WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

House Bill No. 2989

(By Delegates Yost, Reynolds, Perdue, Doyle, Barker,
Tucker, Marshall, Manchin and Blair)

Passed March 10, 2007

In Effect from Passage
AN ACT to amend and reenact §11-10E-6, §11-10E-8 and §11-10E-9 of the Code of West Virginia, 1931, as amended, all relating to certain tax shelters used to avoid paying state income taxes; clarifying when certain penalties are imposed; determining when the tax shelter registration number is to be filed with the tax commissioner; and determining when tax shelter investor lists are to be filed with the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10E-6, §11-10E-8 and §11-10E-9 of the code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

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

1 (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 compliance 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 maintained 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 requirements of subsection (a), subsection (b) or subsection (d) of section eight, the penalty shall be ten thousand dollars;

(2) If the failure to comply with the requirements of subsection (a), subsection (b) or subsection (d) of section eight is with respect to a listed transaction described in subsection (c) of section eight, the penalty shall be one hundred thousand dollars;

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

(4) If the failure to comply with the requirements of subsection (a) or subsection (b) of section nine is with respect to a listed transaction described in 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-8. Registration of tax shelters.

(a) Federal tax shelter. -- Any tax shelter organizer or material advisor 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 for taxable years commencing before the first day of January, two thousand seven. -- 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 shelters subject to this section for taxable years commencing on or after the first day of January, two thousand seven. -- The provisions of this section apply to any tax shelter herein described in which a person organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement that is or was one or more of the following: (i) organized in this state; (ii) doing business in this state; or (iii) deriving income from sources in this state.

(e) 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.


(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.

(d) Tax shelters subject to this section for taxable years
commencing on or after the first day of January, two
thousand seven. -- The provisions of this section apply to
any tax shelter herein described in which a person organizes
or participates in the sale of an interest in a partnership, entity
or other plan or arrangement that is or was one or more of the
following: (i) organized in this state; (ii) doing business in
this state; or (iii) deriving income from sources in this state.
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 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 3rd day of April, 2007.

Governor