WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

House Bill No. 2918

(By Delegates White and T. Campbell)
[By Request of the Tax and Revenue Department]

Passed March 11, 2011

In Effect Ninety Days From Passage
AN ACT to amend and reenact §11-12-3, §11-12-5 and §11-12-86 of the Code of West Virginia, 1931, as amended, all relating to permanent business registrations; changing the procedure for suspending, revoking or canceling a business registration certificate; permitting a registrant to appeal an order to suspend, revoke or cancel a business registration certificate; permitting a business registration certificate to be revoked, canceled or suspended for nonpayment of property taxes; changing the sparkler and novelty registration fee from annual one to an initial one; and updating permanent registration language.

Be it enacted by the Legislature of West Virginia:

That §11-12-3, §11-12-5 and §11-12-86 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; penalty.

(a) Registration required. -- No person shall, without a business registration certificate, engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia. Additionally, before beginning business in this state, such person:

(1) If a transient vendor, shall comply with the provisions of sections twenty through twenty-five of this article.

(2) If a collection agency, shall comply with the provisions of article sixteen, chapter forty-seven of this code.

(3) If an employment agency, shall comply with the provisions of article two, chapter twenty-one of this code.

(4) If selling drug paraphernalia, as defined in section three, article nineteen, chapter forty-seven of this code, shall comply with the provisions of article nineteen, chapter forty-seven of this code.

Persons engaging in or prosecuting other business activities in this state may also be subject to other provisions of this code which they must satisfy before commencing or while engaging in a business activity in this state.

(b) Tax levied. -- The business registration tax hereby levied shall be $15 for each annual business registration certificate: Provided, That for registration periods beginning on or after July 1, 1999, the business registration tax shall be
$30, except as otherwise provided in this article: *Provided, however,* That after June 30, 2010, the business registration tax shall be $30.00 for each business registration certificate, including business registration certificates granted upon application after cessation of a business, or after suspension, revocation, cancellation or lapse of a prior business registration certificate.

(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) of this section for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license
or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if, in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

(c) Exemption from registration. -- Any person engaging in or prosecuting business activity in this state:

(1) Who is not required by law to collect or withhold a tax administered under article ten of this chapter; and

(2) Who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed by this article, if such person had gross income from business activity of $4,000 or less during that person’s tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is otherwise required by this article.

(d) Exemptions from payment of tax. -- Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax administered under article ten of this chapter; or who claims exemption from payment of the taxes imposed by articles fifteen and fifteen-a of this chapter, shall be required to obtain a business registration certificate, as herein before provided, but shall be exempt from payment of the tax levied by subsection (b) of this section, if such person is:

(1) A person who had gross income from business activity of $4,000 or less during that person’s tax year for state income tax purposes immediately preceding the
(2) An organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986, as amended.

(3) This state, or a political subdivision thereof, selling tangible personal property, admissions or services, when those activities compete with or may compete with the activities of another person.

(4) The United States, or an agency or instrumentality thereof, which is exempt from taxation by the states.

(5) A person engaged in the business of agriculture and farming: Provided, That no producer or grower selling products of the farm, garden or dairy and not included within the definition of business under subsection (a), section two of this article shall be required to obtain a business registration certificate or pay the business registration tax.

(6) A foreign retailer who is not a "retailer engaging in business in this state" as defined in section one, article fifteen-a of this chapter, who enters into an agreement with the Tax Commissioner to voluntarily collect and remit use tax on sales to West Virginia customers.

(e) Money penalty. -- Any person required to obtain a business registration certificate under this section, who is exempt from payment of the tax, as provided in subsection (d) of this section, who does not obtain a registration certificate shall, in lieu of paying the penalty imposed by section nine of this article, pay a penalty of $15 for each business location for which a certificate is needed: Provided, That application for business registration is made and the
applicable money penalty tendered to the Tax Commissioner within fifteen days after such person receives written notice from the Tax Commissioner that such person is required to obtain a business registration certificate.

§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend, revoke 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 July 1 and ending June 30 of the following year: Provided, That beginning on or after July 1, 1999, 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 July 1 of an even-numbered calendar year, then the Tax Commissioner may issue a renewal certificate to that business for the period beginning July 1, 1999, and ending June 30, 2000, upon receipt of $15 for each such one-year certificate. Notwithstanding any other provisions of this code to the contrary, any certificate of registration granted on or after July 1, 2010, 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 canceled by the Tax Commissioner. Notwithstanding any provision of this code to the contrary, on or after July 1, 2010, 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. Subject to the exemptions, exceptions and requirements other than the $4,000 or less gross income exemption, set forth in section three of this article, on or after July 1, 2010, the business registration certificate shall be issued upon payment of a tax of $30 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. Subject to the exemptions, exceptions and requirements set forth in section three of this article, the $30 tax shall be paid each and every time there is an issuance, reissuance or reinstatement of a business registration certificate, along with any applicable delinquent fees, interest, penalties and additions to tax: Provided, That the $4,000 or less gross income exemption set forth in subdivision (1), subsection (d), section three of this article does not apply.

(b) Revocation, cancellation or suspension of certificate.

(1) The Tax Commissioner may cancel, revoke 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 July 1, 2010, a prospective registrant or a former registrant for which a business registration certificate has been suspended, canceled 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 $100. 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 July 1, 2010, a prospective registrant or a former registrant for which a business registration certificate has been suspended, canceled 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 $100.

(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 and the
effective date of the cancellation, revocation or suspension. Written notice shall be served on the taxpayer in accordance
with section five-e, article ten of this chapter not less than
twenty days prior to the effective date of the cancellation,
revocation or suspension. Acceptance of service of notice
shall be deemed to have occurred if completed as set forth in
section five-e, article ten of this chapter. The taxpayer may
appeal cancellation, revocation or suspension of its business
registration certificate by filing a petition for appeal with the
Office of Tax Appeals within twenty days immediately
succeeding receipt of the service of notice to suspend, revoke
or cancel the business registration certificate. 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 July 1, 2005, 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 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 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) Revocation, cancellation or suspension due to delinquent personal property tax.-- The Tax Commissioner may revoke, cancel or suspend a business registration certificate when informed in writing, signed by the county sheriff, that personal property owned by a registrant and used in conjunction with the business activity of the registrant is subject to delinquent property taxes. The Tax Commissioner shall forthwith notify the registrant that the commissioner will revoke, cancel or suspend the registrant's business registration certificate unless information is provided evidencing that the taxes due are either exonerated or paid.

(d) Refusal to issue, revocation, suspension and refusal to renew business registration certificate of alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue, revocation, suspension or refuse to renew.--

(1) The Tax Commissioner may refuse to issue a business registration certificate, or may revoke a business registration certificate or may suspend a business registration certificate or may refuse to renew a business registration certificate for any business determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of a business that has
previously been the subject of a lawful refusal to issue a
business registration certificate or of a lawful revocation,
suspension or refusal to renew a business registration
certificate pursuant to this section, and for which the business
registration certificate has not been lawfully reinstated or
reissued.

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

(A) More than twenty percent of the real assets or more
than twenty percent of the operating assets or more than
twenty percent of the tangible personal property of one
business are or have been transferred to the other business or
businesses, or are or have been used in the operations of the
other business or businesses, or more than twenty percent of
the real assets or more than twenty percent of the operating
assets or more than twenty percent of the tangible personal
property of one business are or have been used to
collateralize or secure debts or obligations of the other
business or businesses;

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

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

§11-12-86. Sparkler and novelty registration fee.
The Tax Commissioner shall establish a "Sparkler and Novelty Registration Fee" which shall be charged all businesses licensed to do business in the State of West Virginia desiring to sell sparklers and novelties authorized for sale in section twenty-three, article three, chapter twenty-nine of this code. This fee shall run concurrent with the business registration certificate set forth in section five of this article. This fee shall not be prorated. Each business shall pay $15 for each registration and shall be issued a sticker or card by the Tax Commissioner to be posted in a conspicuous position at the location of the business which has paid the registration fee. This fee shall be collected for each separate location where sparklers and novelties are sold. The Tax Commissioner may, in his or her discretion, require a separate certificate which shall be posted as set forth herein, or provide that the evidence of compliance with this section may be by a stamp or language added to the business registration certificate or by embossing or writing imprinted on the business registration certificate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman, House Committee

[Signature]
Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signature]
Clerk of the House of Delegates

[Signature]
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
Acting President of the Senate

The within was approved this the 30th day of March, 2011.

[Signature]
Governor