WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 545

(Senator Helmick, original sponsor)

[Passed March 8, 2008; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to tax administration efficiency and technical advancements; requiring electronic filing of tax returns when the taxpayer meets a
certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; requiring the Tax Commissioner to design a combined reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of
said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5z. Electronic filing for certain persons.

(a) For tax years beginning on or after the first day of January, two thousand nine, any person required to file a return for a tax administered under the provisions of this article and who had total annual remittance for any single tax equal to or greater than one hundred thousand dollars during the immediately preceding taxable year shall file electronically all returns for all taxes administered under this article.

(b) The Tax Commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she determines necessary. All rules shall be promulgated pursuant to article three, chapter twenty-nine-a of this code.

§11-10-7d. Combining assessments.

(a) The Tax Commissioner may, subsequent to any investigation authorized by subsection (a), section seven of this article that results in an assessment in each of two or more taxes administered pursuant to this article, combine those assessments into a combined single assessment. In order to complete any investigation, the Tax Commissioner may review and combine returns for the taxes that are the subject of the investigation.

(b) If the Tax Commissioner has combined two or
more returns as authorized by subsection (a) of this section, the tax remitted shall be applied against taxes in the order provided in a rule promulgated by the Tax Commissioner under the authority of article three, chapter twenty-nine-a of this code.

(c) If the Tax Commissioner issues a combined single assessment as authorized in subsection (a) of this section, the limitations on assessment provided in section fifteen of this article shall apply separately to each tax liability included in the single assessment.

(d) If the Tax Commissioner issues a single assessment as authorized in subsection (a) of this section and the assessment becomes final pursuant to the provisions of section eight of this article, the Tax Commissioner is authorized to pursue collection of the tax resulting from the combined assessment as authorized by this article, including, but not limited to, sections eleven and thirteen of this article, and to record one lien, pursuant to section twelve of this article, that includes all unpaid amounts of all finalized tax liabilities included in that combined assessment.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.

(a) *Registration period.* — All business registration
certificates issued under the provisions of section four of this article are for the period of one year beginning the first day of July and ending the thirtieth day of the following June: Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after the first day of July, two thousand ten, shall not be subject to the foregoing requirement that it be renewed, but shall be permanent until cessation of the business for which the certificate of registration was granted or until it is suspended, revoked or cancelled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after the first day of July, two thousand ten, reference to renewal of the business registration certificate shall refer to the issuance of a new business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or to reinstatement of a business registration certificate or to reinstatement of a business certificate previously suspended by the Tax Commissioner. On or after the first day of July, two thousand ten, the business
registration certificate shall be issued upon payment of a tax of thirty dollars to the Tax Commissioner for new issuances of the business registration certificate or for issuances of the business registration certificate pursuant to expiration, cancellation or revocation of a prior business registration certificate or for reinstatement of a business registration certificate previously suspended by the Tax Commissioner, along with any applicable delinquent fees, interest, penalties and additions to tax.

(b) Revocation or suspension of certificate. —

(1) The Tax Commissioner may cancel or suspend a business registration certificate at any time during a registration period if:

(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a tax return or to report information required by the Tax Commissioner for any tax imposed by or pursuant to this chapter.

(C) The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(D) The registrant neglected to pay over to the Tax Commissioner on or before its due date, determined with regard to any authorized extension of time for
payment, any tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant's purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(F) The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year.

(2) On or after the first day of July, two thousand ten, a prospective registrant or a former registrant for which a business registration certificate has been suspended, cancelled or revoked pursuant to the provisions of this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate upon payment of all outstanding delinquent fees, taxes, interest, additions to tax and penalties, in addition to payment to the Tax Commissioner of a penalty in the amount of one hundred dollars. The Tax Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has provided security acceptable to and authorized by the Tax Commissioner, payable to the Tax Commissioner, sufficient to secure all delinquent fees, taxes, interest, additions to tax and penalties owed by the prospective registrant. The Tax
Commissioner may issue a new business registration certificate or reinstate a suspended business registration certificate if the prospective or former registrant has entered into a payment plan approved by the Tax Commissioner by which liability for all delinquent fees, taxes, interest, additions to tax and penalties will be paid in due course and without significant delay. Failure of any registrant to comply with a payment plan pursuant to this provision shall be grounds for immediate suspension or revocation of the registrant's business registration certificate.

(3) On and after the first day of July, two thousand ten, a prospective registrant or a former registrant for which a business registration certificate has been suspended, cancelled or revoked pursuant to the provisions of any article of this code other than this article may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate, only if the prospective or former registrant has complied with all applicable statutory and regulatory requirements for renewal, issuance or reinstatement of the business registration certificate and upon payment to the Tax Commissioner of a penalty in the amount of one hundred dollars.

(4) Except pursuant to exceptions specified in this code, before canceling, revoking or suspending any business registration certificate, the Tax Commissioner shall give written notice of his or her intent to suspend, revoke or cancel the business registration certificate of the taxpayer, the reason for the suspension, revocation or cancellation, the effective date of the cancellation, revocation or suspension and the date, time and place where the taxpayer may appear and show cause why
such business registration certificate should not be canceled, revoked or suspended. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the effective date of the cancellation, revocation or suspension. The taxpayer may appeal cancellation, revocation or suspension of its business registration certificate in the same manner as a notice of assessment is appealed under article ten-a of this chapter. The filing of a petition for appeal does not stay the effective date of the suspension, revocation or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the registrant upon finding that state revenues will not be jeopardized by the granting of the stay. The Tax Commissioner may, in his or her discretion and upon such terms as he or she may specify, agree to stay the effective date of the cancellation, revocation or suspension until another date certain.

(5) On or before the first day of July, two thousand five, the Tax Commissioner shall propose for promulgation legislative rules establishing ancillary procedures for the Tax Commissioner's suspension of business registration certificates for failure to pay delinquent personal property taxes pursuant to paragraph (F), subdivision (1) of this section. The rules shall at a minimum establish any additional requirements for the provision of notice deemed necessary by the Tax Commissioner to meet requirements of law; establish protocols for the communication and verification of information exchanged between the Tax Commissioner, sheriffs and others; and establish fees to be assessed against
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delinquent taxpayers that shall be deposited into a special fund which is hereby created and expended for general tax administration by the Tax Division of the Department of Tax and Revenue and for operation of the Tax Division. Upon authorization of the Legislature, the rules shall have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the Tax Commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F), subdivision (1) of this section or under any other provision of this code prior to the authorization of the rules.

(c) Refusal to renew. — The Tax Commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the Tax Commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all the delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon terms as he or she specifies, the Tax Commissioner may enter into an installment payment agreement with the taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the Tax Commissioner may suspend or cancel the business registration certificate in the manner provided in this section.

(d) Refusal to renew due to delinquent personal property tax. — The Tax Commissioner shall refuse to
issue or renew a business registration certificate when informed in writing, signed by the county sheriff, that personal property owned by the applicant and used in conjunction with the business activity of the applicant is subject to delinquent property taxes. The Tax Commissioner shall forthwith notify the applicant that the commissioner will not act upon the application until information is provided evidencing that the taxes due are either exonerated or paid.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.

Any person having a right or claim to any exemption set forth in section nine-i of this article shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit or, as provided in section nine-d of this article and section three-d of article fifteen-a of this chapter, give to the vendor his or her West Virginia direct pay permit number.

§11-15-16. Tax return and payment; exception; requiring a combined return.

(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) Combined return required. —

(1) The Tax Commissioner shall, no later than the
fifteenth day of June, two thousand eight, design a return that combines filing of the taxes levied by this article and article fifteen-a of this chapter.

(2) Beginning the first day of July, two thousand eight, each person required to file a return required by this article or article fifteen-a of this chapter, or both this article and article fifteen-a of this chapter, shall complete and file the return required by the Tax Commissioner.

(3) The Tax Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code and otherwise use any combination of notices, forms and instructions he or she determines necessary to implement the use of the form required by subsection (c) of this section.

(c) 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.

(d) 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.

(e) 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.

(f) 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-nine-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.
(g) 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 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
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98 tax attributable to the first fifteen days of June each
99 year shall be remitted on or before the twentieth day of
100 June as provided in subdivision (2) of this subsection.

101 (4) When a taxpayer required to make an advanced
102 payment of tax under subdivision (1) of this subsection
103 makes out its return for the month of June, which is due
104 on the twentieth day of July, the taxpayer may claim as
105 a credit against liability under this article for tax on
106 taxable transactions during the month of June the
107 amount of the advanced payment of tax made under
108 subdivision (1) of this subsection.

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

§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.

1 (a) General. — Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month
4 following the close of the calendar quarter, file a
5 withholding return as prescribed by the Tax
6 Commissioner and pay over to the Tax Commissioner
7 the taxes required to be deducted and withheld. Where
8 the average quarterly amount deducted and withheld
9 by any employer is less than one hundred fifty dollars
10 and the aggregate for the calendar year can reasonably
11 be expected to be less than six hundred dollars, the Tax
12 Commissioner may by regulation permit an employer to
13 file an annual return and pay over to the Tax
14 Commissioner the taxes deducted and withheld on or
before the last day of the month following the close of
the calendar year. 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
determines 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. Notwithstanding the provisions of
this subsection, on or after the first day of January, two
thousand nine, every employer required to deduct and
withhold tax under this article shall file a withholding
return as prescribed by the Tax Commissioner and pay
over to the Tax Commissioner the taxes required to be
deducted and withheld, in accordance with the
procedures established by the Internal Revenue Service
pursuant to section 3402 of the Internal Revenue Code.

(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 required to be
deducted and withheld, if the 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. Notwithstanding the provisions of this subsection, on and after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(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. Notwithstanding the provisions of this subsection, on or after the first day of January, two thousand nine, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed...
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by the Tax Commissioner and pay over to the Tax
Commissioner the taxes required to be deducted and
withheld. The due dates for annual returns and
payments shall be established by the Tax Commissioner
to match as closely as practicable the due dates in effect
for federal income tax purposes in accordance with the
procedures established by the Internal Revenue Service
pursuant to Section 3402 of the Internal Revenue Code.

(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 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 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
148 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.

152 (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.

155 (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.

165 (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.
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 ______ Day of ______, 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 26 2008

Time 10:06 AM