

HB 4630 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4630

(By Delegate Michael)



Passed March 9, 2006

In Effect Ninety Days from Passage

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FOR

H. B. 4630

(BY DELEGATE MICHAEL)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all relating to creating a voluntary disclosure program; requiring disclosure of certain tax shelters used to avoid paying state income taxes; extending the statute of limitations for issuing assessments related to failures to disclose a listed transaction; and imposing penalties for promoting abusive tax shelters relative to failing to report listed transactions, reportable transaction understatements, failing to participate in the voluntary disclosure program, and for failing to register a tax shelter or maintain required list.

Be it enacted by the Legislature of West Virginia:

That §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-15. Limitations on assessment.

1 (a) *General rule.* — The amount of any tax, additions to
2 tax, penalties and interest imposed by this article or any of the
3 other articles of this chapter to which this article is applicable
4 shall be assessed within three years after the date the return was
5 filed (whether or not such return was filed on or after the date
6 prescribed for filing): *Provided*, That in the case of a false or
7 fraudulent return filed with the intent to evade tax, or in case no
8 return was filed, the assessment may be made at any time:
9 *Provided, however*, That if a taxpayer fails to disclose a listed
10 transaction, as defined in Section 6707A of the Internal
11 Revenue Code, on the taxpayer's state or federal income tax
12 return, an assessment may be made at any time not later than
13 six years after the due date of the return required under article
14 twenty-one or article twenty-four of this chapter for the same
15 taxable year or after such return was filed, or not later than
16 three years after an amended return is filed, whichever is later.

17 (b) *Time return deemed filed.* —

18 (1) *Early return.* — For purposes of this section, a return
19 filed before the last day prescribed by law, or by rules promul-
20 gated by the Tax Commissioner for filing thereof, shall be
21 considered as filed on such last date;

22 (2) *Returns executed by Tax Commissioner.* — The
23 execution of a return by the Tax Commissioner pursuant to the

24 authority conferred by section five-c of this article, shall not
25 start the running of the period of limitations on assessment and
26 collection.

27 (c) *Exceptions.* — Notwithstanding subsection (a):

28 (1) *Extension by agreement.* — The Tax Commissioner and
29 the taxpayer may enter into written agreements to extend the
30 period within which the Tax Commissioner may make an
31 assessment against the taxpayer which period shall not exceed
32 two years. The period so agreed upon may be extended for
33 additional periods not in excess of two years each by subse-
34 quent agreements in writing made before the expiration of the
35 period previously agreed upon.

36 (2) *Deficiency in federal tax.* — Notwithstanding subsec-
37 tion (a), in the event of a final determination by the United
38 States Internal Revenue Service or other competent authority of
39 a deficiency in the taxpayer's federal income tax liability, the
40 period of limitation, upon assessment of a deficiency reflecting
41 such final determinations in the net income tax imposed by
42 article twelve-a and the taxes imposed by articles twenty-one
43 and twenty-four of this chapter, shall not expire until ninety
44 days after the Tax Commissioner is advised of the determina-
45 tion by the taxpayer as provided in section six-a of said article
46 twelve-a, section fifty-nine of said article twenty-one and
47 section twenty of said article twenty-four, or until the period of
48 limitations upon assessment provided in subsection (a) has
49 expired, whichever expires the later, and regardless of the tax
50 year of the deficiency.

51 (3) *Special rule for certain amended returns.* — Where,
52 within the sixty-day period ending on the day on which the time
53 prescribed in this section for the assessment of any tax for any
54 taxable year would otherwise expire, the Tax Commissioner
55 receives a written document signed by the taxpayer showing

56 that the taxpayer owes an additional amount of such tax for
57 such taxable year, the period for the assessment of such
58 additional amount shall not expire before the day sixty days
59 after the day on which the Tax Commissioner receives such
60 document;

61 (4) *Net operating loss or capital loss carrybacks.* — In the
62 case of a deficiency attributable the application by the taxpayer
63 of a net operating loss carryback or a capital loss carryback
64 (including that attributable to a mathematical or clerical error
65 in application of the loss carryback) such deficiency may be
66 assessed at any time before expiration of the period within
67 which a deficiency for the taxable year of the net operating loss
68 or net capital loss which results in such carryback may be
69 assessed;

70 (5) *Certain credit carrybacks.* — In the case of a deficiency
71 attributable to the application to the taxpayer of a credit
72 carryback (including that attributable to a mathematical or
73 clerical error in application of the credit carryback) such
74 deficiency may be assessed at any time before expiration of the
75 period within which a deficiency for the taxable year of the
76 unused credit which results in such carryback may be assessed,
77 or with respect to any portion of a credit carryback from a
78 taxable year attributable to a net operating loss carryback,
79 capital loss carryback, or other credit carryback from a subse-
80 quent taxable year, at any time before expiration of the period
81 within which a deficiency for such subsequent taxable year may
82 be assessed. The term “credit carryback” means any carryback
83 allowed under section eight, article one, chapter five-e of this
84 code;

85 (6) *Overpayment of tax credited against payment of another*
86 *tax.* — In the event of a final determination that a taxpayer
87 owes less tax than the amount paid by the taxpayer, and the
88 amount paid was allowed as a credit against a tax administered

89 under this article, the period of limitation upon assessment of
90 a deficiency in the payment of such other tax due to the
91 overstating of the allowable credit, shall not expire until ninety
92 days after the Tax Commissioner receives written notice from
93 the taxpayer advising the Tax Commissioner of the final
94 determination reducing the taxpayer's liability for a tax allowed
95 as a credit against a tax administered under this article, or until
96 the period of limitations upon assessment provided in subsection
97 (a) has expired, whichever expires the later, and regardless
98 of the tax year of the deficiency.

99 (d) *Cases under bankruptcy code.* — The running of
100 limitations provided in subsection (a), on the making of
101 assessments, or provided in section sixteen, on collection, shall,
102 in a case under title eleven of the United States code, be
103 suspended for the period during which the Tax Commissioner
104 is prohibited by reason of such case from making the assess-
105 ment or from collecting the tax and:

106 (1) For assessment, sixty days thereafter; and

107 (2) For collection, six months thereafter.

§11-10-18. Additions to tax.

1 (a) *Failure to file tax return or pay tax due.* —

2 (1) In the case of failure to file a required return of any tax
3 administered under this article on or before the date prescribed
4 for filing such return (determined with regard to any extension
5 of time for filing), unless it is shown that such failure is due to
6 reasonable cause and not due to willful neglect, there shall be
7 added to the amount required to be shown as tax on such return
8 five percent of the amount of such tax if the failure is for more
9 than one month, with an additional five percent for each
10 additional month or fraction thereof during which such failure
11 continues, not exceeding twenty-five percent in the aggregate:

12 *Provided*, That this addition to tax shall be imposed only on the
13 net amount of tax due;

14 (2) In the case of failure to pay the amount shown as tax, on
15 any required return of any tax administered under this article on
16 or before the date prescribed for payment of such tax (deter-
17 mined with regard to any extension of time for payment), unless
18 it is shown that such failure is due to reasonable cause and not
19 due to willful neglect, there shall be added to the amount shown
20 as tax on such return one half of one percent of the amount of
21 such tax if the failure is for not more than one month, with an
22 additional one half of one percent for each additional month or
23 fraction thereof during which such failure continues, not
24 exceeding twenty-five percent in the aggregate: *Provided*, That
25 the addition to tax shall be imposed only on the net amount of
26 tax due;

27 (3) In the case of failure to pay any amount in respect to
28 any tax required to be shown on a return specified in paragraph
29 (1) which is not so shown within fifteen days of the date of
30 notice and demand therefore, unless it is shown that such failure
31 is due to reasonable cause and not due to willful neglect, there
32 shall be added to the amount of tax stated in such notice and
33 demand one half of one percent of the amount of each tax if the
34 failure is for not more than one month, with an additional one
35 half of one percent for each additional month or fraction thereof
36 during which such failure continues, not exceeding twenty-five
37 percent in the aggregate: *Provided*, That this addition to tax
38 shall be imposed only on the net amount of tax due.

39 (b) *Limitation and special rule.* —

40 (1) Additions under more than one paragraph:

41 (A) With respect to any return, the amount of the addition
42 under paragraph (1) of subsection (a) shall be reduced by the
43 amount of the addition under paragraph (2) of subsection (a) for

44 any month to which an addition to tax applies under both
45 paragraphs (1) and (2);

46 (B) With respect to any return, the maximum amount of the
47 addition permitted under paragraph (3) of subsection (a) shall
48 be reduced by the amount of the addition under paragraph (1)
49 of subsection (a) (determined without regard to the last sentence
50 of such subsection) which is attributable to the tax for which the
51 notice and demand is made and which is not paid within fifteen
52 days of notice and demand.

53 (2) *Amount of tax shown more than amount required to be*
54 *shown.* — If the correct amount of tax due is less than the
55 amount shown on the return, paragraphs (1) and (2) of subsec-
56 tion (a) shall only apply to the lower amount.

57 (3) *Exception for estimated tax.* — Subsection (a) shall not
58 apply to any failure to pay any estimated tax.

59 (c) *Negligence or intentional disregard of rules and*
60 *regulations.* — If any part of any underpayment of any tax
61 administered under this article is due to negligence or inten-
62 tional disregard of rules (but without intent to defraud), there
63 shall be added to the amount of tax due five percent of the
64 amount of such tax if the underpayment due to negligence or
65 intentional disregard of rules is for not more than one month,
66 with an additional five percent for each additional month or
67 fraction thereof during which such underpayment continues, not
68 exceeding twenty-five percent in the aggregate: *Provided,* That
69 these additions to tax shall be imposed only on the net amount
70 of tax due and shall be in lieu of the additions to tax provided
71 in subsection (a), and the Tax Commissioner shall state in his
72 or her notice of assessment the reason or reasons for imposing
73 this addition to tax with sufficient particularity to put the
74 taxpayer on notice regarding why it was assessed.

75 (d) *False or fraudulent return.* — In the case of the filing
76 of any false or fraudulent return with intent to evade any such
77 tax, or in the case of willful failure to file a return with intent to
78 evade tax, there shall be added to the tax due an amount equal
79 to fifty percent thereof which shall be in lieu of the additions to
80 tax provided in subsections (a) and (c). The burden of proving
81 fraud, willfulness or intent to evade tax shall be upon the Tax
82 Commissioner. In the case of a joint personal income tax return
83 under article twenty-one of this chapter, this subsection shall
84 not apply with respect to the tax of the spouse unless some part
85 of the underpayment is due to the fraud of such spouse.

86 (e) *Additions to tax treated as tax.* — Additions to tax
87 prescribed under this section on any tax shall be assessed,
88 collected and paid in the same manner as taxes.

89 (f) *Penalties for promoting abusive tax shelters and for*
90 *failure to report listed transactions.* —

91 (1) A penalty is hereby imposed on every person who
92 engages in activities promoting abusive tax shelters described
93 in Section 6700(a) of the Internal Revenue Code of 1986, or
94 any subsequent corresponding provisions of the Internal
95 Revenue Code, as from time to time amended, and who is
96 subject to a penalty imposed thereunder, whether or not such
97 penalty has been imposed, where such activities affect tax
98 returns required to be filed with the Tax Commissioner. The
99 amount of the penalty imposed hereunder shall be equal to fifty
100 percent of the gross income derived from activities by such
101 person which are subject to that penalty under paragraph (2)(A)
102 of said section 6700(a) for making a false or fraudulent state-
103 ment; and shall be the lesser of one thousand dollars or one
104 hundred percent of such gross income when the activity is
105 subject to that penalty under paragraph (1) of said section
106 6700(a).

107 (2) For audits of returns commencing on or after the first
108 day of July, two thousand six, when it appears that any part of
109 the deficiency for which an assessment is made is due to failure
110 to disclose a listed transaction or a reportable transaction other
111 than a listed transaction, as the terms are defined in Section
112 6707A of the Internal Revenue Code of 1986, or any subse-
113 quent corresponding provision of the Internal Revenue Code, as
114 from time to time amended, on the taxpayer's federal income
115 tax return, there shall be imposed a penalty. In the case of a
116 listed transaction the amount of the penalty shall be equal to
117 seventy percent of the amount of the deficiency, and in the case
118 of other reportable transactions the amount of the penalty shall
119 be equal to thirty-five percent of the amount of the deficiency.

120 (g) *Coordination with other penalties.* — Unless provided
121 otherwise by rules, the penalties imposed by this section are in
122 addition to any other penalty imposed by this article or article
123 ten-e of this chapter.

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-1. Short title.

1 This article may be cited as the "Tax Shelter Voluntary
2 Compliance Act."

§11-10E-2. Tax shelter voluntary compliance program.

1 (a) *In general.* — The Tax Commissioner shall establish
2 and administer a tax shelter voluntary compliance program for
3 eligible taxpayers subject to tax under article twenty-one and
4 article twenty-four of this chapter. The program shall be
5 conducted from the first day of August, two thousand six,
6 through the first day of November, two thousand six, and shall
7 apply to personal income tax and corporation net income tax
8 liabilities attributable to the use of tax avoidance transactions

9 for taxable years beginning before the first day of January, two
10 thousand six.

11 (b) The department is authorized to adopt rules (including
12 interpretive and emergency rules), issue forms and instructions,
13 issue administrative notices, and take such other actions as it
14 deems necessary to implement the provisions of this article.

15 (c) *Election.* — An eligible taxpayer that meets the require-
16 ments of subsection (d) of this section with respect to any
17 taxable year to which this article applies may elect to partici-
18 pate in the program under either method below for any particu-
19 lar tax avoidance transaction period. Such election shall be
20 made separately for each taxable year in the form and manner
21 prescribed by the Tax Commissioner, and once made shall be
22 irrevocable.

23 (1) *Voluntary compliance without appeal.* — If an eligible
24 taxpayer elects to participate under this paragraph: (i) The Tax
25 Commissioner shall abate and not seek to collect any penalty
26 that may be applicable to the underreporting or underpayment
27 of West Virginia income tax attributable to the use of tax
28 avoidance transactions for such taxable year; (ii) except as
29 otherwise provided in this article, the Tax Commissioner shall
30 not seek civil or criminal prosecution against the taxpayer for
31 such taxable year with respect to tax avoidance transactions;
32 and (iii) the taxpayer may not file a claim for credit or refund
33 with respect to the tax avoidance transaction for such taxable
34 year. Nothing in this subsection shall preclude a taxpayer from
35 filing a claim for credit or refund for the same taxable year in
36 which a tax avoidance transaction was reported if such credit or
37 refund is not attributable to the tax avoidance transaction. No
38 penalty may be waived or abated under this article if the penalty
39 imposed relates to an amount of West Virginia income tax
40 assessed prior to the first day of August, two thousand six.

41 (2) *Voluntary compliance with appeal.* — If an eligible
42 taxpayer elects to participate under this paragraph, then: (i) The
43 Tax Commissioner shall abate and not seek to collect the
44 penalties for failure to report listed transactions, with respect to
45 such taxable year; (ii) except as otherwise provided in this
46 article, the Tax Commissioner shall not seek civil or criminal
47 prosecution against the taxpayer for such taxable year with
48 respect to tax avoidance transactions; and (iii) the taxpayer may
49 file a claim for credit or refund as provided in article ten of this
50 chapter with respect to such taxable year. Notwithstanding any
51 other provision of the code to the contrary, the taxpayer may
52 not file an appeal until after either of the following: (i) The Tax
53 Commissioner issues a notice of denial; or (ii) the earlier of: (1)
54 The date which is one hundred eighty days after the date of a
55 final determination by the Internal Revenue Service with
56 respect to the transactions at issue; or (2) the date that is three
57 years after the date the claim for refund was filed or one year
58 after full payment of all tax, including penalty and interest. No
59 penalty may be waived or abated under this article if the penalty
60 imposed relates to an amount of West Virginia income tax
61 assessed prior to the first day of August, two thousand six.

62 (d) *Eligible taxpayer.* — (1) The tax shelter voluntary
63 compliance program applies to any eligible taxpayer who,
64 during the period from the first day of August, two thousand
65 six, to the first day of November, two thousand six, does both
66 of the following: (1) Files an amended return for the taxable
67 year for which the taxpayer used a tax avoidance transaction to
68 underreport the taxpayer's West Virginia income tax liability,
69 reporting the total West Virginia taxable income and income
70 tax for such taxable year computed without regard to any tax
71 avoidance transactions; and (2) makes full payment of the
72 additional income tax and interest due for such taxable year that
73 is attributable to the use of the tax avoidance transaction. For
74 purposes of this subsection (d), if the Tax Commissioner
75 subsequently determines that the correct amount of West

76 Virginia income tax was not paid for the taxable year, then the
77 penalty relief under this section shall not apply to any portion
78 of the underpayment not paid to the state that is attributable to
79 a tax avoidance transaction.

80 An “eligible taxpayer” is an individual, partnership, estate,
81 trust, corporation, limited liability company, joint stock
82 company, or any other company, trustee, receiver, assignee,
83 referee, society, association, business or any other person as
84 described in the tax law, who or which has a tax liability
85 relating to income tax imposed under article twenty-one or
86 article twenty-four of this chapter. However, an otherwise
87 eligible taxpayer would be prohibited from participating in the
88 voluntary compliance initiative if:

89 (a) The taxpayer is a party to any federal or state criminal
90 investigation for underreporting or underpayment of tax;

91 (b) As of the taxpayer’s application date under the volun-
92 tary compliance initiative, the taxpayer is a party to any
93 pending administrative proceeding or civil or criminal litigation
94 relating to the designated taxes under the voluntary compliance
95 initiative. An administrative proceeding or civil litigation shall
96 be deemed not to be pending on the application date if the
97 taxpayer withdraws from that proceeding or litigation before the
98 Tax Commissioner’s penalty waiver under the voluntary
99 compliance initiative;

100 (c) The taxpayer has a criminal conviction concerning the
101 tax on which penalty relief is sought; or

102 (d) The taxpayer was eligible to participate in the amnesty
103 program under article ten-d of this chapter but did not do so,
104 and the taxpayer participated in the voluntary compliance
105 programs of any other state.

§11-10E-3. “Tax avoidance transaction” defined.

1 For purposes of this article, the term “tax avoidance
2 transaction” means a plan or arrangement devised for the
3 principal purpose of avoiding federal or state income tax or
4 both. Tax avoidance transactions include, but are not limited to,
5 “listed transactions” as defined in Treasury Regulations Section
6 1.6011-4(b)(2).

§11-10E-4. Use of evidence of participation in the program.

1 The fact of a taxpayer’s participation in the tax shelter
2 voluntary compliance program shall not be considered evidence
3 that the taxpayer in fact engaged in a tax avoidance transaction.

§11-10E-5. Reportable transactions.

1 (a) For each taxable year in which a taxpayer is required to
2 make a disclosure statement under Treasury Regulations
3 Section 1.6011-4 (26 CFR 1.6011-4) (including any taxpayer
4 that is a member of a consolidated group required to make such
5 disclosure) with respect to a reportable transaction (including
6 a listed transaction) in which the taxpayer participated in a
7 taxable year for which a return is required, such taxpayer shall
8 file a copy of such disclosure with the Tax Commissioner.
9 Disclosure under this subsection is required to be made by any
10 taxpayer that is a member of a unitary business group that
11 includes any person required to make a disclosure statement
12 under Treasury Regulations Section 1.6011-4. Disclosure under
13 this subsection is required with respect to any transaction
14 entered into after the twenty-eighth day of February, two
15 thousand, that becomes a listed transaction at any time, and
16 shall be made in the manner prescribed by the Tax Commis-
17 sioner. With respect to transactions in which the taxpayer
18 participated for taxable years ending before the thirty-first day
19 of December, two thousand four, disclosure shall be made by

20 the due date (including extensions) of the first annual return due
21 after the effective date of this article. With respect to transac-
22 tions in which the taxpayer participated for taxable years ending
23 on and after the thirty-first day of December, two thousand
24 four, disclosure shall be made in the time and manner pre-
25 scribed in Treasury Regulations Section 1.6011-4(e). Notwith-
26 standing the above, no disclosure is required for transactions
27 entered into after the twenty-eighth day of February, two
28 thousand, and before the first day of January, two thousand
29 five: (i) If the taxpayer has filed an amended West Virginia
30 income tax return which reverses the tax benefits of the
31 potential tax avoidance transaction; or (ii) as a result of a
32 federal audit the Internal Revenue Service has determined the
33 tax treatment of the transaction and a West Virginia amended
34 return has been filed to reflect the federal treatment.

35 (b) *Reportable transaction understatement penalty.* — If a
36 taxpayer has a reportable transaction understatement for any
37 taxable year, there shall be added to the tax an amount equal to
38 twenty percent of the amount of that understatement. This
39 penalty shall be deemed assessed upon the assessment of the tax
40 to which such penalty relates and shall be collected and paid on
41 notice and demand in the same manner as the tax.

42 (1) *Reportable transaction understatement.* — For purposes
43 of this section, the term “reportable transaction understatement”
44 means the product of: (i) The amount of the increase (if any) in
45 taxable income, as determined by reference to the amount of
46 post-apportioned income that results from a difference between
47 the proper tax treatment of an item to which this subsection
48 applies and the taxpayer’s treatment of that item as shown on
49 the taxpayer’s return, including an amended return filed prior
50 to the date the taxpayer is first contacted by the Tax Commis-
51 sioner regarding the examination of the return; and (ii) the
52 applicable tax rates.

53 (2) *Items to which subsection (b) applies.* — This subsection
54 shall apply to any item which is attributable to either of the
55 following: (i) any listed transaction as defined in Treasury
56 Regulations Section 1.6011-4; and (ii) any reportable transac-
57 tion as defined in Treasury Regulations Section 1.6011-4 (other
58 than a listed transaction) if a significant purpose of the transac-
59 tion is the avoidance or evasion of federal income tax.

60 (3) Subsection (b) shall be applied by substituting thirty
61 percent for twenty percent with respect to the portion of any
62 reportable transaction understatement with respect to which the
63 requirements of this subsection are not met.

64 (4) *Reasonable cause exception.* —

65 (A) *In general.* — No penalty shall be imposed under this
66 subsection with respect to any portion of a reportable transac-
67 tion understatement if it is shown by clear and convincing
68 evidence that there was a reasonable cause for such portion and
69 that the taxpayer acted in good faith with respect to such
70 portion.

71 (B) *Special rules.* — Subparagraph (A) does not apply to
72 any reportable transaction (including a listed transaction) unless
73 all of the following requirements are met:

74 (C) The relevant facts affecting the tax treatment of the
75 item are adequately disclosed in accordance with this article. A
76 taxpayer failing to adequately disclose shall be treated as
77 meeting the requirements of this subparagraph: (i) If the penalty
78 for that failure was rescinded; (ii) there is or was substantial
79 authority for such treatment; and (iii) the taxpayer reasonably
80 believed that such treatment was more likely than not the proper
81 treatment.

82 (c) *One hundred percent interest penalty for failure to*
83 *participate.* — If an eligible taxpayer who fails to participate in

84 the program is contacted by the Internal Revenue Service or the
85 Tax Commissioner regarding the potential use of a tax avoid-
86 ance transaction with respect to a taxable year and has a
87 deficiency with respect to such taxable year or years, there shall
88 be added to the tax attributable to the potential tax avoidance
89 transaction an amount equal to one hundred percent of the
90 interest due under article ten of this chapter for the period
91 beginning with the statutory due date of the return (determined
92 without regard to extensions) on which the income should have
93 been reported to the date of the notice of assessment. Such
94 penalty shall be deemed assessed upon the assessment of the
95 interest to which such penalty relates and shall be collected and
96 paid in the same manner as such interest. The penalty imposed
97 by this subsection is in addition to any other penalty imposed
98 by this article or article ten. This subsection shall apply to
99 taxable years ending on and after the thirty-first day of Decem-
100 ber, two thousand five.

101 (d) *Coordination with other penalties.* — Unless provided
102 otherwise by rules, the penalties imposed by this section are in
103 addition to any other penalty imposed by this article or article
104 ten of this chapter.

§11-10E-6. Failure to register tax shelter or maintain list.

1 (a) *Penalty imposed.* — Any person that fails to comply
2 with the requirements of section eight or section nine of this
3 article shall incur a penalty as provided in subsection (b). A
4 person shall not be in compliance with the requirements of
5 section eight unless and until the required registration has been
6 filed and contains all of the information required to be included
7 with such registration under such section eight or Section 6111
8 of the Internal Revenue Code. A person shall not be in compli-
9 ance with the requirements of section nine unless, at the time
10 the required list is made available to the Tax Commissioner,
11 such list contains all of the information required to be main-

12 tained under such section nine or Section 6112 of the Internal
13 Revenue Code.

14 (b) *Amount of penalty.* — The following penalties apply:

15 (1) In the case of each failure to comply with the require-
16 ments of subsection (a), subsection (b) or subsection (d) of
17 section eight, the penalty shall be ten thousand dollars;

18 (2) If the failure is with respect to a listed transaction under
19 subsection (c) of section eight, the penalty shall be one hundred
20 thousand dollars;

21 (3) In the case of each failure to comply with the require-
22 ments of subsection (a) or subsection (b) of section nine, the
23 penalty shall be ten thousand dollars; and

24 (4) If the failure is with respect to a listed transaction under
25 subsection (c) of section nine, the penalty shall be one hundred
26 thousand dollars.

27 (c) *Authority to rescind penalty.* — The office of tax
28 appeals, with the written approval of the Tax Commissioner,
29 may rescind all or any portion of any penalty imposed by this
30 section with respect to any violation only if one or more of the
31 following apply: (1) It is determined that failure to comply did
32 not jeopardize the best interests of the state and is not due to
33 any willful neglect or any intent not to comply; (2) it is shown
34 that the violation is due to an unintentional mistake of fact; (3)
35 rescinding the penalty would promote compliance with the
36 requirements of this article and effective tax administration; or
37 (4) the taxpayer can show that there was reasonable cause for
38 the failure to disclose and that the taxpayer acted in good faith.

39 (d) *Coordination with other penalties.* — The penalty
40 imposed by this section is in addition to any penalty imposed by
41 this article or article ten of this chapter.

§11-10E-7. Promoting tax shelters.

1 Except as herein provided, the provisions of Section 6700
2 of the Internal Revenue Code shall apply for purposes of this
3 article as if such section applied to a West Virginia deduction,
4 credit, exclusion from income, allocation or apportionment rule,
5 or other West Virginia tax benefit. Notwithstanding Section
6 6700(a) of the Internal Revenue Code, if an activity with
7 respect to which a penalty imposed under Section 6700(a) of
8 the Internal Revenue Code, as applied for purposes of this
9 article, involves a false or fraudulent statement as described in
10 Section 6700(a)(2)(A) of the Internal Revenue Code, as applied
11 for purposes of this article, the amount of the penalty imposed
12 under this section shall be fifty percent of the gross income
13 derived (or to be derived) from such activity by the person upon
14 which the penalty is imposed.

§11-10E-8. Registration of tax shelters.

1 (a) *Federal tax shelter.* — Any tax shelter organizer
2 required to register a tax shelter under Section 6111 of the
3 Internal Revenue Code shall send a duplicate of the federal
4 registration information to the Tax Commissioner not later than
5 the day on which registration is required under federal law. Any
6 person required to register under Section 6111 of the Internal
7 Revenue Code who receives a tax registration number from the
8 Secretary of the Treasury shall, within thirty days after request
9 by the Tax Commissioner, file a statement of that registration
10 number with the Tax Commissioner.

11 (b) *Additional requirements for listed transactions.* — In
12 addition to the requirements of subsection (a), for any transac-
13 tions entered into on or after the twenty-eighth day of February,
14 two thousand, that become listed transactions (as defined under
15 Treasury Regulations Section 1.6011-4) at any time, those
16 transactions shall be registered with the Tax Commissioner (in

17 the form and manner prescribed by the Tax Commissioner) by
18 the later of: (i) Sixty days after entering into the transaction; (ii)
19 sixty days after the transaction becomes a listed transaction; or
20 (iii) the first day of July, two thousand six.

21 (c) *Tax shelters subject to this section.* — The provisions of
22 this section apply to any tax shelter herein described in which
23 a person:

24 (1) Organizes or participates in the sale of an interest in a
25 partnership, entity or other plan or arrangement; and

26 (2) Makes or causes another person to make a false or
27 fraudulent statement with respect to securing a tax benefit or a
28 gross valuation as to any material matter, and which is or was
29 one or more of the following: (A) Organized in this state; (B)
30 doing business in this state; or (C) deriving income from
31 sources in this state.

32 (d) *Tax shelter identification number.* — Any person
33 required to file a return under this article and required to
34 include on the person's federal income tax return a tax shelter
35 identification number pursuant to Section 6111 of the Internal
36 Revenue Code shall furnish such number when filing the
37 person's West Virginia return.

§11-10E-9. Investor lists.

1 (a) *Federal abusive tax shelter.* — Any person required to
2 maintain a list under Section 6112 of the Internal Revenue Code
3 and Treasury Regulations Section 301.6112-1 with respect to a
4 potentially abusive tax shelter shall furnish such list to the Tax
5 Commissioner not later than the time such list is required to be
6 furnished to the Internal Revenue Service under federal income
7 tax law. The list required under this section shall include the
8 same information required with respect to a potentially abusive

9 tax shelter under Treasury Regulations Section 301.6112-1 and
10 any other information that the Tax Commissioner may require.

11 (b) *Additional requirements for listed transactions.* — For
12 transactions entered into on or after the twenty-eighth day of
13 February, two thousand, that become listed transactions (as
14 defined under Treasury Regulations Section 1.6011-4) at any
15 time thereafter, the list shall be furnished to the Tax Commis-
16 sioner by the later of sixty days after entering into the transac-
17 tion or sixty days after the transaction becomes a listed transac-
18 tion.

19 (c) *Tax shelters subject to this section.* — The provisions of
20 this section apply to any tax shelter herein described in which
21 a person:

22 (1) Organizes or participates in the sale of an interest in a
23 partnership, entity or other plan or arrangement; and

24 (2) Makes or causes another person to make a false or
25 fraudulent statement with respect to securing a tax benefit or a
26 gross valuation as to any material matter; and which is or was
27 one or more of the following: (A) Organized in this state; (B)
28 doing business in this state; or (C) deriving income from
29 sources in this state.

§11-10E-10. Suspension of inconsistent code provisions.

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

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



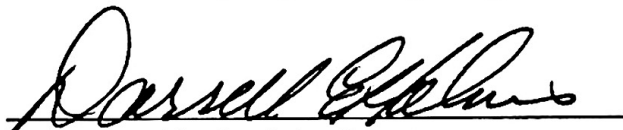
Chairman Senate Committee



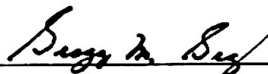
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



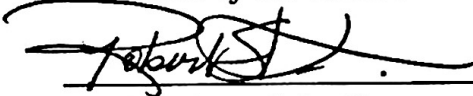
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 28th
day of March, 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2006

Time 3:25pm