
112 missioner may institute a proceeding to secure an injunc-

113 tion to restrain the taxpayer from doing business in this
114 state until the taxpayer fully complies with the provisions
115 of this article or any other articles. No bond is required of
116 the Tax Commissioner in any action instituted under this
117 subsection.

118 (i) *Costs.* – In any proceeding under this section, upon
119 judgment or decree for the Tax Commissioner, he or she
120 shall be awarded his or her costs.

121 (j) *Refunds; credits; right to offset.* –

122 (1) Whenever a taxpayer has a refund or credit due it for
123 an overpayment of any tax administered under this article,
124 the Tax Commissioner may reduce the amount of the
125 refund or credit by the amount of any tax administered
126 under this article, whether it be the same tax or any other
127 tax, which is owed by the same taxpayer and collectible as
128 provided in subsection (a) of this section.

129 (2) The Tax Commissioner may enter into agreements
130 with the Internal Revenue Service that provide for offset-
131 ting state tax refunds against federal tax liabilities;
132 offsetting federal tax refunds against state tax liabilities;
133 and establishing the amount of the offset fee per transac-
134 tion which both agencies may charge each other: *Pro-*
135 *vided*, That offsets under subdivision (1) of this subsection
136 shall occur prior to offset under this subdivision. At the
137 times moneys are received as a result of an offset of a
138 taxpayer's federal tax refund under the provisions of
139 section 6402(e) of the Internal Revenue Code, the taxpayer
140 is given credit against state tax liability for the amount of
141 the offset less a deduction for the offset fee imposed by the
142 Internal Revenue Service: *Provided*, That the amount of
143 the offset fee imposed by the Internal Revenue Service
144 shall be added to the taxes, interest and penalties owed by
145 the taxpayer to this state: *Provided, however*, That the
146 amount of the offset fee imposed by the Internal Revenue
147 Service shall be deducted from the moneys received from
148 the taxpayer's federal tax refund and then deposited in the

149 special revolving fund which is hereby created and estab-
150 lished in the State Treasury and designated as the Tax
151 Offset Fee Administration Fund: *Provided further*, That
152 the fees deposited in the Tax Offset Fee Administration
153 Fund may be expended by the Tax Commissioner for the
154 general administration of the taxes administered under the
155 authority of this article.

156 (k) *Spouse relieved of liability in certain cases.* –

157 (1) *In general.* – Under regulations prescribed by the Tax
158 Commissioner, if:

159 (A) A joint personal income tax return has been made for
160 a taxable year;

161 (B) On the return there is a substantial understatement
162 of tax attributable to grossly erroneous items of one
163 spouse;

164 (C) The other spouse establishes that in signing the
165 return he or she did not know, and had no reason to know,
166 that there was a substantial understatement; and

167 (D) Taking into account all the facts and circumstances,
168 it is inequitable to hold the other spouse liable for the
169 deficiency in tax for the taxable year attributable to the
170 substantial understatement, then the other spouse is
171 relieved of any liability for tax, including interest, addi-
172 tions to tax, and other amounts for the taxable year to the
173 extent the liability is attributable to the substantial
174 understatement.

175 (2) *Grossly erroneous items.* – For purposes of this
176 subsection, the term “grossly erroneous items” means,
177 with respect to any spouse:

178 (A) Any item of gross income attributable to a spouse
179 which is omitted from gross income; and

180 (B) Any claim of a deduction, credit or basis by a spouse
181 in an amount for which there is no basis in fact or law.

182 (3) *Substantial understatement.* – For purposes of this
183 subsection, the term “substantial understatement” means
184 any understatement, as defined in regulations prescribed
185 by the Tax Commissioner which exceed five hundred
186 dollars.

187 (4) Understatement must exceed specified percentage of
188 spouse’s income.

189 (A) *Adjusted gross income of \$20,000 or less.* – If the
190 spouse’s adjusted gross income for the readjustment year
191 is twenty thousand dollars or less, this subsection applies
192 only if the liability described in paragraph (1) of this
193 subsection is greater than ten percent of the adjusted gross
194 income.

195 (B) *Adjusted gross income of more than twenty thousand*
196 *dollars.* – If the spouse’s adjusted gross income for the
197 readjustment year is more than twenty thousand dollars,
198 subparagraph (A) of this subdivision is applied by substi-
199 tuting “twenty-five percent” for “ten percent”.

200 (C) *Readjustment year.* – For purposes of this paragraph,
201 the term “readjustment year” means the most recent
202 taxable year of the spouse ending before the date the
203 deficiency notice is mailed.

204 (D) *Computation of spouse’s adjusted gross income.* – If
205 the spouse is married to another spouse at the close of the
206 readjustment year, the spouse’s adjusted gross income
207 shall include the income of the new spouse whether or not
208 they file a joint return.

209 (E) *Exception for omissions from gross income.* – This
210 paragraph shall not apply to any liability attributable to
211 the omission of an item from gross income.

212 (5) *Adjusted gross income.* – For purposes of this
213 subsection, the term “adjusted gross income” means the
214 West Virginia adjusted gross income of the taxpayer,
215 determined under article twenty-one of this chapter.

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

Kandy White
.....
Chairman Senate Committee

R. Bury
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Palmer
.....
Clerk of the Senate

Bugs M. Sear
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert L. Taylor
.....
Speaker House of Delegates

The within *is approved* this the *23rd*
Day of *March* 2006.

Paul Patton
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2006

Time 11:00am