

SB 148 5

FILED

2004 APR -1 P 4:42

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 148

(By Senators Tomblin, Mr. President, and Sprouse, &
By Request of the Executive)

PASSED March 13, 2004

In Effect 90 days from Passage

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Senate Bill No. 148

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-10D-1, §11-10D-2, §11-10D-3, §11-10D-4, §11-10D-5, §11-10D-6, §11-10D-7, §11-10D-8, §11-10D-9, §11-10D-10, §11-10D-11, §11-10D-12 and §11-10D-13; to amend and reenact §11-12-5 of said code; to amend and reenact §11A-1-7 of said code; and to amend and reenact §11A-2-11 of said code, all relating generally to the collection of delinquent taxes; granting persons who owe but have not paid one or more taxes administered under West Virginia tax procedure and administration act an amnesty period during which past-due taxes may be paid or payment agreements acceptable to tax commissioner executed; providing for waiver of additions to tax, money penalties and fifty percent of accrued interest on past-due taxes; prohibiting criminal prosecution for default for which tax amnesty is granted; providing a penalty of ten percent for failure to take advantage of this amnesty program; setting forth legislative findings and declarations;

establishing requirements of and exceptions and limitations to tax amnesty program; defining certain terms; authorizing tax commissioner to do all things necessary to implement two-month tax amnesty program during current calendar year; requiring tax commissioner to report certain information to Legislature and governor after conclusion of tax amnesty program; authorizing tax commissioner to suspend a business registration certificate for failure to pay delinquent personal property taxes; requiring the tax commissioner to refuse to issue or renew a business registration certificate upon certain notice from the sheriff that the registrant has not paid delinquent personal property taxes; requiring tax commissioner to propose legislative rules establishing ancillary procedures for the tax commissioner's suspension of business registration certificates; requiring sheriff to decline to receive current taxes due on any personal property where a prior year's taxes are unpaid; and providing language for inclusion in publication giving notice of that license to do business in state will be suspended for failure to pay delinquent personal property taxes.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-10D-1, §11-10D-2, §11-10D-3, §11-10D-4, §11-10D-5, §11-10D-6, §11-10D-7, §11-10D-8, §11-10D-9, §11-10D-10, §11-10D-11, §11-10D-12 and §11-10D-13; to amend and reenact §11-12-5 of said code; to amend and reenact §11A-1-7 of said code; and to amend and reenact §11A-2-11 of said code, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10D. TAX AMNESTY PROGRAM.

§11-10D-1. Short title.

1 This article may be cited as the "West Virginia Tax
2 Amnesty Program of 2004".

§11-10D-2. Legislative intent and findings.

1 (a) *Intent.* — It is the intent of the Legislature in enact-
2 ing the tax amnesty program provided by this article to
3 improve compliance with this state’s tax laws and to
4 accelerate and increase collections of certain taxes cur-
5 rently owed to this state.

6 (b) *Findings.* — The Legislature finds and declares that
7 a public purpose is served by the waiver of tax penalties,
8 additions to tax, a portion of accrued interest, and crimi-
9 nal prosecution in return for the immediate reporting and
10 payment of previously underreported, unreported, unpaid
11 or underpaid tax liabilities that are due and owing and are
12 delinquent as of the first day of January, two thousand
13 four. Benefits gained by this program include, among
14 other things, accelerated receipt of certain currently owed
15 taxes, permanently bringing into the tax system taxpayers
16 who have been evading tax and providing an opportunity
17 for taxpayers to clear their records and satisfy tax obliga-
18 tions. It is further the intent of the Legislature in enacting
19 this article that the tax amnesty program be a one-time
20 occurrence which shall not be repeated in the future, since
21 taxpayers’ expectations of future amnesty programs could
22 have a counterproductive effect on compliance today.

§11-10D-3. Definitions.

1 (a) *General rule.* — Terms used in this article shall have
2 the meaning ascribed to them in section four, article ten of
3 this chapter, unless the context in which the term is used
4 in this article clearly requires a different meaning, or the
5 term is defined in subsection (b) of this section.

6 (b) *Terms defined.* — For purposes of this article, the
7 term:

8 (1) “Additions to tax” means that amount imposed by
9 section eighteen or eighteen-a, article ten of this chapter,
10 for failure to file a return or pay tax due, or for negligence
11 or intentional disregard of rules and regulations of the tax
12 commissioner, for filing a false or fraudulent return, or for

13 failure to pay estimated tax, and includes “additions to
14 tax” imposed by any other article of chapter eleven of the
15 code administered under article ten of this chapter;

16 (2) “Applicant” means any person who timely files an
17 application for amnesty under this article;

18 (3) “Interest” means interest imposed pursuant to
19 sections seventeen and seventeen-a, article ten of this
20 chapter;

21 (4) “Penalty” means civil money penalties imposed by
22 section nineteen, article ten of this chapter and any other
23 civil money penalty imposed by any article of this chapter
24 administered under article ten;

25 (5) “Specified tax” shall mean the tax or taxes and the
26 periods thereof for which the taxpayer applies for amnesty
27 under this article.

**§11-10D-4. Development and administration of tax amnesty
program, implementation of article.**

1 (a) *General.* — The tax commissioner shall develop and
2 administer the tax amnesty program provided in this
3 article, notwithstanding any provision of this article to the
4 contrary. The tax commissioner shall develop and issue
5 the forms, instructions and guidelines as the commissioner
6 believes to be necessary, and take any other action needed
7 to implement this article.

8 (b) *Rules.* — The tax commissioner may promulgate rules,
9 including emergency rules, that implement, clarify or
10 explain the tax amnesty program, in the manner provided
11 in article three, chapter twenty-nine-a of this code.

§11-10D-5. Duration and application of program.

1 The tax commissioner shall establish a two-month tax
2 amnesty program to be conducted during the calendar
3 year, two thousand four. The program shall apply to
4 payments and returns required

5 pursuant to any tax administered under article ten of this
6 chapter, but only if the obligation for payment or filing of
7 a return, or both, arose after the first day of January, one
8 thousand nine hundred eighty-six, and prior to the first
9 day of January, two thousand four, provided: (1) The tax
10 return was due before the first day of January, two
11 thousand four; (2) the amount of tax shown to be due on
12 the tax return was due and payable to the tax commis-
13 sioner before the first day of January, two thousand four;
14 or (3) if no tax return was required by law to be filed, the
15 tax was due and payable to the tax commissioner before
16 the first day of January, two thousand four.

**§11-10D-6. Waiver of penalties; criminal immunity; exceptions
and limitations.**

1 (a) *Waiver of penalty, addition to tax and interest.* — For
2 any taxpayer who meets the requirements of section seven
3 of this article and except as otherwise specifically pro-
4 vided in this article:

5 (1) *Waiver.* — The tax commissioner shall waive all
6 penalties and additions to tax and fifty percent of the
7 interest imposed on the late filing of a return or the late
8 payment of any tax for which tax amnesty is granted,
9 which is owed as a result of nonpayment, underpayment,
10 nonreporting or underreporting of tax liabilities; and

11 (2) *Criminal penalties.* — No criminal action may be
12 brought against the taxpayer for the default for which tax
13 amnesty is granted under this article.

14 (b) *Exceptions.* — This section does not apply to non-
15 payment or underpayment of tax liabilities, or to
16 nonreported, misreported or underreported tax liabilities
17 for which amnesty is sought if, as of the date the tax-
18 payer's application for amnesty is filed:

19 (1) The taxpayer is the subject of a criminal investigation
20 by any agency of this state; or

21 (2) An administrative proceeding or a civil or criminal
22 court proceeding has been initiated or is pending in any
23 administrative agency or court of this state or of the
24 United States for nonpayment, delinquency, fraud or other
25 event of noncompliance in relation to any of the taxes
26 administered under article ten of this chapter. An admin-
27 istrative or civil proceeding shall not be deemed to be
28 pending if the taxpayer withdraws with prejudice from the
29 proceeding prior to the granting of amnesty, pays in full
30 the outstanding tax liability plus fifty percent of the
31 accrued interest thereon and otherwise cures any default
32 which is the subject of the proceeding.

33 (c) *No refund or credit.* — No refund or credit may be
34 granted for any penalty, addition to tax or interest paid
35 prior to the date the taxpayer files his or her application
36 for tax amnesty pursuant to section seven of this article.
37 Additionally, no refund or credit shall be granted for any
38 tax or interest paid under this program unless the tax
39 commissioner, on his or her own motion, redetermines the
40 amount of tax or accrued interest thereon.

41 (d) *Bar to amnesty.* — A taxpayer shall not be eligible
42 for amnesty for any tax liability if the taxpayer has other
43 liabilities outstanding for any tax administered under
44 article ten of this chapter, for which the taxpayer has not
45 applied for amnesty. This includes tax deficiencies
46 pending before the office of tax appeals or a court in this
47 state.

**§11-10D-7. Application for amnesty; requirements; deficiency
assessment.**

1 (a) *Timely application required.* — The provisions of this
2 article apply to any taxpayer who, on or after the date of
3 commencement of the tax amnesty program and on or
4 before the termination date of the program designated by
5 the tax commissioner, files an application for tax amnesty
6 on or before the last day of the second calendar month of
7 the amnesty program and does the following:

8 (1) Voluntarily completes, signs and files amended tax
9 returns to report transactions and other material matters
10 not included on original returns and pays in full all
11 additional taxes shown to be due on the amended return or
12 returns and fifty percent of the interest imposed on the
13 additional taxes by article ten of this chapter;

14 (2) Voluntarily completes, signs and files all delinquent
15 tax returns and pays in full all taxes shown to be due on
16 the return or returns and fifty percent of the interest
17 imposed on the taxes by article ten of this chapter;

18 (3) Voluntarily completes, signs and files amended tax
19 returns to correct all incorrect, deficient or incomplete
20 original returns and pays in full all taxes shown to be due
21 on the amended return or returns and fifty percent of the
22 interest imposed on the tax or taxes by article ten of this
23 chapter; and

24 (4) Voluntarily pays in full all previously assessed tax
25 liabilities and other taxes legally collectible under section
26 eleven, article ten of this chapter and fifty percent of the
27 interest due thereon imposed by article ten of this chapter.

28 (b) *Due date of tax for which amnesty granted.* —
29 Except as provided in subsection (d) of this section, all
30 taxes for which tax amnesty is sought plus fifty percent of
31 interest accrued to the date of payment shall be paid not
32 later than the last day of the month next succeeding the
33 termination of the amnesty program. Interest on the
34 amount of tax due shall be calculated as prescribed in
35 article ten of this chapter and shall continue to accrue
36 until the tax liability is paid.

37 (c) *Payments.* — Payments made by the taxpayer under
38 this tax amnesty program shall be in United States
39 currency or by certified check, cashier's check or post
40 office money order, payable to the tax commissioner of
41 this state.

42 (d) *Installment payment agreements.* — The tax com-
43 missioner may, at his or her discretion and upon such
44 terms and conditions as the commissioner may prescribe,
45 enter into an installment payment agreement with the
46 taxpayer, which installment payment agreement shall be
47 in lieu of the full immediate payment required by subsec-
48 tion (b) of this section: *Provided,* That the length of the
49 installment payment may not exceed twelve months.

50 (1) Each installment payment agreement shall provide
51 for payment of the tax due and fifty percent of the statu-
52 tory interest on the outstanding amount of tax due,
53 computed to the date the installment payment agreement
54 is executed by the taxpayer. The amount of tax and
55 interest due from the taxpayer shall be stated in the
56 installment payment agreement and constitute the install-
57 ment payment agreement amount.

58 (2) *Down payment.* — The installment payment agree-
59 ment shall require payment of twenty-five percent of the
60 installment payment agreement amount or one thousand
61 dollars, whichever amount is the greater, at the time the
62 installment payment agreement is submitted to the tax
63 commissioner for acceptance and signature.

64 (3) *Interest.* — Interest on the installment payment
65 agreement amount shall be calculated at the rates deter-
66 mined under sections seventeen and seventeen-a, article
67 ten of this chapter, as applicable to the installment
68 payment period, and shall accrue on the declining balance
69 of the installment payment agreement amount from the
70 date the installment payment agreement is signed by the
71 taxpayer to the date the last installment payment is made
72 by the taxpayer.

73 (4) *Lien securing payment.* — When payments are made
74 under an installment payment agreement, the amount due
75 shall be secured by recordation of a tax lien against the
76 property of the taxpayer and recordation of a tax lien
77 against the property of any person guaranteeing payment

78 of the installment payment agreement amount, should
79 there be a guarantor, unless the tax commissioner deter-
80 mines that existing recorded tax liens are adequate to
81 secure the payment. Liens required by this subdivision
82 shall be recorded in each county of this state in which the
83 taxpayer and the guarantor, if any, owns an interest in
84 property and shall be released by the tax commissioner
85 upon full payment of the amount stated in the installment
86 payment agreement plus applicable interest.

87 (5) *Failure to comply with installment payment agree-*
88 *ment.* — Failure of the taxpayer to fully comply with the
89 terms of the installment payment agreement shall render
90 the waiver of penalties, additions to tax and interest under
91 this amnesty program null and void, unless the tax com-
92 missioner determines that the failure was due to reason-
93 able cause. In the event of an unexcused noncompliance
94 with the terms of the installment payment agreement, the
95 taxpayer shall immediately pay the unpaid balance of the
96 installment payment agreement amount plus the interest
97 and all additions to tax and penalties waived under section
98 six of this article.

99 (6) *Late payment of installment payment.* — Notwith-
100 standing the provisions of subdivision (5) of this subsec-
101 tion, payment of an installment payment after the date the
102 installment payment is due under the installment payment
103 agreement shall not void the agreement provided the
104 amount of the installment payment, plus a late payment
105 fee of ten dollars or one half of one percent of the amount
106 of the late installment payment, whichever is the greater
107 amount, is paid within twenty days after the installment
108 payment was due under the installment payment agree-
109 ment.

110 (7) *Failure to timely pay current taxes.* — If a taxpayer
111 with an installment payment agreement fails to timely file
112 returns and remit current tax liabilities by their statutory
113 due date or dates, the installment payment agreement shall
114 be rendered null and void, unless the tax commissioner

115 determines that the failure was due to reasonable cause.
116 In the event an installment payment agreement becomes
117 null and void, taxpayer shall immediately pay the unpaid
118 balance of the installment payment agreement plus
119 interest and all additions to tax and penalties waived
120 when the tax commissioner accepted the installment
121 payment agreement.

122 (e) *Understatement of tax due.* — If, subsequent to
123 termination of this tax amnesty program, the tax commis-
124 sioner determines there was a defect in the amnesty
125 application or in the materials submitted in support of the
126 amnesty application and subsequently issues a deficiency
127 assessment upon the application or a return or amended
128 return filed pursuant to this article, the tax commissioner
129 has the authority to collect the additional tax due, impose
130 applicable penalties, additions to tax and interest and to
131 pursue any criminal prosecution as may ordinarily be
132 brought with respect to the defect as if no amnesty had
133 been granted the taxpayer.

134 (f) *Mistake or misrepresentation of material fact.* — The
135 tax commissioner may review all cases in which amnesty
136 has been granted and may on the basis of a mistake or
137 misrepresentation of a material fact, rescind the grant of
138 amnesty, or in lieu thereof, appropriate review of the grant
139 of amnesty may be obtained by proceeding under article
140 nine or ten, or both, of this chapter. The taxpayer may
141 appeal the tax commissioner's order rescinding the grant
142 of amnesty by filing a petition for appeal with the office of
143 tax appeals, established in article ten-a of this chapter,
144 within thirty days after receipt of the tax commissioner's
145 order, which shall be served by personal service or by
146 certified mail.

147 (g) *False or fraudulent amnesty return.* — Any taxpayer
148 who files an amnesty tax return or amended return that is
149 false or fraudulent shall be subject to applicable civil
150 penalties and be referred for criminal prosecution.

151 (h) *Attempt to evade or defeat tax.* — Any taxpayer who
152 files a false amnesty application or attempts in any
153 manner to defeat or evade payment of tax or interest under
154 this amnesty program, shall be subject to applicable civil
155 penalties and be referred for criminal prosecution.

§11-10D-8. Publicity efforts.

1 The tax commissioner shall cause the tax amnesty
2 program to be adequately publicized so as to maximize
3 public awareness of and participation in the program.

§11-10D-9. Examination of amnesty returns and taxpayer books and records.

1 Nothing in this article shall prevent the tax commis-
2 sioner or any authorized employee or agent of the commis-
3 sioner from examining the books, paper, records and
4 equipment of any taxpayer or other person in order to
5 verify the accuracy and completeness of the application
6 for amnesty or of any tax return filed or payment made
7 under this article, as provided in article ten of this chapter,
8 and to ascertain and assess any tax or other liability owed
9 to the state for any tax administered under article ten of
10 this chapter.

§11-10D-10. Disposition of revenue collected.

1 There is hereby created in the state treasury a special
2 fund to be known as the “tax amnesty fund” into which
3 shall be deposited all payments received under the tax
4 amnesty program. On a monthly basis, the tax amnesty
5 fund shall be distributed as follows:

6 (1) *Dedicated taxes.* — A dedicated tax and applicable
7 interest collected under the tax amnesty program shall be
8 deposited in the fund or account in which the tax would
9 have been deposited had the tax been timely paid; and

10 (2) *Other taxes.* — After complying with subdivision (1)
11 of this section, all other funds collected under the tax

12 amnesty program shall be deposited into the general
13 revenue fund.

**§11-10D-11. Penalty on liabilities eligible for amnesty for
which taxpayer did not apply for amnesty.**

1 (a) If a taxpayer has a liability that would be eligible for
2 amnesty under this article but the taxpayer fails to apply
3 for amnesty within the designated amnesty period as
4 determined in this article, or, after applying for amnesty,
5 fails to satisfy all of the requirements for amnesty, then a
6 penalty in the amount of ten percent of the unpaid liability
7 shall be added to the amount of any unpaid taxes eligible
8 for amnesty.

9 (b) The tax commissioner shall assess the penalty
10 provided in subsection (a) of this section unless:

11 (1) Taxpayer provides evidence satisfactory to the
12 commissioner which demonstrates that taxpayer's failure
13 to apply for amnesty or his or her failure to satisfy all of
14 the requirements for amnesty was not an intentional
15 attempt to avoid the payment of taxes and was based on
16 the taxpayer's mistaken belief that he or she did not have
17 any liability eligible for amnesty; or

18 (2) Taxpayer's failure to apply for amnesty, in the case of
19 an assessment issued before the start of or during the
20 amnesty period, is due to taxpayer contesting in an
21 administrative or judicial forum the disputed liability.

§11-10D-12. Report to Legislature and governor.

1 On or before the first day of July, two thousand five, the
2 tax commissioner shall issue a report to the Legislature
3 and the governor detailing the implementation and results
4 of the tax amnesty program provided in this article. This
5 report shall include, but not be limited to, the following
6 information:

7 (1) A detailed breakdown of the tax commissioner's
8 administrative costs in implementing the program;

9 (2) The total number of tax amnesty returns filed, by tax
10 and by whether the returns are new returns or amended
11 returns;

12 (3) The gross tax amnesty revenues collected by tax,
13 which shall also be broken down into the following
14 categories:

15 (A) Amounts represented by assessments made, but not
16 finalized, and by liens filed by the tax commissioner before
17 the first day of the amnesty period; and

18 (B) All other amounts;

19 (4) The total dollar amount of revenue collected by the
20 program to a date no earlier than thirty days before the
21 date of the report required by this section, which shall be
22 further allocated by type of tax, interest on the tax to
23 which the payment relates;

24 (5) The total amount of interest forgiven under the
25 program;

26 (6) The total amount of additions to tax forgiven under
27 the program;

28 (7) The total amount of penalties (not including addi-
29 tions to tax or interest) collected under the program; and

30 (8) Any other statistical information that the tax com-
31 missioner determines to be necessary to measure the net
32 impact of this tax amnesty program.

§11-10D-13. Suspension of inconsistent code provisions.

1 All provisions of article ten, chapter eleven of this code
2 and all provisions of tax statutes administered under
3 article ten of this chapter that are inconsistent with the
4 provisions of this article are suspended to the extent
5 necessary to carry out the provisions of this article.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

1 (a) *Registration period.* – All business registration
2 certificates issued under the provisions of section four of
3 this article are for the period of one year beginning the
4 first day of July and ending the thirtieth day of the
5 following June: *Provided*, That beginning on or after the
6 first day of July, one thousand nine hundred ninety-nine,
7 all business registration certificates issued under the
8 provisions of section four of this article shall be issued for
9 two fiscal years of this state, subject to the following
10 transition rule. If the first year for which a business was
11 issued a business registration certificate under this article
12 began on the first day of July of an even-numbered
13 calendar year, then the tax commissioner may issue a
14 renewal certificate to that business for the period begin-
15 ning the first day of July, one thousand nine hundred
16 ninety-nine, and ending the thirtieth day of June, two
17 thousand, upon receipt of fifteen dollars for each such one-
18 year certificate. Thereafter, only certificates covering two
19 fiscal years of this state shall be issued.

20 (b) *Revocation or suspension of certificate.* –

21 (1) The tax commissioner may cancel or suspend a
22 business registration certificate at any time during a
23 registration period if:

24 (A) The registrant filed an application for a business
25 registration certificate, or an application for renewal
26 thereof, for the registration period that was false or
27 fraudulent.

28 (B) The registrant willfully refused or neglected to file a
29 tax return or to report information required by the tax
30 commissioner for any tax imposed by or pursuant to this
31 chapter.

32 (C) The registrant willfully refused or neglected to pay
33 any tax, additions to tax, penalties or interest, or any part
34 thereof, when they became due and payable under this
35 chapter, determined with regard to any authorized exten-
36 sion of time for payment.

37 (D) The registrant neglected to pay over to the tax
38 commissioner on or before its due date, determined with
39 regard to any authorized extension of time for payment,
40 any tax imposed by this chapter which the registrant
41 collects from any person and holds in trust for this state.

42 (E) The registrant abused the privilege afforded to it by
43 article fifteen or fifteen-a of this chapter to be exempt
44 from payment of the taxes imposed by such articles on
45 some or all of the registrant's purchases for use in business
46 upon issuing to the vendor a properly executed exemption
47 certificate, by failing to timely pay use tax on taxable
48 purchase for use in business, or by failing to either pay the
49 tax or give a properly executed exemption certificate to
50 the vendor.

51 (F) The registrant has failed to pay in full delinquent
52 personal property taxes owing for the calendar year
53 immediately preceding the calendar year in which the
54 application is made.

55 (2) Before canceling or suspending any business registra-
56 tion certificate, the tax commissioner shall give written
57 notice of his or her intent to suspend or cancel the business
58 registration certificate of the taxpayer, the reason for the
59 suspension or cancellation, the effective date of the
60 cancellation or suspension and the date, time and place
61 where the taxpayer may appear and show cause why such
62 business registration certificate should not be canceled or
63 suspended. This written notice shall be served on the
64 taxpayer in the same manner as a notice of assessment is
65 served under article ten of this chapter, not less than
66 twenty days prior to the date of the show cause informal
67 hearing. The taxpayer may appeal cancellation or suspen-

68 sion of its business registration certificate in the same
69 manner as a notice of assessment is appealed under article
70 ten-a of this chapter: *Provided*, That the filing of a petition
71 for appeal does not stay the effective date of the suspen-
72 sion or cancellation. A stay may be granted only after a
73 hearing is held on a motion to stay filed by the registrant,
74 upon finding that state revenues will not be jeopardized by
75 the granting of the stay. The tax commissioner may, in his
76 or her discretion and upon such terms as he or she may
77 specify, agree to stay the effective date of the cancellation
78 or suspension until another date certain.

79 (3) On or before the first day of July, two thousand five,
80 the tax commissioner shall propose for promulgation
81 legislative rules establishing ancillary procedures for the
82 tax commissioner's suspension of business registration
83 certificates for failure to pay delinquent personal property
84 taxes pursuant to paragraph (F), subdivision (1) of this
85 section. The rules shall at a minimum establish any
86 additional requirements for the provision of notice deemed
87 necessary by the tax commissioner to meet requirements
88 of law; establish protocols for the communication and
89 verification of information exchanged between the tax
90 commissioner, sheriffs and others; and establish fees to be
91 assessed against delinquent taxpayers that shall be
92 deposited into a special fund which is hereby created and
93 expended for general tax administration by the tax
94 division of the department of tax and revenue and for
95 operation of the tax division. Upon authorization of the
96 Legislature, the rules shall have the same force and effect
97 as if set forth herein. No provision of this subdivision may
98 be construed to restrict in any manner the authority of the
99 tax commissioner to suspend such certificates for failure
100 to pay delinquent personal property taxes under para-
101 graph (C) or (F), subdivision (1) of this section or under
102 any other provision of this code prior to the authorization
103 of the rules.

104 (c) *Refusal to renew.* – The tax commissioner may refuse
105 to issue or renew a business registration certificate if the
106 registrant is delinquent in the payment of any tax admin-
107 istered by the tax commissioner under article ten of this
108 chapter or the corporate license tax imposed by article
109 twelve-c of this chapter, until the registrant pays in full all
110 the delinquent taxes including interest and applicable
111 additions to tax and penalties. In his or her discretion and
112 upon such terms as he or she may specify, the tax commis-
113 sioner may enter into an installment payment agreement
114 with the taxpayer in lieu of the complete payment. Failure
115 of the taxpayer to fully comply with the terms of the
116 installment payment agreement shall render the amount
117 remaining due thereunder immediately due and payable
118 and the tax commissioner may suspend or cancel the
119 business registration certificate in the manner provided in
120 this section.

121 (d) *Refusal to renew due to delinquent personal property*
122 *tax.* – The tax commissioner shall refuse to issue or
123 renew a business registration certificate when informed in
124 writing, signed by the county sheriff, that personal prop-
125 erty owned by the applicant and used in conjunction with
126 the business activity of the applicant is subject to delin-
127 quent property taxes. The tax commissioner shall forth-
128 with notify the applicant that the commissioner will not
129 act upon the application until information is provided
130 evidencing that the taxes due are either exonerated or
131 paid.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-7. No collection of current taxes until delinquent taxes are paid.

1 The sheriff, in preparing his or her tax receipts for any
2 current year shall examine and compare them with the
3 delinquent list for the preceding year in his or her hands,

4 and if any tract or personal property is found to be delin-
5 quent for the preceding year, he or she shall note the fact
6 on his or her current receipts and shall decline to receive
7 current taxes on any land or personal property where it
8 appears to his or her office that a prior year's taxes are
9 unpaid. Acceptance of current taxes through oversight
10 shall not relieve the owner of any land or personal prop-
11 erty, of the liability to pay prior taxes and penalties
12 imposed for nonpayment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-11. Delinquent lists; oath.

1 The sheriff, after ascertaining which of the taxes as-
2 sessed in his or her county are delinquent, shall, on or
3 before the first day of May next succeeding the year for
4 which the taxes were assessed, prepare the following
5 delinquent lists, arranged by districts and alphabetically
6 by name of the person charged, and showing in respect to
7 each the amount of taxes remaining delinquent on April
8 thirtieth: (1) A list of property in the landbook improperly
9 entered or not ascertainable; (2) a list of other delinquent
10 real estate; and (3) a list of all other delinquent taxes:
11 *Provided*, That the list shall conclude with a notice,
12 substantially as follows: "Any person holding a West
13 Virginia business registration certificate under the author-
14 ity of article twelve, chapter eleven of this code who does
15 not pay all delinquent personal property taxes shall have
16 his or her license to do business in this state suspended
17 until the delinquency is cured."

18 The sheriff on returning each list shall, at the foot
19 thereof, subscribe an oath, which shall be subscribed
20 before and certified by some person duly authorized to
21 administer oaths, in form or effect as follows:

22 I,, sheriff (or deputy sheriff or collector) of the
23 County of, do swear that the foregoing list is, to the
24 best of my knowledge and belief, complete and accurate,
25 and that I have received none of the taxes listed therein.

26 Except for the oath, the auditor shall prescribe the form
27 of the delinquent lists.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within is approved this the 1st
Day of April, 2004.
[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/25/04

TIME 10:10am