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WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 485

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect ninety days from Passage

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Senate Bill No. 485

(BY SENATORS MINARD, JENKINS, MINEAR, SHARPE AND ROSS)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend article forty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the granting of authority to the insurance commissioner to enter into agreements and compromises relating to taxes, interest, penalties and other charges; and imposing conditions upon such authority.

Be it enacted by the Legislature of West Virginia:

That article forty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-4a. Agreements and compromises.

- 1 (a) Prior to commencing any civil action, the commis-
- 2 sioner may compromise any claim relating to the liability

3 of a person with respect to any tax, including any sur-
4 charge, interest, additional tax, fee, fine or penalty,
5 administered by the commissioner under this chapter for
6 any taxable period. The following conditions apply to any
7 agreement entered into under this subsection:

8 (1) The agreement must be in writing;

9 (2) In the absence of a showing of fraud, malfeasance or
10 misrepresentation of a material fact, then:

11 (A) The agreement shall be final and conclusive;

12 (B) The agreement and the matters so agreed upon shall
13 not be reopened or the agreement modified by any officer,
14 employee or agent of this state; and

15 (C) In any civil action or administrative proceeding, the
16 compromise agreement or any determination, assessment,
17 collection, payment, abatement, refund or credit made in
18 accordance therewith may not be annulled, modified, set
19 aside or disregarded.

20 (b) The commissioner may compromise all or part of any
21 civil case arising under the provisions of this article. The
22 following conditions apply to any agreement entered into
23 under this subsection:

24 (1) Any liability for tax, including any surcharge,
25 interest, additional tax, fee, fine or penalty, may be
26 compromised upon consideration of the terms and condi-
27 tions of the compromise agreement in light of any or all of
28 the following:

29 (A) Doubt as to liability;

30 (B) Doubt as to the ability to collect;

31 (C) Strength of the taxpayer's defenses to the assessment
32 of the tax, surcharge, interest, additional tax, fee, fine or
33 penalty;

34 (D) Age of the dispute;

35 (E) The anticipated time and resources which will be
36 required to develop the civil action for adjudication; and

37 (F) Any other factors relevant to the determination of
38 whether citizens of the state of West Virginia are best
39 served by entering into a compromise agreement.

40 (2) In all matters involving issues in respect of a tax
41 liability in controversy of fifteen thousand dollars or more
42 for one or all of the years involved in claim or case, the
43 commissioner shall seek the written recommendation of
44 the attorney general before entering into the compromise
45 agreement. The written recommendation of the attorney
46 general shall be placed in the commissioner's file.

47 (c) Whenever a compromise agreement is made by the
48 commissioner under subsections (a) or (b) of this section,
49 there shall be placed on file in the commissioner's office an
50 opinion from the commissioner's legal counsel. The
51 opinion must include the following:

52 (1) The amount of tax, surcharge, additional tax, fee and
53 interest assessed;

54 (2) The anticipated fine or penalty imposed by law on the
55 person against whom the tax, surcharge, additional tax,
56 fee and interest was assessed; and

57 (3) The amount actually paid in accordance with the
58 terms of the compromise agreement;

59 (4) The reasons underlying the decision to enter into a
60 compromise agreement: *Provided*, That the requirements
61 of this subsection do not apply with respect to any agree-
62 ment in which the amount of the tax assessed, including
63 any surcharge, interest, additional tax, fee, fine or penalty,
64 is less than one thousand dollars.

65 (d) *Report to Legislature.* – The commissioner shall
66 submit to the speaker of the House of Delegates, the
67 president of the Senate and the legislative auditor a
68 quarterly report summarizing the issues and amounts of

69 liabilities contained in the agreements and compromises
70 into which he or she has entered pursuant to this section.
71 The report shall be in a form which preserves the confiden-
72 tiality of the identity of the taxpayers involved in the
73 agreements and compromises. Notwithstanding any other
74 provision of law to the contrary, the agreements and
75 compromises entered into pursuant to this section shall be
76 subject to audit, in their entirety, by the legislative audi-
77 tor.

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

Calley M. ...
.....
Chairman Senate Committee

Shon ...
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll ...
.....
Clerk of the Senate

Bayou ...
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Arthur ...
.....
Speaker House of Delegates

The within *is approved* this the *1st*
Day of *April*, 2003.
Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am