

HB 4312

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OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010



ENROLLED

House Bill No. 4312

(By Delegates White and Campbell)



Passed March 10, 2010

In Effect Ninety Days From Passage

E N R O L L E D

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H. B. 4312

OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
SECRETARY OF STATE

(BY DELEGATES WHITE AND CAMPBELL)

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

AN ACT to amend and reenact §11-10-18 of the Code of West Virginia, 1931, as amended, specifying the required addition to tax to be paid if the failure to timely file the required return of a tax administered by the West Virginia Tax Commissioner is for not more than one month from the date the return is due.

Be it enacted by the Legislature of West Virginia:

That §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§11-10-18. Additions to tax.

1 (a) *Failure to file tax return or pay tax due.* --

2 (1) In the case of failure to file a required return of any
3 tax administered under this article on or before the date
4 prescribed for filing such return (determined with regard to
5 any extension of time for filing), unless it is shown that such
6 failure is due to reasonable cause and not due to willful

7 neglect, there shall be added to the amount required to be
8 shown as tax on such return five percent of the amount of
9 such tax if the failure is for not more than one month, an
10 additional five percent for each additional month or fraction
11 thereof during which such failure continues, not exceeding
12 twenty-five percent in the aggregate: *Provided*, That this
13 addition to tax shall be imposed only on the net amount of tax
14 due;

15 (2) In the case of failure to pay the amount shown as tax,
16 on any required return of any tax administered under this
17 article on or before the date prescribed for payment of such
18 tax (determined with regard to any extension of time for
19 payment), unless it is shown that such failure is due to
20 reasonable cause and not due to willful neglect, there shall be
21 added to the amount shown as tax on such return one half of
22 one percent of the amount of such tax if the failure is for not
23 more than one month, with an additional one half of one
24 percent for each additional month or fraction thereof during
25 which such failure continues, not exceeding twenty-five
26 percent in the aggregate: *Provided*, That the addition to tax
27 shall be imposed only on the net amount of tax due;

28 (3) In the case of failure to pay any amount in respect to
29 any tax required to be shown on a return specified in
30 paragraph (1) which is not so shown within fifteen days of
31 the date of notice and demand therefore, unless it is shown
32 that such failure is due to reasonable cause and not due to
33 willful neglect, there shall be added to the amount of tax
34 stated in such notice and demand one half of one percent of
35 the amount of each tax if the failure is for not more than one
36 month, with an additional one half of one percent for each
37 additional month or fraction thereof during which such
38 failure continues, not exceeding twenty-five percent in the
39 aggregate: *Provided*, That this addition to tax shall be
40 imposed only on the net amount of tax due.

41 (b) *Limitation and special rule.* --

42 (1) Additions under more than one paragraph:

43 (A) With respect to any return, the amount of the addition
44 under paragraph (1) of subsection (a) shall be reduced by the
45 amount of the addition under paragraph (2) of subsection (a)
46 for any month to which an addition to tax applies under both
47 paragraphs (1) and (2);

48 (B) With respect to any return, the maximum amount of
49 the addition permitted under paragraph (3) of subsection (a)
50 shall be reduced by the amount of the addition under
51 paragraph (1) of subsection (a) (determined without regard to
52 the last sentence of such subsection) which is attributable to
53 the tax for which the notice and demand is made and which
54 is not paid within fifteen days of notice and demand.

55 (2) *Amount of tax shown more than amount required to*
56 *be shown.* -- If the correct amount of tax due is less than the
57 amount shown on the return, paragraphs (1) and (2) of
58 subsection (a) shall only apply to the lower amount.

59 (3) *Exception for estimated tax.* -- Subsection (a) shall not
60 apply to any failure to pay any estimated tax.

61 (c) *Negligence or intentional disregard of rules and*
62 *regulations.* -- If any part of any underpayment of any tax
63 administered under this article is due to negligence or
64 intentional disregard of rules (but without intent to defraud),
65 there shall be added to the amount of tax due five percent of
66 the amount of such tax if the underpayment due to negligence
67 or intentional disregard of rules is for not more than one
68 month, with an additional five percent for each additional
69 month or fraction thereof during which such underpayment
70 continues, not exceeding twenty-five percent in the aggregate:

71 *Provided*, That these additions to tax shall be imposed only
72 on the net amount of tax due and shall be in lieu of the
73 additions to tax provided in subsection (a), and the Tax
74 Commissioner shall state in his or her notice of assessment
75 the reason or reasons for imposing this addition to tax with
76 sufficient particularity to put the taxpayer on notice regarding
77 why it was assessed.

78 (d) *False or fraudulent return.* -- In the case of the filing
79 of any false or fraudulent return with intent to evade any such
80 tax, or in the case of willful failure to file a return with intent
81 to evade tax, there shall be added to the tax due an amount
82 equal to fifty percent thereof which shall be in lieu of the
83 additions to tax provided in subsections (a) and (c). The
84 burden of proving fraud, willfulness or intent to evade tax
85 shall be upon the Tax Commissioner. In the case of a joint
86 personal income tax return under article twenty-one of this
87 chapter, this subsection shall not apply with respect to the tax
88 of the spouse unless some part of the underpayment is due to
89 the fraud of such spouse.

90 (e) *Additions to tax treated as tax.* -- Additions to tax
91 prescribed under this section on any tax shall be assessed,
92 collected and paid in the same manner as taxes.

93 (f) *Penalties for promoting abusive tax shelters and for*
94 *failure to report listed transactions.* --

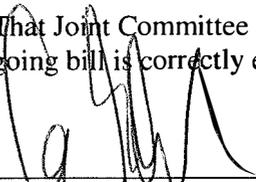
95 (1) A penalty is hereby imposed on every person who
96 engages in activities promoting abusive tax shelters described
97 in Section 6700(a) of the Internal Revenue Code of 1986, or
98 any subsequent corresponding provisions of the Internal
99 Revenue Code, as from time to time amended, and who is
100 subject to a penalty imposed thereunder, whether or not such
101 penalty has been imposed, where such activities affect tax
102 returns required to be filed with the Tax Commissioner. The

103 amount of the penalty imposed hereunder shall be equal to
104 fifty percent of the gross income derived from activities by
105 such person which are subject to that penalty under paragraph
106 (2)(A) of said section 6700(a) for making a false or
107 fraudulent statement; and shall be the lesser of \$1,000 or one
108 hundred percent of such gross income when the activity is
109 subject to that penalty under paragraph (1) of said section
110 6700(a).

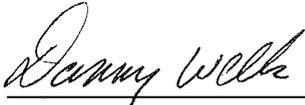
111 (2) For audits of returns commencing on or after July 1,
112 2006, when it appears that any part of the deficiency for
113 which an assessment is made is due to failure to disclose a
114 listed transaction or a reportable transaction other than a
115 listed transaction, as the terms are defined in Section 6707A
116 of the Internal Revenue Code of 1986, or any subsequent
117 corresponding provision of the Internal Revenue Code, as
118 from time to time amended, on the taxpayer's federal income
119 tax return, there shall be imposed a penalty. In the case of a
120 listed transaction the amount of the penalty shall be equal to
121 seventy percent of the amount of the deficiency, and in the
122 case of other reportable transactions the amount of the
123 penalty shall be equal to thirty-five percent of the amount of
124 the deficiency.

125 (g) *Coordination with other penalties.* -- Unless provided
126 otherwise by rules, the penalties imposed by this section are
127 in addition to any other penalty imposed by this article or
128 article ten-e of this chapter.

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



Chairman Senate Committee



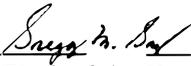
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



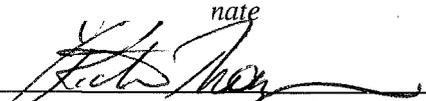
Clerk of the Senate



Clerk of the House of Delegates

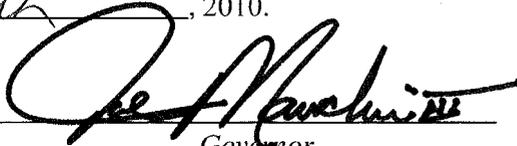


Speaker of the House of Delegates



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2010

Time 3:00