WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2579

BY DELEGATES NELSON AND CRISS

[Passed March 7, 2019; in effect ninety days from passage.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18a of said code, all relating to the collection of tax and the priority of distribution of an estate or property in receivership and the liability of the fiduciary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11. Collection of tax.

(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 §11-10-12 of this code, or by levy and distraint under §11-10-13 of this code.

(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 §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code, 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 Tax Commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(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 of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code against 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 30 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 30-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.* — 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, or entity, subject to §38-10C-1 *et seq*. of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any person responsible for the administration of an estate of a decedent, 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 60 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 paragraph (1) of this subsection is greater than 10 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, subparagraph (A) of this subdivision is applied by substituting "25 percent" for "10 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 §11-21-1 *et seq.* of this code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18a. Receivership; bankruptcy; priority of tax.

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, or entity, subject to §38-10C-1 *et seq.* of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any person responsible for the administration of an estate of a decedent, 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.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within .... this the..

day of ...., 2019.

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Governor