

H. B. 2918

(BY DELEGATES WHITE AND T. CAMPBELL)
[BY REQUEST OF THE TAX AND REVENUE DEPARTMENT)]

[Introduced January 28, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL 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.

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

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

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

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

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

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

21 (b) *Tax levied.* -- The business registration tax hereby
22 levied shall be \$15 for each annual business registration
23 certificate: *Provided*, That for registration periods beginning
24 on or after July 1, 1999, the business registration tax shall be
25 \$30, except as otherwise provided in this article: *Provided*,
26 *however*, That after June 30, 2010, the business registration
27 tax shall be \$30.00 for each business registration certificate,
28 including business registration certificates granted upon
29 application after cessation of a business, or after suspension,
30 revocation, cancellation or lapse of a prior business
31 registration certificate.

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

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

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

49 (4) A business registration certificate is required by
50 subsection (a) of this section for every person engaging in

51 purposeful revenue generating activity in this state. If that
52 activity is one for which an employment agency license or a
53 collection agency license or a license to sell drug
54 paraphernalia is required and no other business activity is
55 conducted by that person at each business location for which
56 the employment agency license or collection agency license
57 or license to sell drug paraphernalia is issued, then only that
58 license is required for each such activity conducted by the
59 licensee at each business location. However, if, in addition
60 to the activity for which each license is issued, some other
61 business activity is conducted by the licensee at such
62 business location, a separate business registration certificate
63 is required to conduct the nonlicensed activity.

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

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

68 (2) Who does not claim exemption from payment of taxes
69 imposed by articles fifteen and fifteen-a of this chapter, shall

70 be exempt from both registration and payment of the tax
71 imposed by this article, if such person had gross income from
72 business activity of \$4,000 or less during that person's tax
73 year for state income tax purposes immediately preceding the
74 registration period for which a registration certificate is
75 otherwise required by this article.

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

85 (1) A person who had gross income from business
86 activity of \$4,000 or less during that person's tax year for
87 state income tax purposes immediately preceding the
88 registration period for which a registration certificate is
89 required under this article.

90 (2) An organization which qualifies, or would qualify, for
91 exemption from federal income taxes under section 501 of
92 the Internal Revenue Code of 1986, as amended.

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

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

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

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

110 (e) *Money penalty.* -- Any person required to obtain a
111 business registration certificate under this section, who is
112 exempt from payment of the tax, as provided in subsection
113 (d) of this section, who does not obtain a registration
114 certificate shall, in lieu of paying the penalty imposed by
115 section nine of this article, pay a penalty of \$15 for each
116 business location for which a certificate is needed: *Provided,*
117 That application for business registration is made and the
118 applicable money penalty tendered to the Tax Commissioner
119 within fifteen days after such person receives written notice
120 from the Tax Commissioner that such person is required to
121 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.

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 canceled 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, cancellation or suspension of certificate.*

50 --

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

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

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

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

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

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

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

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

101 which liability for all delinquent fees, taxes, interest,
102 additions to tax and penalties will be paid in due course and
103 without significant delay. Failure of any registrant to comply
104 with a payment plan pursuant to this provision shall be
105 grounds for immediate suspension or revocation of the
106 registrant's business registration certificate.

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

118 (4) Except pursuant to exceptions specified in this code,
119 before canceling, revoking or suspending any business
120 registration certificate, the Tax Commissioner shall give

121 written notice of his or her intent to suspend, revoke or cancel
122 the business registration certificate of the taxpayer, the reason
123 for the suspension, revocation or cancellation and the
124 effective date of the cancellation, revocation or suspension.
125 ~~and the date, time and place where the taxpayer may appear~~
126 ~~and show cause why such business registration certificate~~
127 ~~should not be canceled, revoked or suspended. This written~~
128 Written notice shall be served on the taxpayer in accordance
129 with section five-e, article ten of this chapter in the same
130 ~~manner as a notice of assessment is served under article ten~~
131 ~~of this chapter~~, not less than twenty days prior to the effective
132 date of the cancellation, revocation or suspension.
133 Acceptance of service of notice shall be deemed to have
134 occurred if completed as set forth in section five-e, article ten
135 of this chapter. The taxpayer may appeal cancellation,
136 revocation or suspension of its business registration
137 certificate ~~in the same manner as a notice of assessment is~~
138 ~~appealed under article ten-a of this chapter~~ by filing a petition
139 for appeal with the Office of Tax Appeals within twenty days
140 immediately succeeding receipt of the service of notice to

141 suspend, revoke or cancel the business registration certificate.

142 The filing of a petition for appeal does not stay the effective
143 date of the suspension, revocation or cancellation. A stay
144 may be granted only after a hearing is held on a motion to
145 stay filed by the registrant upon finding that state revenues
146 will not be jeopardized by the granting of the stay. The Tax
147 Commissioner may, in his or her discretion and upon such
148 terms as he or she may specify, agree to stay the effective
149 date of the cancellation, revocation or suspension until
150 another date certain.

151 (5) On or before July 1, 2005, the Tax Commissioner
152 shall propose for promulgation legislative rules establishing
153 ancillary procedures for the Tax Commissioner's suspension
154 of business registration certificates for failure to pay
155 delinquent personal property taxes pursuant to paragraph (F),
156 subdivision (1) of this section. The rules shall at a minimum
157 establish any additional requirements for the provision of
158 notice deemed necessary by the Tax Commissioner to meet
159 requirements of law; establish protocols for the

160 communication and verification of information exchanged
161 between the Tax Commissioner, sheriffs and others; and
162 establish fees to be assessed against delinquent taxpayers that
163 shall be deposited into a special fund which is hereby created
164 and expended for general tax administration by the Tax
165 Division of the Department of Revenue and for operation of
166 the Tax Division. Upon authorization of the Legislature, the
167 rules shall have the same force and effect as if set forth
168 herein. No provision of this subdivision may be construed to
169 restrict in any manner the authority of the Tax Commissioner
170 to suspend such certificates for failure to pay delinquent
171 personal property taxes under paragraph (C) or (F),
172 subdivision (1) of this section or under any other provision of
173 this code prior to the authorization of the rules.

174 ~~(c) Refusal to renew. -- The Tax Commissioner may~~
175 ~~refuse to issue or renew a business registration certificate if~~
176 ~~the registrant is delinquent in the payment of any tax~~
177 ~~administered by the Tax Commissioner under article ten of~~
178 ~~this chapter or the corporate license tax imposed by article~~

179 ~~twelve-c of this chapter, until the registrant pays in full all the~~
180 ~~delinquent taxes including interest and applicable additions~~
181 ~~to tax and penalties. In his or her discretion and upon terms~~
182 ~~as he or she specifies, the Tax Commissioner may enter into~~
183 ~~an installment payment agreement with the taxpayer in lieu~~
184 ~~of the complete payment. Failure of the taxpayer to fully~~
185 ~~comply with the terms of the installment payment agreement~~
186 ~~shall render the amount remaining due thereunder~~
187 ~~immediately due and payable and the Tax Commissioner may~~
188 ~~suspend or cancel the business registration certificate in the~~
189 ~~manner provided in this section.~~

190 ~~(d) Refusal to renew~~ (c) Revocation, cancellation or
191 suspension due to delinquent personal property tax. -- The
192 Tax Commissioner ~~shall refuse to issue or renew~~ may revoke,
193 cancel or suspend a business registration certificate when
194 informed in writing, signed by the county sheriff, that
195 personal property owned by ~~the applicant~~ a registrant and
196 used in conjunction with the business activity of the ~~applicant~~
197 registrant is subject to delinquent property taxes. The Tax

198 Commissioner shall forthwith notify the ~~applicant~~ registrant
199 that the commissioner will ~~not act upon the application until~~
200 revoke, cancel or suspend the registrant's business registration
201 certificate unless information is provided evidencing that the
202 taxes due are either exonerated or paid.

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

208 (1) The Tax Commissioner may refuse to issue a business
209 registration certificate, or may revoke a business registration
210 certificate or may suspend a business registration certificate
211 or may refuse to renew a business registration certificate for
212 any business determined by the Tax Commissioner to be an
213 alter ego, nominee or instrumentality of a business that has
214 previously been the subject of a lawful refusal to issue a
215 business registration certificate or of a lawful revocation,
216 suspension or refusal to renew a business registration

217 certificate pursuant to this section, and for which the business
218 registration certificate has not been lawfully reinstated or
219 reissued.

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

223 (A) More than twenty percent of the real assets or more
224 than twenty percent of the operating assets or more than
225 twenty percent of the tangible personal property of one
226 business are or have been transferred to the other business or
227 businesses, or are or have been used in the operations of the
228 other business or businesses, or more than twenty percent of
229 the real assets or more than twenty percent of the operating
230 assets or more than twenty percent of the tangible personal
231 property of one business are or have been used to
232 collateralize or secure debts or obligations of the other
233 business or businesses;

234 (B) Ownership of the businesses is so configured that the
235 attribution rules of either Internal Revenue Code section 267

236 or Internal Revenue Code section 318 would apply to cause
237 ownership of the businesses to be attributed to the same
238 person or entity; or

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

§11-12-86. Sparkler and novelty registration fee.

1 The Tax Commissioner shall establish ~~an annual~~ a
2 “Sparkler and Novelty Registration Fee” which shall be
3 charged all businesses licensed to do business in the State of
4 West Virginia desiring to sell sparklers and novelties
5 authorized for sale in section twenty-three, article three,
6 chapter twenty-nine of this code. This fee shall run
7 concurrent with the business registration certificate set forth
8 in section five of this article. This fee shall not be prorated.
9 Each business shall pay \$15 for each registration and shall be
10 issued a sticker or card by the Tax Commissioner to be
11 posted in a conspicuous position at the location of the

12 business which has paid the registration fee. This fee shall be
13 collected for each separate location where sparklers and
14 novelties are sold. The Tax Commissioner may, in his or her
15 discretion, require a separate certificate which shall be posted
16 as set forth herein, or provide that the evidence of compliance
17 with this section may be by a stamp or language added to the
18 business registration certificate or by embossing or writing
19 imprinted on the business registration certificate.

NOTE: The purpose of this bill is to change the procedure for suspending, revoking or canceling a business registration certificate. The bill permits a registrant to appeal an order to suspend, revoke or cancel a business registration certificate. The bill permits a business registration certificate to be revoked, canceled or suspended for nonpayment of property taxes. The bill also changes the sparkler and novelty registration fee from annual one to an initial one. The bill updates permanent registration language.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.