

HB 2989
S 686C
OH

FILED

2007 APR -3 PM 4: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

House Bill No. 2989

(By Delegates Yost, Reynolds, Perdue, Doyle, Barker,
Tucker, Marshall, Manchin and Blair)



Passed March 10, 2007

In Effect from Passage

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H. B. 2989

OFFICE WEST VIRGINIA
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(BY DELEGATES YOST, REYNOLDS, PERDUE, DOYLE, BARKER,
TUCKER, MARSHALL, MANCHIN AND BLAIR)

[Passed March 10, 2007; in effect from passage.]

AN ACT to amend and reenact §11-10E-6, §11-10E-8 and § 11-10E-9 of the Code of West Virginia, 1931, as amended, all relating to certain tax shelters used to avoid paying state income taxes; clarifying when certain penalties are imposed; determining when the tax shelter registration number is to be filed with the tax commissioner; and determining when tax shelter investor lists are to be filed with the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10E-6, §11-10E-8 and §11-10E-9 of the code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-6. Failure to register tax shelter or maintain list.

- 1 (a) *Penalty imposed.* -- Any person that fails to comply
- 2 with the requirements of section eight or section nine of this
- 3 article shall incur a penalty as provided in subsection (b). A

4 person shall not be in compliance with the requirements of
5 section eight unless and until the required registration has
6 been filed and contains all of the information required to be
7 included with such registration under such section eight or
8 Section 6111 of the Internal Revenue Code. A person shall
9 not be in compliance with the requirements of section nine
10 unless, at the time the required list is made available to the
11 Tax Commissioner, such list contains all of the information
12 required to be maintained under such section nine or Section
13 6112 of the Internal Revenue Code.

14 (b) *Amount of penalty.* -- The following penalties apply:

15 (1) In the case of each failure to comply with the
16 requirements of subsection (a), subsection (b) or subsection
17 (d) of section eight, the penalty shall be ten thousand dollars;

18 (2) If the failure to comply with the requirements of
19 subsection (a), subsection (b) or subsection (d) of section
20 eight is with respect to a listed transaction described in
21 subsection (c) of section eight, the penalty shall be one
22 hundred thousand dollars;

23 (3) In the case of each failure to comply with the
24 requirements of subsection (a) or subsection (b) of section
25 nine, the penalty shall be ten thousand dollars; and

26 (4) If the failure to comply with the requirements of
27 subsection (a) or subsection (b) of section nine is with respect
28 to a listed transaction described in subsection (c) of section
29 nine, the penalty shall be one hundred thousand dollars.

30 (c) *Authority to rescind penalty.* -- The office of tax
31 appeals, with the written approval of the Tax Commissioner,
32 may rescind all or any portion of any penalty imposed by this
33 section with respect to any violation only if one or more of
34 the following apply: (1) It is determined that failure to
35 comply did not jeopardize the best interests of the state and
36 is not due to any willful neglect or any intent not to comply;
37 (2) it is shown that the violation is due to an unintentional
38 mistake of fact; (3) rescinding the penalty would promote

39 compliance with the requirements of this article and effective
 40 tax administration; or (4) the taxpayer can show that there
 41 was reasonable cause for the failure to disclose and that the
 42 taxpayer acted in good faith.

43 (d) *Coordination with other penalties.* -- The penalty
 44 imposed by this section is in addition to any penalty imposed
 45 by this article or article ten of this chapter.

§11-10E-8. Registration of tax shelters.

1 (a) *Federal tax shelter.* -- Any tax shelter organizer or
 2 material advisor required to register a tax shelter under
 3 Section 6111 of the Internal Revenue Code shall send a
 4 duplicate of the federal registration information to the Tax
 5 Commissioner not later than the day on which registration is
 6 required under federal law. Any person required to register
 7 under Section 6111 of the Internal Revenue Code who
 8 receives a tax registration number from the Secretary of the
 9 Treasury shall, within thirty days after request by the Tax
 10 Commissioner, file a statement of that registration number
 11 with the Tax Commissioner.

12 (b) *Additional requirements for listed transactions.* -- In
 13 addition to the requirements of subsection (a), for any
 14 transactions entered into on or after the twenty-eighth day of
 15 February, two thousand, that become listed transactions (as
 16 defined under Treasury Regulations Section 1.6011-4) at any
 17 time, those transactions shall be registered with the Tax
 18 Commissioner (in the form and manner prescribed by the Tax
 19 Commissioner) by the later of: (i) Sixty days after entering
 20 into the transaction; (ii) sixty days after the transaction
 21 becomes a listed transaction; or (iii) the first day of July, two
 22 thousand six.

23 (c) *Tax shelters subject to this section for taxable years*
 24 *commencing before the first day of January, two thousand*
 25 *seven.* -- The provisions of this section apply to any tax
 26 shelter herein described in which a person:

27 (1) Organizes or participates in the sale of an interest in
 28 a partnership, entity or other plan or arrangement; and

29 (2) Makes or causes another person to make a false or
30 fraudulent statement with respect to securing a tax benefit or
31 a gross valuation as to any material matter, and which is or
32 was one or more of the following: (A) Organized in this state;
33 (B) doing business in this state; or (C) deriving income from
34 sources in this state

35 (d) *Tax shelters subject to this section for taxable years*
36 *commencing on or after the first day of January, two*
37 *thousand seven.* -- The provisions of this section apply to
38 any tax shelter herein described in which a person organizes
39 or participates in the sale of an interest in a partnership, entity
40 or other plan or arrangement that is or was one or more of the
41 following: (i) organized in this state; (ii) doing business in
42 this state; or (iii) deriving income from sources in this state.

43 (e) *Tax shelter identification number.* -- Any person
44 required to file a return under this article and required to
45 include on the person's federal income tax return a tax shelter
46 identification number pursuant to Section 6111 of the Internal
47 Revenue Code shall furnish such number when filing the
48 person's West Virginia return.

§11-10E-9. Investor lists.

1 (a) *Federal abusive tax shelter.* -- Any person required to
2 maintain a list under Section 6112 of the Internal Revenue
3 Code and Treasury Regulations Section 301.6112-1 with
4 respect to a potentially abusive tax shelter shall furnish such
5 list to the Tax Commissioner not later than the time such list
6 is required to be furnished to the Internal Revenue Service
7 under federal income tax law. The list required under this
8 section shall include the same information required with
9 respect to a potentially abusive tax shelter under Treasury
10 Regulations Section 301.6112-1 and any other information
11 that the Tax Commissioner may require.

12 (b) *Additional requirements for listed transactions.* -- For
13 transactions entered into on or after the twenty-eighth day of
14 February, two thousand, that become listed transactions (as
15 defined under Treasury Regulations Section 1.6011-4) at any
16 time thereafter, the list shall be furnished to the Tax

17 Commissioner by the later of sixty days after entering into
18 the transaction or sixty days after the transaction becomes a
19 listed transaction.

20 (c) *Tax shelters subject to this section.* -- The provisions
21 of this section apply to any tax shelter herein described in
22 which a person:

23 (1) Organizes or participates in the sale of an interest in
24 a partnership, entity or other plan or arrangement; and

25 (2) Makes or causes another person to make a false or
26 fraudulent statement with respect to securing a tax benefit or
27 a gross valuation as to any material matter; and which is or
28 was one or more of the following: (A) Organized in this state;
29 (B) doing business in this state; or (C) deriving income from
30 sources in this state.

31 (d) *Tax shelters subject to this section for taxable years*
32 *commencing on or after the first day of January, two*
33 *thousand seven.* -- The provisions of this section apply to
34 any tax shelter herein described in which a person organizes
35 or participates in the sale of an interest in a partnership, entity
36 or other plan or arrangement that is or was one or more of the
37 following: (i) organized in this state; (ii) doing business in
38 this state; or (iii) deriving income from sources in this state.

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



Chairman Senate Committee



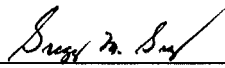
Chairman House Committee

Originating in the House.

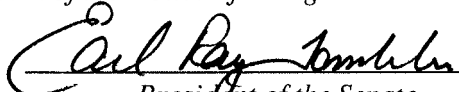
In effect from passage.



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 3rd
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time 4:00pm