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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

House Bill No. 2990

(By Delegates Doyle, Barker, Klempa, Marshall,
Carmichael, Blair and Walters)



Passed March 7, 2007

In Effect from Passage

FILED

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ENROLLED
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
WEST VIRGINIA
SECRETARY OF STATE

H. B. 2990

(BY DELEGATES DOYLE, BARKER, KLEMPA, MARSHALL,
CARMICHAEL, BLAIR AND WALTERS)

[Passed March 7, 2007; in effect from passage.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating to the administration of taxes; and providing technical corrections to assure the proper collection of offset fees.

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 TAXATION.

§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 this
- 3 article or any of the other articles of this chapter to which this
- 4 article is applicable. In addition to all other remedies

5 available for the collection of debts due this state, the Tax
6 Commissioner may proceed by foreclosure of the lien
7 provided in section twelve, or by levy and distraint under
8 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-one
13 and twenty-four of this chapter, shall withhold payment, in
14 the final settlement of the contract, of a sufficient amount, not
15 exceeding six percent of the contract price, as will in the
16 person's opinion be sufficient to cover the taxes, until the
17 receipt of a certificate from the Tax Commissioner to the
18 effect that the above referenced taxes imposed against the
19 nonresident contractor have been paid or provided for.

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

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

38 (d) *Prerequisite to final settlement of contract with this*
39 *state or political subdivision; penalty.* -- All state, county,
40 district and municipal officers and agents making contracts

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

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

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

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

73 (2) The successor in business of any person who sells out
74 his, her or its business or stock of goods, or ceases doing
75 business, is personally liable for the payments of tax,
76 additions to tax, penalties and interest unpaid after expiration
77 of the thirty-day period allowed for payment: *Provided*, That

78 if the business is purchased in an arms-length transaction, and
79 if the purchaser withholds so much of the consideration for
80 the purchase as will satisfy any tax, additions to tax, penalties
81 and interest which may be due until the seller produces a
82 receipt from the Tax Commissioner evidencing the payment
83 thereof, the purchaser is not personally liable for any taxes
84 attributable to the former owner of the business unless the
85 contract of sale provides for the purchaser to be liable for
86 some or all of the taxes. The amount of tax, additions to tax,
87 penalties and interest for which the successor is liable is a
88 lien on the property of the successor, which shall be enforced
89 by the Tax Commissioner as provided in this article.

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

104 (h) *Injunction.* -- If the taxpayer fails for a period of more
105 than sixty days to fully comply with any of the provisions of
106 this article or of any other article of this chapter to which this
107 article is applicable, the Tax Commissioner may institute a
108 proceeding to secure an injunction to restrain the taxpayer
109 from doing business in this state until the taxpayer fully
110 complies with the provisions of this article or any other
111 articles. No bond is required of the Tax Commissioner in any
112 action instituted under this subsection.

113 (i) *Costs.* -- In any proceeding under this section, upon
114 judgment or decree for the Tax Commissioner, he or she shall
115 be awarded his or her costs.

116 (j) *Refunds; credits; right to offset.* --

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

124 (2) The Tax Commissioner may enter into agreements
125 with the Internal Revenue Service that provide for offsetting
126 state tax refunds against federal tax liabilities; offsetting
127 federal tax refunds against state tax liabilities; and
128 establishing the amount of the offset fee per transaction
129 which both agencies may charge each other: *Provided*, That
130 offsets under subdivision (1) of this subsection shall occur
131 prior to offset under this subdivision. At the times moneys
132 are received as a result of an offset of a taxpayer's federal tax
133 refund under the provisions of section 6402(c) of the Internal
134 Revenue Code, the taxpayer is given credit against state tax
135 liability for the amount of the offset less a deduction for the
136 offset fee imposed by the Internal Revenue Service:
137 *Provided*, That the amount of the offset fee imposed by the
138 Internal Revenue Service shall be added to the taxes, interest
139 and penalties owed by the taxpayer to this state: *Provided*,
140 *however*, That the amount of the offset fee imposed by the
141 Tax Commissioner shall be deducted from the moneys
142 retained from the taxpayer's state tax refund and then
143 deposited in the special revolving fund which is hereby
144 created and established in the State Treasury and designated
145 as the Tax Offset Fee Administration Fund: *Provided further*,
146 That the fees deposited in the Tax Offset Fee Administration
147 Fund may be expended by the Tax Commissioner for the
148 general administration of the taxes administered under the
149 authority of this article.

150 (k) *Spouse relieved of liability in certain cases.* --

151 (1) *In general.* -- Under regulations prescribed by the Tax
152 Commissioner, if:

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

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

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

160 (D) Taking into account all the facts and circumstances,
161 it is inequitable to hold the other spouse liable for the
162 deficiency in tax for the taxable year attributable to the
163 substantial understatement, then the other spouse is relieved
164 of any liability for tax, including interest, additions to tax,
165 and other amounts for the taxable year to the extent the
166 liability is attributable to the substantial understatement.

167 (2) *Grossly erroneous items.* -- For purposes of this
168 subsection, the term "grossly erroneous items" means, with
169 respect to any spouse:

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

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

174 (3) *Substantial understatement.* -- For purposes of this
175 subsection, the term "substantial understatement" means any
176 understatement, as defined in regulations prescribed by the
177 Tax Commissioner which exceed five hundred dollars.

178 (4) Understatement must exceed specified percentage of
179 spouse's income.

180 (A) *Adjusted gross income of twenty thousand dollars or*
181 *less.* -- If the spouse's adjusted gross income for the
182 readjustment year is twenty thousand dollars or less, this
183 subsection applies only if the liability described in paragraph
184 (1) of this subsection is greater than ten percent of the
185 adjusted gross income.

186 (B) *Adjusted gross income of more than twenty thousand*
187 *dollars.* -- If the spouse's adjusted gross income for the
188 readjustment year is more than twenty thousand dollars,
189 subparagraph (A) of this subdivision is applied by
190 substituting "twenty-five percent" for "ten percent".

191 (C) *Readjustment year.* -- For purposes of this paragraph,
192 the term "readjustment year" means the most recent taxable
193 year of the spouse ending before the date the deficiency
194 notice is mailed.

195 (D) *Computation of spouse's adjusted gross income.* -- If
196 the spouse is married to another spouse at the close of the
197 readjustment year, the spouse's adjusted gross income shall
198 include the income of the new spouse whether or not they file
199 a joint return.

200 (E) *Exception for omissions from gross income.* -- This
201 paragraph shall not apply to any liability attributable to the
202 omission of an item from gross income.

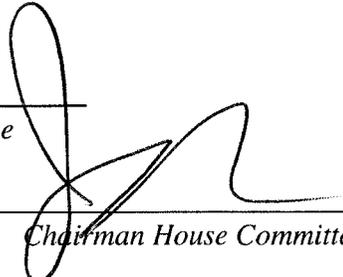
203 (5) *Adjusted gross income.* -- For purposes of this
204 subsection, the term "adjusted gross income" means the West
205 Virginia adjusted gross income of the taxpayer, determined
206 under article twenty-one of this chapter.

Enr. H.B. 2990]

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



Chairman Senate Committee



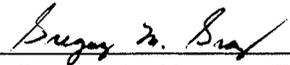
Chairman House Committee

Originating in the House.

In effect from passage.



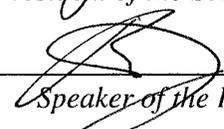
Clerk of the Senate



Clerk of the House of Delegates

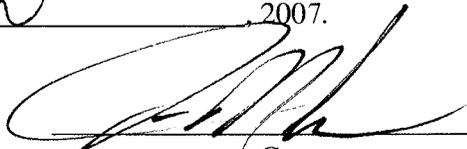


President of the Senate



Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time 4:05 pm