WEST VIRGINIA LEGISLATURE

2017 SECOND EXTRAORDINARY SESSION

ENROLLED

Senate Bill 2002

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage]
WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

ENROLLED

Senate Bill 2002

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5cc; and to amend and reenact §11-10-11 of said code, all relating generally to allowing certain tax information to be shared with designated employees of Commissioner of Highways pursuant to written agreement; specifying information that may be disclosed; defining "good standing"; permitting agreement to be amended from time to time; clarifying scope of confidentiality and protection of information in hands of Commissioner of Highways; and clarifying that failure to remit personal income taxes required to be withheld by a contractor is grounds for withholding payment in final settlement of a contract.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5cc; and that §11-10-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5cc. Disclosure of certain tax information to Commissioner of Highways.

(a) Notwithstanding any provision of this article to the contrary, the Tax Commissioner shall enter into a written agreement with the Commissioner of Highways of this state to disclose to designated employees of the Division of Highways:

(1) Whether a bidder for a contract with the Division of Highways has a current business registration certificate under article twelve of this chapter;

(2) Whether a contractor with the Division of Highways, or any subcontractor of that contractor, has had its current business registration certificate revoked or suspended under article twelve of this chapter;

(3) Whether a cease and desist order has been issued under article twelve of this chapter to a contractor working on a project for the Division of Highways or a subcontractor of that contractor working on a road construction or repair project;
(4) Whether a contractor bidding on a contract for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(5) Whether a contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(6) Whether a subcontractor of any contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(7) Whether a bidder for a highway construction contract is in good standing with the Tax Commissioner;

(8) Whether a contractor or subcontractor working on a project for the Division of Highways is in good standing with the Tax Commissioner and, if not in good standing, an explanation of why the contractor or subcontractor is not in good standing; and

(9) Whether a bidder, contractor or subcontractor currently has pending before the Office of Tax Appeals a contest concerning any assessment for additional tax or denial of a claim for refund or credit.

(b) For purposes of this section, the term "good standing" means that the bidder, contractor or subcontractor has: (1)Filed all required tax returns due for taxes administered under this article;

(2) paid all taxes shown to be due in the filed returns, including any interest and additions to tax;

and (3) paid all withholding taxes for employees of the bidder, contractor or subcontractor required to be paid under this code.

(c) An agreement executed under subsection (a) of this section may be amended, from time to time, by the Tax Commissioner and the Commissioner of Highways.

Enr. SB 2002
Enr. SB 2002

(d) Information in the hands of the Commissioner of Highways or his or her designees pursuant to an agreement under this section shall enjoy the same level of confidentiality and protection as the information would enjoy in the hands of the Tax Commissioner.


(a) General. — The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.

(b) Prerequisite to final settlement of contracts with nonresident contractor; user personally liable. —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above-referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation. —

The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the
Enr. SB 2002

23 Tax Commissioner to the effect that every tax administered under this article imposed against any
24 corporation has been paid or provided for, or that the applicant is not liable for any tax
25 administered under this article.
26
27 (d) Prerequisite to final settlement of contract with this state or political subdivision; penalty. — All state, county, district and municipal officers and agents making contracts on behalf
28 of this state or any political subdivision thereof shall withhold payment, in the final settlement of
29 any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the
taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the
contractor, or required to be withheld by the contractor, have been paid or provided for. If the
transaction embodied in the contract or the subject matter of the contract is subject to county or
municipal business and occupation tax, then the payment shall also be withheld until receipt of a
release from the county or municipality to the effect that all county or municipal business and
occupation taxes levied or accrued against the contractor have been paid. Any official violating
this section is subject to a civil penalty of $1,000, recoverable as a debt in a civil action brought
by the Tax Commissioner.

(e) Limited effect of Tax Commissioner’s certificates. — The certificates of the Tax
Commissioner provided in subsections (b), (c) and (d) of this section shall not bar subsequent
investigations, assessments, refunds and credits with respect to the taxpayer.

(f) Payment when person sells out or quits business; liability of successor; lien. —

(1) If any person subject to any tax administered under this article sells out his, her or its
business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and
interest imposed by this article or any of the other articles of this chapter to which this article is
applicable shall become due and payable immediately and that person shall, within thirty days
after selling out his, her or its business or stock of goods or ceasing to do business, make a final
return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien
upon the property of that person.
(2) The successor in business of any person who sells out his, her or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties and interest unpaid after expiration of the thirty-day period allowed for payment: Provided, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) **Priority in distribution of estate or property in receivership; personal liability of fiduciary.** — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who violates the provisions of this section is personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(h) **Injunction.** — If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the Tax Commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any other articles. No bond is required of the Tax Commissioner in any action instituted under this subsection.
(i) Costs. — In any proceeding under this section, upon judgment or decree for the Tax Commissioner, he or she shall be awarded his or her costs.

(j) Refunds; credits; right to offset. —

(1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the Tax Commissioner may reduce the amount of the refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this section.

(2) The Tax Commissioner may enter into agreements with the Internal Revenue Service that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax refunds against state tax liabilities; and establishing the amount of the offset fee per transaction which both agencies may charge each other: Provided, That offsets under subdivision (1) of this subsection shall occur prior to offset under this subdivision. At the times moneys are received as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: Provided however, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest and penalties owed by the taxpayer to this state: Provided further, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the moneys retained from the taxpayer's state tax refund and then deposited in the special revolving fund which is hereby created and established in the state Treasury and designated as the Tax Offset Fee Administration Fund: And provided further, That the fees deposited in the Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

(k) Spouse relieved of liability in certain cases. —

(1) In general. — Under regulations prescribed by the Tax Commissioner, if:
(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.

(2) Grossly erroneous items. — For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income;

and

(B) Any claim of a deduction, credit or basis by a spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement. — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed $500.

(4) Understatement must exceed specified percentage of spouse’s income.

(A) Adjusted gross income of $20,000 or less. — If the spouse’s adjusted gross income for the readjustment year is $20,000 or less, this subsection applies only if the liability described in subdivision (1) of this subsection is greater than ten percent of the adjusted gross income.

(B) Adjusted gross income of more than $20,000. — If the spouse’s adjusted gross income for the readjustment year is more than $20,000, paragraph (A) of this subdivision is applied by substituting “twenty-five percent” for “ten percent".
(C) Readjustment year. — For purposes of this paragraph, the term "readjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) Computation of spouse's adjusted gross income. — If the spouse is married to another spouse at the close of the readjustment year, the spouse's adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) Exception for omissions from gross income. — This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Adjusted gross income. — For purposes of this subsection, the term "adjusted gross income" means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman, Senate Committee

[Signature]
Chairman, House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the ______ Day of _______ 2017.

[Signature]
Governor