

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4265

(BY REQUEST OF THE TAX DIVISION)

BY DELEGATES NELSON AND BOGGS

[Introduced January 23, 2018;
referred to the Committee on Finance.]

1 A BILL to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating
 2 generally to employer withholding taxes; changing due date for employers to file annual
 3 reconciliation and withholding statements with Tax Commissioner to January 31; requiring
 4 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~~ §11-
 2 21-1 et seq. of this code shall ~~for each calendar quarter, on or before the last day of the month~~
 3 ~~following the close of the calendar quarter, file a withholding return as prescribed by the Tax~~
 4 ~~Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and~~
 5 ~~withheld. Where the average quarterly amount deducted and withheld by any employer is less~~
 6 ~~than \$150 and the aggregate for the calendar year can reasonably be expected to be less than~~
 7 ~~\$600, the Tax Commissioner may by rule permit an employer to file an annual return and pay~~
 8 ~~over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the~~
 9 ~~month following the close of the calendar year. The Tax Commissioner may, by nonemergency~~
 10 ~~legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change~~
 11 ~~the minimum amounts established by this subsection. The Tax Commissioner may, if he or she~~
 12 ~~determines necessary for the protection of the revenues, require any employer to make the return~~
 13 ~~and pay to him or her the tax deducted and withheld at any time or from time to time.~~
 14 ~~Notwithstanding the provisions of this subsection, after December 31, 2008, every employer~~
 15 ~~required to deduct and withhold tax under this article shall file a withholding return as prescribed~~
 16 ~~by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be~~
 17 ~~deducted and withheld, in accordance with the procedures established by the Internal Revenue~~

18 ~~Service pursuant to Section 3402 of the Internal Revenue Code.~~

19 ~~(b) Monthly returns and payments of withheld tax after December 31, 2000.--~~

20 ~~Notwithstanding the provisions of subsection (a) of this section, after December 31, 2000,~~
21 ~~every employer required to deduct and withhold tax under this article shall, for each of the first~~
22 ~~eleven months of the calendar year, by the twentieth day of the succeeding month, and for the~~
23 ~~last calendar month of the year, by the last day of the succeeding month, file a withholding return~~
24 ~~as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required~~
25 ~~to be deducted and withheld, if the withheld taxes aggregate \$ 250 or more for the month, except~~
26 ~~any employer with respect to whom the Tax Commissioner may have by rule provided otherwise~~
27 ~~in accordance with the provisions of subsection (a) of this section. Notwithstanding the provisions~~
28 ~~of this subsection, after December 31, 2008, every employer required to deduct and withhold tax~~
29 ~~under this article shall file a withholding return as prescribed by the Tax Commissioner and pay~~
30 ~~over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for~~
31 ~~returns and payments shall be established by the Tax Commissioner to match as closely as~~
32 ~~practicable the due dates in effect for federal income tax purposes, in accordance with the~~
33 ~~procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal~~
34 ~~Revenue Code except as otherwise provided in §11-21-74 of this code: *Provided*, That not later~~
35 ~~than January 31, 2019, and January 31 of each year thereafter, employers and payers shall~~
36 ~~submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld,~~
37 ~~together with state copies of all withholding tax statements reflecting West Virginia tax~~
38 ~~withholding, including, but not limited to, forms W-2, W-2G and 1099, furnished to each employee~~
39 ~~or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may~~
40 ~~have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than~~
41 ~~December 31. Notwithstanding the provisions of this section, where the average quarterly amount~~
42 ~~deducted and withheld by any employer is less than \$150 and the aggregate for the calendar year~~
43 ~~can reasonably be expected to be less than \$600, the Tax Commissioner may by rule permit an~~

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

46 ~~(e)~~ (b) *Annual returns and payments of withheld tax of certain domestic and household*
47 *employees.* -- Employers of domestic and household employees whose withholdings of federal
48 income tax are annually paid and reported by the employer pursuant to the filing of Schedule H
49 of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 ~~may shall~~, on or before
50 January 31 next succeeding the end of the calendar year for which withholdings are deducted
51 and withheld, file an annual withholding return with the Tax Commissioner and annually remit to
52 the Tax Commissioner West Virginia personal income taxes deducted and withheld for the
53 employees together with state copies of all withholding tax statements reflecting West Virginia tax
54 withholding, including, but not limited to, forms W-2, W-2G and 1099, furnished to each employee
55 or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may
56 have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than
57 December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-
58 3-1 *et seq.* this code for implementation of this subsection. ~~Notwithstanding the provisions of this~~
59 ~~subsection, after December 31, 2008, every employer required to deduct and withhold tax under~~
60 ~~this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to~~
61 ~~the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns~~
62 ~~and payments shall be established by the Tax Commissioner to match as closely as practicable~~
63 ~~the due dates in effect for federal income tax purposes, in accordance with the procedures~~
64 ~~established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue~~
65 ~~Code~~

66 ~~(d)~~ (c) *Deposit in trust for Tax Commissioner.* -- Whenever any employer fails to collect,
67 truthfully account for or pay over the tax, or to make returns of the tax as required in this section
68 the Tax Commissioner may serve a notice requiring the employer to collect the taxes which
69 become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax

70 Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to
71 keep the amount of the tax in the separate account until payment over to the Tax Commissioner.
72 The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

73 ~~(e)~~ (d) *Accelerated payment.* --

74 (1) ~~Notwithstanding the provisions of subsections (a) and (b) of this section, after June 30,~~
75 ~~2014, every~~ Every employer required to deduct and withhold tax whose average payment per
76 calendar month for the preceding calendar year under subsection ~~(b)~~ (a) of this section exceeded
77 \$100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

78 (2) For purposes of complying with subdivision (1) of this subsection, the employer shall
79 remit an amount equal to the withholding tax due under this article on employee compensation
80 subject to withholding tax payable or paid to employees for the first ~~fifteen~~ 15 days of June or, at
81 the employer's election, the employer may remit an amount equal to ~~fifty~~ 50 percent of the
82 employer's liability for withholding tax under ~~this article~~ §11-21-1 et seq. of this code on
83 compensation payable or paid to employees for the preceding month of May.

84 (3) For an employer which has not been in business for a full calendar year, the total
85 amount the employer was required to deduct and withhold under ~~subsection (b) of this section~~
86 §11-21-74(a) for the prior calendar year shall be divided by the number of months, including
87 fractions of a month, that it was in business during the prior calendar year and if that amount
88 exceeds \$100,000, the employer shall remit the tax attributable to the first ~~fifteen~~ 15 days of June
89 each year by June 23, as provided in subdivision (2) of this subsection.

90 (4) When an employer required to make an advanced payment of withholding tax under
91 subdivision (1) of this subsection makes out its return for the month of June, which is due by July
92 20, that employer may claim as a credit against its liability under this article for tax on employee
93 compensation paid or payable for employee services rendered during the month of June the
94 amount of the advanced payment of tax made under subdivision (1) of this subsection.

95 ~~(f) The amendments to this section enacted in the year 2006 are effective for tax years~~

96 ~~beginning after December 31, 2005~~

97 ~~(g)~~ (e) An annual reconciliation of West Virginia personal income tax withheld shall be
98 submitted by the employer by ~~February 28~~ January 31, following the close of the calendar year,
99 together with Tax Division copies of all withholding tax statements for that preceding calendar
100 year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each
101 employee in such form as the Tax Commissioner prescribes and shall be filed separately from
102 the employer's monthly or quarterly return.

103 ~~(h)~~ (f) Any employer required to file a withholding return for ~~two hundred fifty or more~~
104 ~~employees shall file its return using electronic filing as defined in section fifty-four of this article:~~
105 ~~Provided, That for any tax period beginning after December 31, 2010, any employer with 50 or~~
106 ~~more employees shall file its return using electronic filing as defined in section fifty-four~~ §11-21-
107 54 of this article code: Provided, That for any tax period beginning after December 31, 2017, any
108 employer that uses a payroll service or is required to file a withholding return for 25 or more
109 employees shall file its return using electronic filing as defined in §11-21-54 of this code. An
110 employer that is required to file electronically but does not do so is subject to a penalty in the
111 amount of \$25 per employee for whom the return was not filed electronically, unless the employer
112 shows that the failure is due to a technical inability to comply.

NOTE: The purpose of this bill is to change the due date for employers to file their annual reconciliation and withholding statements with the Tax Commissioner to January 31, which date is consistent with the date by which employers must file their annual employer withholding reconciliation statements with the Internal Revenue Service; and to require more employers to file withholding return information electronically with the Tax Commissioner. Additionally, obsolete language would be deleted from the current law.

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