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OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4335

(By Delegates H. White, Campbell and Kominar)



Passed March 11, 2010

In Effect Ninety Days From Passage

HB 4335

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COMMITTEE SUBSTITUTE

FOR

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H. B. 4335

(BY DELEGATES H. WHITE, CAMPBELL AND KOMINAR)

[Passed March 11, 2010; in effect ninety days from passage]

AN ACT to amend and reenact §11-12-5 of the Code of West Virginia, 1931, as amended, relating to the business registration tax generally; specifying the business registration tax and business registration certificate are subject to certain exemptions; and specifying that the tax is imposed for each and every issuance, reissuance or reinstatement of a business registration certificate.

Be it enacted by the Legislature of West Virginia:

That §11-12-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

1 (a) *Registration period.* -- All business registration
2 certificates issued under the provisions of section four of this
3 article are for the period of one year beginning July 1 and
4 ending June 30 of the following year: *Provided*, That
5 beginning on or after July 1, 1999, all business registration
6 certificates issued under the provisions of section four of this
7 article shall be issued for two fiscal years of this state, subject
8 to the following transition rule. If the first year for which a
9 business was issued a business registration certificate under
10 this article began on July 1 of an even-numbered calendar
11 year, then the Tax Commissioner may issue a renewal
12 certificate to that business for the period beginning July 1,
13 1999, and ending June 30, 2000, upon receipt of \$15 for each
14 such one-year certificate. Notwithstanding any other
15 provisions of this code to the contrary, any certificate of
16 registration granted on or after July 1, 2010, shall not be
17 subject to the foregoing requirement that it be renewed, but
18 shall be permanent until cessation of the business for which
19 the certificate of registration was granted or until it is
20 suspended, revoked or cancelled by the Tax Commissioner.
21 Notwithstanding any provision of this code to the contrary,
22 on or after July 1, 2010, reference to renewal of the business
23 registration certificate shall refer to the issuance of a new
24 business registration certificate pursuant to expiration,
25 cancellation or revocation of a prior business registration
26 certificate or to reinstatement of a business registration
27 certificate or to reinstatement of a business certificate
28 previously suspended by the Tax Commissioner. Subject to
29 the exemptions, exceptions and requirements other than the
30 \$4,000 or less gross income exemption, set forth in section
31 three of this article, on or after July 1, 2010, the business
32 registration certificate shall be issued upon payment of a tax

33 of \$30 to the Tax Commissioner for new issuances of the
34 business registration certificate or for issuances of the
35 business registration certificate pursuant to expiration,
36 cancellation or revocation of a prior business registration
37 certificate or for reinstatement of a business registration
38 certificate previously suspended by the Tax Commissioner,
39 along with any applicable delinquent fees, interest, penalties
40 and additions to tax. Subject to the exemptions, exceptions
41 and requirements set forth in section three of this article, the
42 \$30 tax shall be paid each and every time there is an
43 issuance, reissuance or reinstatement of a business
44 registration certificate, along with any applicable delinquent
45 fees, interest, penalties and additions to tax: *Provided*, That
46 the \$4,000 or less gross income exemption set forth in
47 subdivision (1), subsection (d), section three of this article
48 does not apply.

49 (b) *Revocation or suspension of certificate.* --

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

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

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

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

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

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

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

80 (2) On or after July 1, 2010, a prospective registrant or a
81 former registrant for which a business registration certificate
82 has been suspended, cancelled or revoked pursuant to the
83 provisions of this article may apply for a new business
84 registration certificate or for reinstatement of a suspended
85 business registration certificate upon payment of all
86 outstanding delinquent fees, taxes, interest, additions to tax
87 and penalties, in addition to payment to the Tax
88 Commissioner of a penalty in the amount of \$100. The Tax
89 Commissioner may issue a new business registration
90 certificate or reinstate a suspended business registration
91 certificate if the prospective or former registrant has provided
92 security acceptable to and authorized by the Tax
93 Commissioner, payable to the Tax Commissioner, sufficient
94 to secure all delinquent fees, taxes, interest, additions to tax
95 and penalties owed by the prospective registrant. The Tax
96 Commissioner may issue a new business registration
97 certificate or reinstate a suspended business registration

98 certificate if the prospective or former registrant has entered
99 into a payment plan approved by the Tax Commissioner by
100 which liability for all delinquent fees, taxes, interest,
101 additions to tax and penalties will be paid in due course and
102 without significant delay. Failure of any registrant to comply
103 with a payment plan pursuant to this provision shall be
104 grounds for immediate suspension or revocation of the
105 registrant's business registration certificate.

106 (3) On and after July 1, 2010, a prospective registrant or
107 a former registrant for which a business registration
108 certificate has been suspended, cancelled or revoked pursuant
109 to the provisions of any article of this code other than this
110 article may apply for a new business registration certificate
111 or for reinstatement of a suspended business registration
112 certificate, only if the prospective or former registrant has
113 complied with all applicable statutory and regulatory
114 requirements for renewal, issuance or reinstatement of the
115 business registration certificate and upon payment to the Tax
116 Commissioner of a penalty in the amount of \$100.

117 (4) Except pursuant to exceptions specified in this code,
118 before canceling, revoking or suspending any business
119 registration certificate, the Tax Commissioner shall give
120 written notice of his or her intent to suspend, revoke or cancel
121 the business registration certificate of the taxpayer, the reason
122 for the suspension, revocation or cancellation, the effective
123 date of the cancellation, revocation or suspension and the
124 date, time and place where the taxpayer may appear and
125 show cause why such business registration certificate should
126 not be canceled, revoked or suspended. This written notice
127 shall be served on the taxpayer in the same manner as a
128 notice of assessment is served under article ten of this
129 chapter, not less than twenty days prior to the effective date
130 of the cancellation, revocation or suspension. The taxpayer
131 may appeal cancellation, revocation or suspension of its

132 business registration certificate in the same manner as a
133 notice of assessment is appealed under article ten-a of this
134 chapter. The filing of a petition for appeal does not stay the
135 effective date of the suspension, revocation or cancellation.
136 A stay may be granted only after a hearing is held on a
137 motion to stay filed by the registrant upon finding that state
138 revenues will not be jeopardized by the granting of the stay.
139 The Tax Commissioner may, in his or her discretion and
140 upon such terms as he or she may specify, agree to stay the
141 effective date of the cancellation, revocation or suspension
142 until another date certain.

143 (5) On or before July 1, 2005, the Tax Commissioner
144 shall propose for promulgation legislative rules establishing
145 ancillary procedures for the Tax Commissioner's suspension
146 of business registration certificates for failure to pay
147 delinquent personal property taxes pursuant to paragraph (F),
148 subdivision (1) of this section. The rules shall at a minimum
149 establish any additional requirements for the provision of
150 notice deemed necessary by the Tax Commissioner to meet
151 requirements of law; establish protocols for the
152 communication and verification of information exchanged
153 between the Tax Commissioner, sheriffs and others; and
154 establish fees to be assessed against delinquent taxpayers that
155 shall be deposited into a special fund which is hereby created
156 and expended for general tax administration by the Tax
157 Division of the Department of Revenue and for operation of
158 the Tax Division. Upon authorization of the Legislature, the
159 rules shall have the same force and effect as if set forth
160 herein. No provision of this subdivision may be construed to
161 restrict in any manner the authority of the Tax Commissioner
162 to suspend such certificates for failure to pay delinquent
163 personal property taxes under paragraph (C) or (F),
164 subdivision (1) of this section or under any other provision of
165 this code prior to the authorization of the rules.

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

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

192 (e) *Refusal to issue, revocation, suspension and refusal*
193 *to renew business registration certificate of alter ego,*
194 *nominee or instrumentality of a business that has previously*
195 *been the subject of a lawful refusal to issue, revocation,*
196 *suspension or refuse to renew.* --

197 (1) The Tax Commissioner may refuse to issue a business
198 registration certificate, or may revoke a business registration
199 certificate or may suspend a business registration certificate

200 or may refuse to renew a business registration certificate for
201 any business determined by the Tax Commissioner to be an
202 alter ego, nominee or instrumentality of a business that has
203 previously been the subject of a lawful refusal to issue a
204 business registration certificate or of a lawful revocation,
205 suspension or refusal to renew a business registration
206 certificate pursuant to this section, and for which the business
207 registration certificate has not been lawfully reinstated or
208 reissued.

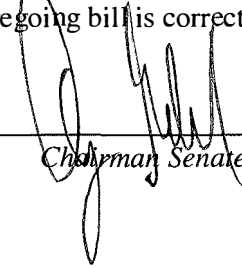
209 (2) For purposes of this section, a business is presumed
210 to be an alter ego, nominee or instrumentality of another
211 business or other businesses if:

212 (A) More than twenty percent of the real assets or more
213 than twenty percent of the operating assets or more than
214 twenty percent of the tangible personal property of one
215 business are or have been transferred to the other business or
216 businesses, or are or have been used in the operations of the
217 other business or businesses, or more than twenty percent of
218 the real assets or more than twenty percent of the operating
219 assets or more than twenty percent of the tangible personal
220 property of one business are or have been used to
221 collateralize or secure debts or obligations of the other
222 business or businesses;

223 (B) Ownership of the businesses is so configured that the
224 attribution rules of either Internal Revenue Code section 267
225 or Internal Revenue Code section 318 would apply to cause
226 ownership of the businesses to be attributed to the same
227 person or entity; or

228 (C) Substantive control of the businesses is held or
229 retained by the same person, entity or individual, directly or
230 indirectly, or through attribution under paragraph (B) of this
231 subdivision.

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



Chairman Senate Committee



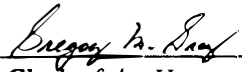
Chairman House Committee

Originating in the House.

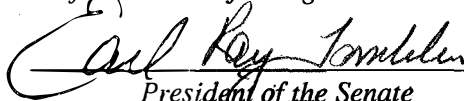
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

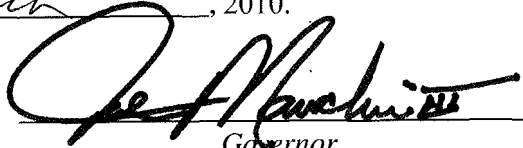


President of the Senate



Speaker of the House of Delegates

The within is approved this the 23rd
day of March, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 10:40am