

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Senate Bill 338

BY SENATORS BLAIR AND BOSO

[Passed March 3, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended,
2 relating generally to employer withholding taxes; changing due date for employers to file
3 annual reconciliation and withholding statements with Tax Commissioner to January 31;
4 requiring certain employers to file withholding return information electronically with the Tax
5 Commissioner; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

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.

1 (a) *General.* — Every employer required to deduct and withhold tax under this article shall
2 file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax
3 Commissioner the taxes required to be deducted and withheld. The due dates for returns and
4 payments shall be established by the Tax Commissioner to match as closely as practicable the
5 due dates in effect for federal income tax purposes, in accordance with the procedures
6 established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue
7 Code except as otherwise provided in this section: *Provided,* That not later than January 31, 2019,
8 and January 31 of each year thereafter, employers and payers shall submit to the Tax
9 Commissioner the annual reconciliation of West Virginia income tax withheld, together with state
10 copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not
11 limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding
12 calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year
13 ending on December 31 or a fiscal tax year ending on a date other than December 31.
14 Notwithstanding the provisions of this section, where the average quarterly amount deducted and
15 withheld by any employer is less than \$150 and the aggregate for the calendar year can
16 reasonably be expected to be less than \$600, the Tax Commissioner may by rule permit an

17 employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and
18 withheld on or before the last day of the month following the close of the calendar year.

19 (b) *Annual returns and payments of withheld tax of certain domestic and household*
20 *employees.* — Employers of domestic and household employees whose withholdings of federal
21 income tax are annually paid and reported by the employer pursuant to the filing of Schedule H
22 of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 shall, on or before January
23 31 next succeeding the end of the calendar year for which withholdings are deducted and
24 withheld, file an annual withholding return with the Tax Commissioner, and annually remit to the
25 Tax Commissioner, West Virginia personal income taxes deducted and withheld for the
26 employees together with state copies of all withholding tax statements reflecting West Virginia tax
27 withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee
28 or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may
29 have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than
30 December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-
31 3-1 *et seq.* of this code for implementation of this subsection.

32 (c) *Deposit in trust for Tax Commissioner.* — Whenever any employer fails to collect,
33 truthfully account for, or pay over the tax, or to make returns of the tax as required in this section,
34 the Tax Commissioner may serve a notice requiring the employer to collect the taxes which
35 become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax
36 Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to
37 keep the amount of the tax in the separate account until payment over to the Tax Commissioner.
38 The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

39 (d) *Accelerated payment.* —

40 (1) Every employer required to deduct and withhold tax whose average payment per
41 calendar month for the preceding calendar year under §11-21-74(a) of this code exceeded
42 \$100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

43 (2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit
44 an amount equal to the withholding tax due under this article on employee compensation subject
45 to withholding tax payable or paid to employees for the first 15 days of June or, at the employer's
46 election, the employer may remit an amount equal to 50 percent of the employer's liability for
47 withholding tax under this article on compensation payable or paid to employees for the preceding
48 month of May.

49 (3) For an employer which has not been in business for a full calendar year, the total
50 amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the
51 prior calendar year shall be divided by the number of months, including fractions of a month, that
52 it was in business during the prior calendar year and if that amount exceeds \$100,000, the
53 employer shall remit the tax attributable to the first 15 days of June each year by June 23, as
54 provided in §11-21-74(d)(2) of this code.

55 (4) When an employer required to make an advanced payment of withholding tax under
56 §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20,
57 that employer may claim as a credit against its liability under this article for tax on employee
58 compensation paid or payable for employee services rendered during the month of June the
59 amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

60 (e) An annual reconciliation of West Virginia personal income tax withheld shall be
61 submitted by the employer by January 31, following the close of the calendar year, together with
62 Tax Division copies of all withholding tax statements for that preceding calendar year. The
63 reconciliation shall be accompanied by a list of the amounts of income withheld for each employee
64 in such form as the Tax Commissioner prescribes and shall be filed separately from the
65 employer's monthly or quarterly return.

66 (f) Any employer required to file a withholding return for 50 or more employees shall file
67 its return using electronic filing as defined in §11-21-54 of this code: *Provided*, That for any tax
68 period beginning after December 31, 2017, any employer that uses a payroll service or is required

69 to file a withholding return for 25 or more employees shall file its return using electronic filing as
70 defined in §11-21-54 of this code. An employer that is required to file electronically but does not
71 do so is subject to a penalty in the amount of \$25 per employee for whom the return was not filed
72 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.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2018.

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Governor