WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED

Senate Bill No. 331

(By Senators Kessler (Mr. President) and M. Hall,
By Request of the Executive)

[Passed March 5, 2014; in effect from passage.]
AN ACT to amend and reenact §11-15-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-21-74 of said code, all relating to providing accelerated payment of consumers sales and service and use tax and employee withholding taxes for certain taxpayers and employers.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

1   (a) Payment of tax. – Subject to the exceptions set forth
2   in subsection (b) of this section, the taxes levied by this
3   article are due and payable in monthly installments, on or
4   before the twentieth day of the month next succeeding the
(b) Combined return required. —

(1) The Tax Commissioner shall, no later than June 15, 2008, design a return that combines filing of the taxes levied by this article and article fifteen-a of this chapter.

(2) Beginning July 1, 2008, 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) Notwithstanding any other provision of this code to the contrary, after June 30, 2014, 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 $100,000 shall remit the tax attributable to the first fifteen days of June each year by June 20.

(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 $100,000, the tax attributable to the first fifteen days of June each year shall be remitted by June 20 as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due by July 20, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.
ARTICLE 21. PERSONAL INCOME TAX.

§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.

(a) General. — Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of the calendar quarter, 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. Where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax 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, after December 31, 2008, 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 after December 31, 2000. — Notwithstanding the provisions of subsection (a) of this section, after December 31, 2000, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, by the twentieth day of the succeeding month, and for the last calendar month of the year, by 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 $250 or more for the month, except any employer with respect to whom the Tax Commissioner may have by rule provided otherwise in accordance with the provisions of subsection (a) of this section. Notwithstanding the provisions of this subsection, after December 31, 2008, 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 January 31 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, after December 31, 2008, 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 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 remains 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, after June 30, 2014, 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 $100,000 shall remit the tax attributable to the first fifteen days of June each year by June 23.
(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 $100,000, the employer shall remit the tax attributable to the first fifteen days of June each year by June 23, 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 by July 20, that employer may claim as a credit against its liability 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.

(f) The amendments to this section enacted in the year 2006 are effective for tax years beginning after December 31, 2005.

(g) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by February 28 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.

(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: Provided, That for any tax period beginning after December 31, 2010, any employer with 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 $25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member - Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph W. Misera
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 26th Day of March, 2014.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 PM