

HB 4035

2010 MAR 16 PM 2:41  
CLERK OF COURTS  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4035**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed March 10, 2010

In Effect Ninety Days From Passage

# ENROLLED

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OFFICE OF THE CLERK  
SECRETARY OF STATE

FOR

## H. B. 4035

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

[Passed March 10, 2010; in effect ninety days from passage]

AN ACT to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13V-7 of said code; and to amend and reenact §11-21-54 and §11-21-74 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; requiring taxpayers with a tax liability of \$10,000 or more to file electronically; requiring electronic filing for certain tax preparers and employers; providing exceptions; and providing a \$10,000 tax liability threshold amount to require taxpayers to pay by electronic funds transfers.

*Be it enacted by the Legislature of West Virginia:*

That §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13V-7 of said code be amended and reenacted; and that §11-21-54 and §11-21-74 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION  
ACT.**

**§11-10-5t. Payment by electronic funds transfers.**

1 (a) The term “electronic funds transfer” means and  
2 includes automated clearinghouse debit, automated  
3 clearinghouse credit, wire transfer and any other means  
4 recognized by the Tax Commissioner for payment of taxes.

5 (b) The Tax Commissioner may prescribe by emergency  
6 rules, administrative notices, forms and instructions, and the  
7 procedures and criteria to be followed by certain taxpayers in  
8 order to pay taxes by electronic funds transfer methods.

9 (c) The rules shall set forth the following:

10 (1) Acceptable indicia of timely payment;

11 (2) Which type of electronic filing method or methods a  
12 particular type of taxpayer may or may not use;

13 (3) Which types of taxes to which electronic filing  
14 requirements apply for any given tax year and implementation  
15 dates: *Provided*, That the type of tax to which electronic  
16 funds transfer requirements apply during the first tax year is  
17 personal income tax withholding by employers;

18 (4) The dollar amount of tax liability per year which,  
19 when exceeded, requires or permits electronic funds transfer.  
20 Unless and until a legislative rule is promulgated or this  
21 section is amended, no person may be required to pay any tax  
22 by electronic funds transfer if the amount owed for the tax  
23 during the preceding year was less than \$120,000: *Provided*,  
24 That for tax years beginning on or after January 1, 2011, no  
25 person may be required to pay any tax by electronic funds

26 transfer if the amount owed for the tax during the preceding  
27 tax year was less than \$10,000;

28 (5) What, if any, exceptions are allowable, and alternative  
29 methods of payment to be used for any exceptions;

30 (6) Procedures for making voluntary electronic funds  
31 transfer payments;

32 (7) Any provisions needed to implement the civil penalty  
33 created by this section; and

34 (8) Any other provisions necessary to ensure the timely  
35 implementation of electronic funds transfer payments.

36 (d) In addition to any other additions and penalties which  
37 may be applicable, there is a civil penalty for failing or  
38 refusing to use an appropriate electronic funds transfer  
39 method when required to do so. The amount of this penalty  
40 is three percent of the total tax liability which is or was to be  
41 paid by electronic funds transfer for any tax for which  
42 electronic funds transfer methods are required to be used by  
43 the taxpayer.

44 (e) The provisions of this section are not intended to  
45 affect the provisions of other sections of this chapter  
46 concerning filing of returns or any other provisions which are  
47 not in direct conflict with this section.

48 (f) The State Treasurer shall adopt any procedures or  
49 rules necessary or convenient for implementing electronic  
50 funds transfers of tax payments authorized by this section and  
51 rules adopted by the Tax Commissioner. The treasurer shall  
52 draft any procedures and rules adopted in consultation with  
53 the Tax Commissioner and the procedures and rules may not  
54 conflict with this section or rules adopted by the Tax  
55 Commissioner.

56 (g) The provisions of this section become effective on or  
57 after January 1, 1998.

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

1 (a) For tax years beginning on or after January 1, 2009,  
2 any person required to file a return for a tax administered  
3 under the provisions of this article and who had total annual  
4 remittance for any single tax equal to or greater than  
5 \$100,000 during the immediately preceding taxable year shall  
6 file electronically all returns for all taxes administered under  
7 this article. For tax years beginning on or after January 1,  
8 2011, any person required to file a return for a tax  
9 administered under the provisions of this article and who had  
10 total annual remittance for any single tax equal to or greater  
11 than \$10,000 during the immediately preceding tax year shall  
12 file electronically all returns for all taxes administered under  
13 this article.

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

**ARTICLE 13V. WORKERS' COMPENSATION DEBT  
REDUCTION ACT.**

**§11-13V-7. Periodic installment payments of taxes imposed by  
this article; exceptions.**

1 (a) *General rule.* -- Except as provided in subsection (b)  
2 of this section, taxes levied by this article are due and payable  
3 in periodic installments as follows:

4 (1) *Tax of \$50 or less per month.* -- If a person's  
5 aggregate annual tax liability under this article and article  
6 thirteen-a of this chapter is reasonably expected to be \$50 or  
7 less per month, no installment payments of tax are required  
8 under this section during that taxable year.

9 (2) *Tax of more than \$1,000 per month.* -- For taxpayers  
10 whose aggregate estimated tax liability under this article and  
11 article thirteen-a of this chapter exceeds \$1,000 per month,  
12 the tax is due and payable in monthly installments on or  
13 before the last day of the month following the month in  
14 which the tax accrued: *Provided,* That the installment  
15 payment otherwise due under this subdivision on or before  
16 June 30 each year shall be remitted to the Tax Commissioner  
17 on or before June 15 each year. When this subdivision  
18 applies, the taxpayer shall, on or before the due date specified  
19 in this subdivision, make out an estimate of the tax for which  
20 the taxpayer is liable for the preceding month, sign the  
21 estimate and mail it together with a remittance, in the form  
22 prescribed by the Tax Commissioner, of the amount of tax  
23 due to the office of the Tax Commissioner: *Provided,*  
24 *however,* That the installment payment otherwise due under  
25 this paragraph on or before June 30 each year shall be  
26 remitted to the Tax Commissioner on or before June 15.

27 (3) *Tax of \$1,000 per month or less.* -- For taxpayers  
28 whose estimated tax liability under this article is \$1,000 per  
29 month or less, the tax is due and payable in quarterly  
30 installments on or before the last day of the month following  
31 the quarter in which the tax accrued. When this subdivision  
32 applies, the taxpayer shall, on or before the last day of the  
33 fourth, seventh and tenth months of the taxable year, make  
34 out an estimate of the tax for which the taxpayer is liable for  
35 the preceding quarter, sign the same and mail it together with  
36 a remittance, in the form prescribed by the Tax Commissioner,

37 of the amount of tax due to the office of the Tax  
38 Commissioner.

39 (b) *Exception.* -- Notwithstanding the provisions of  
40 subsection (a) of this section, the Tax Commissioner, if he or  
41 she considers it necessary to ensure payment of the tax, may  
42 require the return and payment under this section for periods  
43 of shorter duration than those prescribed in subsection (a) of  
44 this section.

45 (c) *Remittance by electronic funds transfer.* -- When the  
46 taxpayer's annual aggregate liability for tax under this article  
47 and article thirteen-a of this chapter exceeds \$50,000 for the  
48 prior tax year, payments of estimated tax required by this  
49 article and article thirteen-a during the then current tax year  
50 shall be by electronic funds transfer, in accordance with rules  
51 of the Tax Commissioner and rules of the State Treasurer,  
52 except as otherwise permitted by the Tax Commissioner:  
53 *Provided,* That for tax years beginning on or after January 1,  
54 2011, when the taxpayer's annual aggregate liability for tax  
55 under this article and article thirteen-a of this chapter exceeds  
56 \$10,000 for the prior tax year, payments of estimated tax  
57 required by this article and article thirteen-a during the then  
58 current tax year shall be by electronic funds transfer, in  
59 accordance with rules of the Tax Commissioner and rules of  
60 the State Treasurer, except as otherwise permitted by the Tax  
61 Commissioner.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-54. Electronic filing for certain tax preparers.**

1 (a) If an income tax return preparer filed more than one  
2 hundred personal income tax returns for any taxable year that  
3 began after January 1, 2005, and if during calendar year 2006  
4 or any calendar year thereafter that income tax preparer

5 prepares one or more personal income tax returns using tax  
6 preparation software for a previous taxable year, then for  
7 each current taxable year all unamended personal income tax  
8 returns prepared by that preparer shall be filed electronically,  
9 except as provided in subsections (c) and (d) of this section:  
10 *Provided*, That if an income tax return preparer filed more  
11 than twenty-five personal income tax returns for any tax year  
12 that began on or after January 1, 2010, and if that income tax  
13 preparer prepares one or more personal income tax returns  
14 using tax preparation software, then for each tax year  
15 beginning on or after January 1, 2011, all unamended  
16 personal income tax returns prepared by that preparer shall be  
17 filed electronically, except as provided in subsections (c) and  
18 (d) of this section.

19 (b) For purposes of this section:

20 (1) "Income tax preparer" means any person who  
21 prepares, in exchange for compensation, or who employs  
22 another person to prepare, in exchange for compensation, all  
23 or a substantial portion of any return for a taxpayer for the tax  
24 imposed by this article and who is identified as the preparer  
25 for the taxpayer on the return. A person who only performs  
26 those acts described in clauses (i) through (iv) of Section  
27 7701(a)(36)(B) of the Internal Revenue Code with respect to  
28 the preparation of a return for a trust or estate for which he or  
29 she is a fiduciary or a return for a partnership of which he or  
30 she is a partner is not an income tax preparer for purposes of  
31 this section.

32 (2) "Electronic filing" or "e-filing" means filing using  
33 electronic technology such as computer modem, magnetic  
34 media, optical disk, facsimile machine, telephone or other  
35 technology approved by the Tax Commissioner, in such  
36 manner as he or she deems acceptable.

37 (3) "Tax preparation software" means any computer  
38 software program intended for accounting or tax return  
39 preparation.

40 (c) Subsection (a) of this section shall cease to apply to  
41 an income tax preparer if, for the previous taxable year, that  
42 income tax preparer prepared no more than twenty-five  
43 personal income tax returns.

44 (d) This section first applies to personal income tax  
45 returns required to be filed for taxable years beginning  
46 January 1, 2006. This section does not require electronic  
47 filing of: (1) Returns that were not required to be filed for  
48 taxable years beginning prior to that date; (2) returns for prior  
49 taxable years beginning prior to that date; or (3) amended  
50 returns for any taxable year.

51 (e) An income tax preparer who is required to e-file under  
52 this section but does not do so is liable for a penalty in the  
53 amount of \$25 for each return prepared that is not e-filed,  
54 unless the preparer shows that the failure to do so is due to  
55 technical inability to comply on the part of a tax preparer or  
56 a documented election by a client not to file electronically.

57 (f) The commissioner shall implement the provisions of  
58 this section using any combination of notices, forms,  
59 instructions and rules that he or she deems necessary.

**§11-21-74. Filing of employer's withholding return and  
payment of withheld taxes; annual reconciliation;  
e-filing required for certain tax preparers and  
employer.**

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 following the

4 close of the calendar quarter, file a withholding return as  
5 prescribed by the Tax Commissioner and pay over to the Tax  
6 Commissioner the taxes required to be deducted and  
7 withheld. Where the average quarterly amount deducted and  
8 withheld by any employer is less than \$150 and the aggregate  
9 for the calendar year can reasonably be expected to be less  
10 than \$600, the Tax Commissioner may by regulation permit  
11 an employer to file an annual return and pay over to the Tax  
12 Commissioner the taxes deducted and withheld on or before  
13 the last day of the month following the close of the calendar  
14 year. The Tax Commissioner may, by nonemergency  
15 legislative rules promulgated pursuant to article three, chapter  
16 twenty-nine-a of this code, change the minimum amounts  
17 established by this subsection. The Tax Commissioner may,  
18 if he or she determines necessary for the protection of the  
19 revenues, require any employer to make the return and pay to  
20 him or her the tax deducted and withheld at any time or from  
21 time to time. Notwithstanding the provisions of this  
22 subsection, on or after January 1, 2009, every employer  
23 required to deduct and withhold tax under this article shall  
24 file a withholding return as prescribed by the Tax Commissioner  
25 and pay over to the Tax Commissioner the taxes required to  
26 be deducted and withheld, in accordance with the procedures  
27 established by the Internal Revenue Service pursuant to  
28 Section 3402 of the Internal Revenue Code.

29 (b) *Monthly returns and payments of withheld tax on and*  
30 *after January 1, 2001.* -- Notwithstanding the provisions of  
31 subsection (a) of this section, on and after January 1, 2001,  
32 every employer required to deduct and withhold tax under  
33 this article shall, for each of the first eleven months of the  
34 calendar year, on or before the twentieth day of the  
35 succeeding month and for the last calendar month of the year,  
36 on or before the last day of the succeeding month, file a  
37 withholding return as prescribed by the Tax Commissioner  
38 and pay over to the Tax Commissioner the taxes required to

39 be deducted and withheld, if the withheld taxes aggregate  
40 \$250 or more for the month, except any employer with  
41 respect to whom the Tax Commissioner may have by  
42 regulation provided otherwise in accordance with the  
43 provisions of subsection (a) of this section. Notwithstanding  
44 the provisions of this subsection, on and after January 1,  
45 2009, every employer required to deduct and withhold tax  
46 under this article shall file a withholding return as prescribed  
47 by the Tax Commissioner and pay over to the Tax  
48 Commissioner the taxes required to be deducted and  
49 withheld. The due dates for returns and payments shall be  
50 established by the Tax Commissioner to match as closely as  
51 practicable the due dates in effect for federal income tax  
52 purposes, in accordance with the procedures established by  
53 the Internal Revenue Service pursuant to Section 3402 of the  
54 Internal Revenue Code.

55 (c) *Annual returns and payments of withheld tax of*  
56 *certain domestic and household employees.* -- Employers of  
57 domestic and household employees whose withholdings of  
58 federal income tax are annually paid and reported by the  
59 employer pursuant to the filing of Schedule H of federal form  
60 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,  
61 on or before January 31 next succeeding the end of the  
62 calendar year for which withholdings are deducted and  
63 withheld, file an annual withholding return with the Tax  
64 Commissioner and annually remit to the Tax Commissioner  
65 West Virginia personal income taxes deducted and withheld  
66 for the employees. The Tax Commissioner may promulgate  
67 legislative or other rules pursuant to article three, chapter  
68 twenty-nine-a of this code for implementation of this  
69 subsection. Notwithstanding the provisions of this subsection, on  
70 or after January 1, 2009, every employer required to deduct  
71 and withhold tax under this article shall file a withholding  
72 return as prescribed by the Tax Commissioner and pay over  
73 to the Tax Commissioner the taxes required to be deducted

74 and withheld. The due dates for annual returns and payments  
75 shall be established by the Tax Commissioner to match as  
76 closely as practicable the due dates in effect for federal  
77 income tax purposes in accordance with the procedures  
78 established by the Internal Revenue Service pursuant to  
79 Section 3402 of the Internal Revenue Code.

80 (d) *Deposit in trust for Tax Commissioner.* -- Whenever  
81 any employer fails to collect, truthfully account for or pay  
82 over the tax, or to make returns of the tax as required in this  
83 section, the Tax Commissioner may serve a notice requiring  
84 the employer to collect the taxes which become collectible  
85 after service of the notice, to deposit the taxes in a bank  
86 approved by the Tax Commissioner, in a separate account, in  
87 trust for and payable to the Tax Commissioner and to keep  
88 the amount of the tax in the separate account until payment  
89 over to the Tax Commissioner. The notice shall remain in  
90 effect until a notice of cancellation is served by the Tax  
91 Commissioner.

92 (e) *Accelerated payment.* -- (1) Notwithstanding the  
93 provisions of subsections (a) and (b) of this section, for  
94 calendar years beginning after December 31, 1990, every  
95 employer required to deduct and withhold tax whose average  
96 payment per calendar month for the preceding calendar year  
97 under subsection (b) of this section exceeded \$100,000 shall  
98 remit the tax attributable to the first fifteen days of June each  
99 year on or before June 23: *Provided,* That on and after June  
100 1, 2007, the provisions of this subsection that require the  
101 accelerated payment on or before June 23 of the tax imposed  
102 by this article are no longer effective and any tax due and  
103 owing shall be payable in accordance with subsection (a) of  
104 this section.

105 (2) For purposes of complying with subdivision (1) of  
106 this subsection, the employer shall remit an amount equal to

107 the withholding tax due under this article on employee  
108 compensation subject to withholding tax payable or paid to  
109 employees for the first fifteen days of June or, at the  
110 employer's election, the employer may remit an amount  
111 equal to fifty percent of the employer's liability for  
112 withholding tax under this article on compensation payable  
113 or paid to employees for the preceding month of May.

114 (3) For an employer which has not been in business for  
115 a full calendar year, the total amount the employer was  
116 required to deduct and withhold under subsection (b) of this  
117 section for the prior calendar year shall be divided by the  
118 number of months, including fractions of a month, that it was  
119 in business during the prior calendar year and if that amount  
120 exceeds \$100,000, the employer shall remit the tax  
121 attributable to the first fifteen days of June each year on or  
122 before June 23, as provided in subdivision (2) of this  
123 subsection.

124 (4) When an employer required to make an advanced  
125 payment of withholding tax under subdivision (1) of this  
126 subsection makes out its return for the month of June, which  
127 is due on July 20, that employer may claim as a credit against  
128 its liability under this article for tax on employee  
129 compensation paid or payable for employee services rendered  
130 during the month of June the amount of the advanced  
131 payment of tax made under subdivision (1) of this subsection.

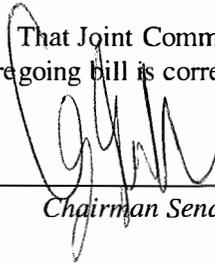
132 (f) The amendments to this section enacted in the year  
133 2006 are effective for tax years beginning on or after January  
134 1, 2006.

135 (g) An annual reconciliation of West Virginia personal  
136 income tax withheld shall be submitted by the employer on  
137 or before February 28 following the close of the calendar  
138 year, together with Tax Division copies of all withholding tax

139 statements for that preceding calendar year. The reconciliation  
140 shall be accompanied by a list of the amounts of income  
141 withheld for each employee in such form as the Tax  
142 Commissioner prescribes and shall be filed separately from  
143 the employer's monthly or quarterly return.

144 (h) Any employer required to file a withholding return for  
145 two hundred fifty or more employees shall file its return  
146 using electronic filing as defined in section fifty-four of this  
147 article: *Provided*, That for any tax period beginning on or  
148 after January 1, 2011, any employer with fifty or more  
149 employees shall file its return using electronic filing as  
150 defined in section fifty-four of this article. An employer that  
151 is required to file electronically but does not do so is subject  
152 to a penalty in the amount of \$25 per employee for whom the  
153 return was not filed electronically, unless the employer shows  
154 that the failure is due to a technical inability to comply.

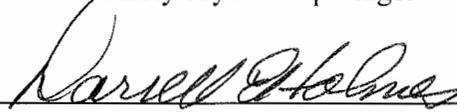
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

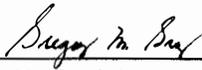
  
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Chairman Senate Committee

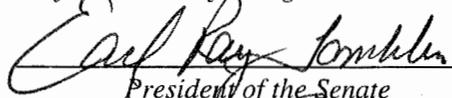
  
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Chairman House Committee

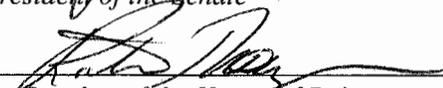
Originating in the House.

In effect ninety days from passage.

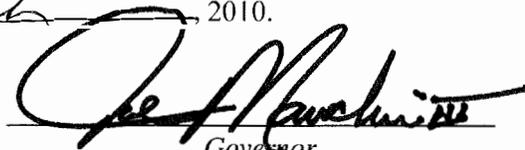
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is appended this the 16th  
day of March, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 15 2010

Time 3:00 pm