WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

House Bill No. 2917

(By Delegates Caputo, DeLong, Fragale, Hatfield, Hrutkay, Morgan, M. Poling, Varner, White, Boggs and Kominar)

Passed February 19, 2007

In Effect from Passage
AN ACT to amend and reenact §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, relating to the accelerated payment of consumers sales and service tax and personal income tax withholding tax; and eliminating the requirement for such accelerated payments after a certain date.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Payment of tax. -- Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.
(b) *Tax return.* -- The taxpayer shall, on or before the twentieth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing:

(1) The total gross proceeds of the vendor's business for the preceding month;

(2) The gross proceeds of the vendor's business upon which the tax is based;

(3) The amount of the tax for which the vendor is liable; and

(4) Any further information necessary in the computation and collection of the tax which the tax commissioner may require, except as otherwise provided in this article or article fifteen-b of this chapter.

(c) *Remittance to accompany return.* -- Except as otherwise provided in this article or article fifteen-b of this chapter, a remittance for the amount of the tax shall accompany the return.

(d) *Deposit of collected tax.* -- Tax collected by the tax commissioner shall be deposited as provided in section thirty of this article, except that:

(1) Tax collected on sales of gasoline and special fuel shall be deposited in the state road fund; and

(2) Any sales tax collected by the alcohol beverage control commissioner from persons or organizations licensed under authority of article seven, chapter sixty of this code shall be paid into a revolving fund account in the state treasury, designated the drunk driving prevention fund, to be administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

(e) *Return to be signed.* -- A return shall be signed by the taxpayer or the taxpayer's duly authorized agent, when a
paper return is prepared and filed. When the return is filed
electronically, the return shall include the digital mark or
digital signature, as defined in article three, chapter thirty-
ine-a of this code, or the personal identification number of
the taxpayer, or the taxpayer's duly authorized agent, made in
accordance with any procedural rule that may be promulgated
by the tax commissioner.

(f) Accelerated payment. --

(1) Taxpayers whose average monthly payment of the
taxes levied by this article and article fifteen-a of this chapter
during the previous calendar year exceeds one hundred
thousand dollars, shall remit the tax attributable to the first
fifteen days of June each year on or before the twentieth day
of June: Provided, That on and after the first day of June,
two thousand seven, the provisions of this subsection (f) that
require the accelerated payment on or before the twentieth
day of June of the tax imposed by this article and article
fifteen-a of this chapter are no longer effective, and any such
tax due and owing shall be payable in accordance with
subsection (a) of this section.

(2) For purposes of complying with subdivision (1) of
this subsection the taxpayer shall remit an amount equal to
the amount of tax imposed by this article and article fifteen-a
of this chapter on actual taxable sales of tangible personal
property and custom software and sales of taxable services
during the first fifteen days of June or, at the taxpayer's
election, the taxpayer may remit an amount equal to fifty
percent of the taxpayer's liability for tax under this article on
taxable sales of tangible personal property and custom
software and sales of taxable services made during the
preceding month of May.

(3) For a business which has not been in existence for a
full calendar year, the total tax due from the business during
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 tax attributable to
the first fifteen days of June each year shall be remitted on or
before the twentieth day of June as provided in subdivision
(2) of this subsection.

(4) When a taxpayer required to make an advanced
payment of 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, the taxpayer may claim as a credit
against liability under this article for tax on taxable
transactions during the month of June, the amount of the
advanced payment of tax made under subdivision (1) of this
subsection.

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: **Provided,** That on and after the first day of
June, two thousand seven, the provisions of this subsection
(e) that require the accelerated payment on or before the
twenty-third day of June of the tax imposed by this article are
no longer effective, and any such tax due and owing shall be
payable in accordance with subsection (a) of this section.

(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.

(g) 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.

(h) 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.
Enr. H.B. 2917]

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

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

[Signatures]

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 [ ]
day of [Month], 2007.

Governor