

HB 3201

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WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

House Bill No. 3201

(By Delegates Shaver and Argento)



Passed March 8, 2008

In Effect from Passage

E N R O L L E D

H. B. 3201

(BY DELEGATES SHAVER AND ARGENTO)

missy dog
[Passed March 8, 2008; in effect ~~from~~ *missy dog* passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §11-10-5z and §11-10-7d; to amend and reenact §11-12-5 of said code; to amend said code by adding thereto a new section, designated §11-15-9j; to amend and reenact §11-15-16 of said code; and to amend and reenact §11-21-74 of said code, all relating to the procedure, assessment, collection, efficient administration and technical advancements for certain taxes; requiring electronic filing of tax returns when the taxpayer meets a certain threshold amount of taxes due; authorizing combined tax assessments; authorizing promulgation of rules to determine the application of partial payments of taxes; authorizing the limitation on assessments to apply separately to each tax in a combined assessment; authorizing the recordation of one lien for all taxes in a combined assessment; prohibiting filing incomplete business registration certificate; specifying the time period for which the business registration certificate is granted; specifying authority of the Tax Commissioner to suspend or cancel certificate; eliminating the periodic biennial business registration certificate renewal requirement; specifying a penalty applied upon issuance, renewal or reinstatement of the

business registration certificate pursuant to involuntary cancellation, revocation or suspension of the business registration certificate; prohibiting filing incomplete returns for consumers sales and service tax and use tax; authorizing the tax commissioner to refuse, revoke, suspend or refuse to renew a business registration certificate for a business that is the alter ego, nominee or instrumentality of a business in certain situations; and defining alter ego; allowing assertion of the consumers sales and use tax exemptions authorized under section nine-i, article fifteen, chapter eleven of the Code of West Virginia to be asserted by use of a direct pay permit; requiring the Tax Commissioner to design a combined reporting form; requiring taxpayers to use the form specified by the Tax Commissioner; authorizing the Tax Commissioner to promulgate necessary rules; and prohibiting filing incomplete filing of withholding tax returns.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §11-10-5z and §11-10-7d; that §11-12-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-15-9j; that §11-15-16 of said code be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND
ADMINISTRATION ACT.**

§11-10-5z. Electronic filing for certain persons.

- 1 (a) For tax years beginning on or after the first day of
- 2 January, two thousand nine, any person required to file a
- 3 return for a tax administered under the provisions of this
- 4 article and who had total annual remittance for any single tax

5 equal to or greater than one hundred thousand dollars during
6 the immediately preceding taxable year shall file
7 electronically all returns for all taxes administered under this
8 article.

9 (b) The Tax Commissioner shall implement the
10 provisions of this section using any combination of notices,
11 forms, instructions and rules that he or she determines
12 necessary. All rules shall be promulgated pursuant to article
13 three, chapter twenty-nine-a of this code.

§11-10-7d. Combining assessments.

1 (a) The Tax Commissioner may, subsequent to any
2 investigation authorized by subsection (a), section seven of
3 this article that results in an assessment in each of two or
4 more taxes administered pursuant to this article, combine
5 those assessments into a combined single assessment. In
6 order to complete any investigation, the Tax Commissioner
7 may review and combine returns for the taxes that are the
8 subject of the investigation.

9 (b) If the Tax Commissioner has combined two or more
10 returns as authorized by subsection (a) of this section, the tax
11 remitted shall be applied against taxes in the order provided
12 in a rule promulgated by the Tax Commissioner under the
13 authority of article three, chapter twenty-nine-a of this code.

14 (c) If the Tax Commissioner issues a combined single
15 assessment as authorized in subsection (a) of this section, the
16 limitations on assessment provided in section fifteen of this
17 article shall apply separately to each tax liability included in
18 the single assessment.

19 (d) If the Tax Commissioner issues a single assessment
20 as authorized in subsection (a) of this section and the

21 assessment becomes final pursuant to the provisions of
22 section eight of this article, the Tax Commissioner is
23 authorized to pursue collection of the tax resulting from the
24 combined assessment as authorized by this article, including,
25 but not limited to, sections eleven and thirteen of this article,
26 and to record one lien, pursuant to section twelve of this
27 article, that includes all unpaid amounts of all finalized tax
28 liabilities included in that combined assessment.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5. Time for which registration certificate granted; power of Tax Commissioner to suspend or cancel certificate; certificate to be permanent until cessation of business for which certificates are granted or revocation, suspension or cancellation by the Tax Commissioner; penalty for involuntary loss of license due to failure to pay required fees and taxes relating to business.

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

17 one-year certificate. Notwithstanding any other provisions
18 of this code to the contrary, any certificate of registration
19 granted on or after the first day of July, two thousand ten,
20 shall not be subject to the foregoing requirement that it be
21 renewed, but shall be permanent until cessation of the
22 business for which the certificate of registration was granted
23 or until it is suspended, revoked or cancelled by the Tax
24 Commissioner. Notwithstanding any provision of this code
25 to the contrary, on or after the first day of July, two thousand
26 ten, reference to renewal of the business registration
27 certificate shall refer to the issuance of a new business
28 registration certificate pursuant to expiration, cancellation or
29 revocation of a prior business registration certificate or to
30 reinstatement of a business registration certificate or to
31 reinstatement of a business certificate previously suspended
32 by the Tax Commissioner. On or after the first day of July,
33 two thousand ten, the business registration certificate shall be
34 issued upon payment of a tax of thirty dollars to the Tax
35 Commissioner for new issuances of the business registration
36 certificate or for issuances of the business registration
37 certificate pursuant to expiration, cancellation or revocation
38 of a prior business registration certificate or for reinstatement
39 of a business registration certificate previously suspended by
40 the Tax Commissioner, along with any applicable delinquent
41 fees, interest, penalties and additions to tax.

42 (b) *Revocation or suspension of certificate.* --

43 (1) The Tax Commissioner may cancel or suspend a
44 business registration certificate at any time during a
45 registration period if:

46 (A) The registrant filed an application for a business
47 registration certificate, or an application for renewal thereof,
48 that was false or fraudulent.

49 (B) The registrant willfully refused or neglected to file a
50 tax return or to report information required by the Tax
51 Commissioner for any tax imposed by or pursuant to this
52 chapter.

53 (C) The registrant willfully refused or neglected to pay
54 any tax, additions to tax, penalties or interest, or any part
55 thereof, when they became due and payable under this
56 chapter, determined with regard to any authorized extension
57 of time for payment.

58 (D) The registrant neglected to pay over to the Tax
59 Commissioner on or before its due date, determined with
60 regard to any authorized extension of time for payment, any
61 tax imposed by this chapter which the registrant collects from
62 any person and holds in trust for this state.

63 (E) The registrant abused the privilege afforded to it by
64 article fifteen or fifteen-a of this chapter to be exempt from
65 payment of the taxes imposed by such articles on some or all
66 of the registrant's purchases for use in business upon issuing
67 to the vendor a properly executed exemption certificate, by
68 failing to timely pay use tax on taxable purchase for use in
69 business or by failing to either pay the tax or give a properly
70 executed exemption certificate to the vendor.

71 (F) The registrant has failed to pay in full delinquent
72 personal property taxes owing for the calendar year.

73 (2) On or after the first day of July, two thousand ten, a
74 prospective registrant or a former registrant for which a
75 business registration certificate has been suspended,
76 cancelled or revoked pursuant to the provisions of this article
77 may apply for a new business registration certificate or for
78 reinstatement of a suspended business registration certificate
79 upon payment of all outstanding delinquent fees, taxes,

80 interest, additions to tax and penalties, in addition to payment
81 to the Tax Commissioner of a penalty in the amount of one
82 hundred dollars. The Tax Commissioner may issue a new
83 business registration certificate or reinstate a suspended
84 business registration certificate if the prospective or former
85 registrant has provided security acceptable to and authorized
86 by the Tax Commissioner, payable to the Tax Commissioner,
87 sufficient to secure all delinquent fees, taxes, interest,
88 additions to tax and penalties owed by the prospective
89 registrant. The Tax Commissioner may issue a new business
90 registration certificate or reinstate a suspended business
91 registration certificate if the prospective or former registrant
92 has entered into a payment plan approved by the Tax
93 Commissioner by which liability for all delinquent fees,
94 taxes, interest, additions to tax and penalties will be paid in
95 due course and without significant delay. Failure of any
96 registrant to comply with a payment plan pursuant to this
97 provision shall be grounds for immediate suspension or
98 revocation of the registrant's business registration certificate.

99 (3) On and after the first day of July, two thousand ten, a
100 prospective registrant or a former registrant for which a
101 business registration certificate has been suspended,
102 cancelled or revoked pursuant to the provisions of any article
103 of this code other than this article may apply for a new
104 business registration certificate or for reinstatement of a
105 suspended business registration certificate, only if the
106 prospective or former registrant has complied with all
107 applicable statutory and regulatory requirements for renewal,
108 issuance or reinstatement of the business registration
109 certificate and upon payment to the Tax Commissioner of a
110 penalty in the amount of one hundred dollars.

111 (4) Except pursuant to exceptions specified in this code,
112 before canceling, revoking or suspending any business
113 registration certificate, the Tax Commissioner shall give

114 written notice of his or her intent to suspend, revoke or cancel
115 the business registration certificate of the taxpayer, the reason
116 for the suspension, revocation or cancellation, the effective
117 date of the cancellation, revocation or suspension and the
118 date, time and place where the taxpayer may appear and
119 show cause why such business registration certificate should
120 not be canceled, revoked or suspended. This written notice
121 shall be served on the taxpayer in the same manner as a
122 notice of assessment is served under article ten of this
123 chapter, not less than twenty days prior to the effective date
124 of the cancellation, revocation or suspension. The taxpayer
125 may appeal cancellation, revocation or suspension of its
126 business registration certificate in the same manner as a
127 notice of assessment is appealed under article ten-a of this
128 chapter. The filing of a petition for appeal does not stay the
129 effective date of the suspension, revocation or cancellation.
130 A stay may be granted only after a hearing is held on a
131 motion to stay filed by the registrant upon finding that state
132 revenues will not be jeopardized by the granting of the stay.
133 The Tax Commissioner may, in his or her discretion and
134 upon such terms as he or she may specify, agree to stay the
135 effective date of the cancellation, revocation or suspension
136 until another date certain.

137 (5) On or before the first day of July, two thousand five,
138 the Tax Commissioner shall propose for promulgation
139 legislative rules establishing ancillary procedures for the Tax
140 Commissioner's suspension of business registration
141 certificates for failure to pay delinquent personal property
142 taxes pursuant to paragraph (F), subdivision (1) of this
143 section. The rules shall at a minimum establish any
144 additional requirements for the provision of notice deemed
145 necessary by the Tax Commissioner to meet requirements of
146 law; establish protocols for the communication and
147 verification of information exchanged between the Tax
148 Commissioner, sheriffs and others; and establish fees to be

149 assessed against delinquent taxpayers that shall be deposited
150 into a special fund which is hereby created and expended for
151 general tax administration by the Tax Division of the
152 Department of Tax and Revenue and for operation of the Tax
153 Division. Upon authorization of the Legislature, the rules
154 shall have the same force and effect as if set forth herein. No
155 provision of this subdivision may be construed to restrict in
156 any manner the authority of the Tax Commissioner to
157 suspend such certificates for failure to pay delinquent
158 personal property taxes under paragraph (C) or (F),
159 subdivision (1) of this section or under any other provision of
160 this code prior to the authorization of the rules.

161 (c) *Refusal to renew.* -- The Tax Commissioner may
162 refuse to issue or renew a business registration certificate if
163 the registrant is delinquent in the payment of any tax
164 administered by the Tax Commissioner under article ten of
165 this chapter or the corporate license tax imposed by article
166 twelve-c of this chapter, until the registrant pays in full all the
167 delinquent taxes including interest and applicable additions
168 to tax and penalties. In his or her discretion and upon terms
169 as he or she specifies, the Tax Commissioner may enter into
170 an installment payment agreement with the taxpayer in lieu
171 of the complete payment. Failure of the taxpayer to fully
172 comply with the terms of the installment payment agreement
173 shall render the amount remaining due thereunder
174 immediately due and payable and the Tax Commissioner may
175 suspend or cancel the business registration certificate in the
176 manner provided in this section.

177 (d) *Refusal to renew due to delinquent personal property*
178 *tax.* — The Tax Commissioner shall refuse to issue or renew
179 a business registration certificate when informed in writing,
180 signed by the county sheriff, that personal property owned by
181 the applicant and used in conjunction with the business
182 activity of the applicant is subject to delinquent property

183 taxes. The Tax Commissioner shall forthwith notify the
184 applicant that the commissioner will not act upon the
185 application until information is provided evidencing that the
186 taxes due are either exonerated or paid.

187 *(e) Refusal to issue, revocation, suspension and refusal*
188 *to renew business registration certificate of alter ego,*
189 *nominee or instrumentality of a business that has previously*
190 *been the subject of a lawful refusal to issue, revocation,*
191 *suspension or refuse to renew. —*

192 (1) The tax commissioner may refuse to issue a business
193 registration certificate, or may revoke a business registration
194 certificate or may suspend a business registration certificate
195 or may refuse to renew a business registration certificate for
196 any business determined by the tax commissioner to be an
197 alter ego, nominee or instrumentality of a business that has
198 previously been the subject of a lawful refusal to issue a
199 business registration certificate or of a lawful revocation,
200 suspension or refusal to renew a business registration
201 certificate pursuant to this section, and for which the business
202 registration certificate has not been lawfully reinstated or
203 reissued.

204 (2) For purposes of this section, a business is presumed
205 to be an alter ego, nominee or instrumentality of another
206 business or other businesses if:

207 (A) More than twenty percent of the real assets or more
208 than twenty percent of the operating assets or more than
209 twenty percent of the tangible personal property of one
210 business are or have been transferred to the other business or
211 businesses, or are or have been used in the operations of the
212 other business or businesses, or more than twenty percent of
213 the real assets or more than twenty percent of the operating
214 assets or more than twenty percent of the tangible personal

215 property of one business are or have been used to
216 collateralize or secure debts or obligations of the other
217 business or businesses;

218 (B) Ownership of the businesses is so configured that the
219 attribution rules of either Internal Revenue Code section 267
220 or Internal Revenue Code section 318 would apply to cause
221 ownership of the businesses to be attributed to the same
222 person or entity; or

223 (C) Substantive control of the businesses is held or
224 retained by the same person, entity or individual, directly or
225 indirectly, or through attribution under paragraph (B) of this
226 subdivision.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9j. Direct pay permits for health care providers.

1 Any person having a right or claim to any exemption set
2 forth in section nine-i of this article shall first pay to the
3 vendor the tax imposed by this article and then apply to the
4 Tax Commissioner for a refund or credit or, as provided in
5 section nine-d of this article and section three-d of article
6 fifteen-a of this chapter, give to the vendor his or her West
7 Virginia direct pay permit number.

§11-15-16. Tax return and payment; exception; requiring a combined return.

1 (a) *Payment of tax.* -- Subject to the exceptions set forth
2 in subsection (b) of this section, the taxes levied by this
3 article are due and payable in monthly installments, on or
4 before the twentieth day of the month next succeeding the
5 month in which the tax accrued, except as otherwise provided
6 in this article.

7 (b) *Combined return required.* --

8 (1) The Tax Commissioner shall, no later than the
9 fifteenth day of June, two thousand eight, design a return that
10 combines filing of the taxes levied by this article and article
11 fifteen-a of this chapter.

12 (2) Beginning the first day of July, two thousand eight,
13 each person required to file a return required by this article or
14 article fifteen-a of this chapter, or both this article and article
15 fifteen-a of this chapter, shall complete and file the return
16 required by the Tax Commissioner.

17 (3) The Tax Commissioner may promulgate rules
18 pursuant to article three, chapter twenty-nine-a of this code
19 and otherwise use any combination of notices, forms and
20 instructions he or she determines necessary to implement the
21 use of the form required by subsection (c) of this section.

22 (c) *Tax return.* -- The taxpayer shall, on or before the
23 twentieth day of each month, make out and mail to the Tax
24 Commissioner a return for the preceding month, in the form
25 prescribed by the Tax Commissioner, showing:

26 (1) The total gross proceeds of the vendor's business for
27 the preceding month;

28 (2) The gross proceeds of the vendor's business upon
29 which the tax is based;

30 (3) The amount of the tax for which the vendor is liable;
31 and

32 (4) Any further information necessary in the computation
33 and collection of the tax which the Tax Commissioner may
34 require, except as otherwise provided in this article or article
35 fifteen-b of this chapter.

36 (d) *Remittance to accompany return.* -- Except as
37 otherwise provided in this article or article fifteen-b of this
38 chapter, a remittance for the amount of the tax shall
39 accompany the return.

40 (e) *Deposit of collected tax.* -- Tax collected by the Tax
41 Commissioner shall be deposited as provided in section thirty
42 of this article, except that:

43 (1) Tax collected on sales of gasoline and special fuel
44 shall be deposited in the state road fund; and

45 (2) Any sales tax collected by the Alcohol Beverage
46 Control Commissioner from persons or organizations
47 licensed under authority of article seven, chapter sixty of this
48 code shall be paid into a revolving fund account in the State
49 Treasury, designated the Drunk Driving Prevention Fund, to
50 be administered by the commission on drunk driving
51 prevention, subject to appropriations by the Legislature.

52 (f) *Return to be signed.* -- A return shall be signed by the
53 taxpayer or the taxpayer's duly authorized agent, when a
54 paper return is prepared and filed. When the return is filed
55 electronically, the return shall include the digital mark or
56 digital signature, as defined in article three, chapter
57 thirty-nine-a of this code, or the personal identification
58 number of the taxpayer, or the taxpayer's duly authorized
59 agent, made in accordance with any procedural rule that may
60 be promulgated by the Tax Commissioner.

61 (g) *Accelerated payment.* --

62 (1) Taxpayers whose average monthly payment of the
63 taxes levied by this article and article fifteen-a of this chapter
64 during the previous calendar year exceeds one hundred
65 thousand dollars, shall remit the tax attributable to the first

66 fifteen days of June each year on or before the twentieth day
67 of June: *Provided*, That on and after the first day of June, two
68 thousand seven, the provisions of this subsection that require
69 the accelerated payment on or before the twentieth day of
70 June of the tax imposed by this article and article fifteen-a of
71 this chapter are no longer effective and any such tax due and
72 owing shall be payable in accordance with subsection (a) of
73 this section.

74 (2) For purposes of complying with subdivision (1) of
75 this subsection, the taxpayer shall remit an amount equal to
76 the amount of tax imposed by this article and article fifteen-a
77 of this chapter on actual taxable sales of tangible personal
78 property and custom software and sales of taxable services
79 during the first fifteen days of June or, at the taxpayer's
80 election, the taxpayer may remit an amount equal to fifty
81 percent of the taxpayer's liability for tax under this article on
82 taxable sales of tangible personal property and custom
83 software and sales of taxable services made during the
84 preceding month of May.

85 (3) For a business which has not been in existence for a
86 full calendar year, the total tax due from the business during
87 the prior calendar year shall be divided by the number of
88 months, including fractions of a month, that it was in
89 business during the prior calendar year; and if that amount
90 exceeds one hundred thousand dollars, the tax attributable to
91 the first fifteen days of June each year shall be remitted on or
92 before the twentieth day of June as provided in subdivision
93 (2) of this subsection.

94 (4) When a taxpayer required to make an advanced
95 payment of tax under subdivision (1) of this subsection
96 makes out its return for the month of June, which is due on
97 the twentieth day of July, the taxpayer may claim as a credit
98 against liability under this article for tax on taxable

99 transactions during the month of June the amount of the
100 advanced payment of tax made under subdivision (1) of this
101 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.

1 (a) *General.* -- Every employer required to deduct and
2 withhold tax under this article shall, for each calendar
3 quarter, on or before the last day of the month following the
4 close of the calendar quarter, file a withholding return as
5 prescribed by the Tax Commissioner and pay over to the Tax
6 Commissioner the taxes required to be deducted and
7 withheld. Where the average quarterly amount deducted and
8 withheld by any employer is less than one hundred fifty
9 dollars and the aggregate for the calendar year can reasonably
10 be expected to be less than six hundred dollars, the Tax
11 Commissioner may by regulation permit an employer to file
12 an annual return and pay over to the Tax Commissioner the
13 taxes deducted and withheld on or before the last day of the
14 month following the close of the calendar year. The Tax
15 Commissioner may, by nonemergency legislative rules
16 promulgated pursuant to article three, chapter twenty-nine-a
17 of this code, change the minimum amounts established by
18 this subsection. The Tax Commissioner may, if he or she
19 determines necessary for the protection of the revenues,
20 require any employer to make the return and pay to him or
21 her the tax deducted and withheld at any time or from time to
22 time. Notwithstanding the provisions of this subsection, on
23 or after the first day of January, two thousand nine, every
24 employer required to deduct and withhold tax under this

25 article shall file a withholding return as prescribed by the Tax
26 Commissioner and pay over to the Tax Commissioner the
27 taxes required to be deducted and withheld, in accordance
28 with the procedures established by the Internal Revenue
29 Service pursuant to section 3402 of the Internal Revenue
30 Code.

31 (b) *Monthly returns and payments of withheld tax on and*
32 *after the first day of January, two thousand one.* --
33 Notwithstanding the provisions of subsection (a) of this
34 section, on and after the first day of January, two thousand
35 one, every employer required to deduct and withhold tax
36 under this article shall, for each of the first eleven months of
37 the calendar year, on or before the twentieth day of the
38 succeeding month and for the last calendar month of the year,
39 on or before the last day of the succeeding month, file a
40 withholding return as prescribed by the Tax Commissioner
41 and pay over to the Tax Commissioner the taxes required to
42 be deducted and withheld, if the withheld taxes aggregate two
43 hundred fifty dollars or more for the month, except any
44 employer with respect to whom the Tax Commissioner may
45 have by regulation provided otherwise in accordance with the
46 provisions of subsection (a) of this section. Notwithstanding
47 the provisions of this subsection, on and after the first day of
48 January, two thousand nine, every employer required to
49 deduct and withhold tax under this article shall file a
50 withholding return as prescribed by the Tax Commissioner
51 and pay over to the Tax Commissioner the taxes required to
52 be deducted and withheld. The due dates for returns and
53 payments shall be established by the Tax Commissioner to
54 match as closely as practicable the due dates in effect for
55 federal income tax purposes, in accordance with the
56 procedures established by the Internal Revenue Service
57 pursuant to Section 3402 of the Internal Revenue Code.

58 (c) *Annual returns and payments of withheld tax of*
59 *certain domestic and household employees.* -- Employers of

60 domestic and household employees whose withholdings of
61 federal income tax are annually paid and reported by the
62 employer pursuant to the filing of Schedule H of federal form
63 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may,
64 on or before the thirty-first day of January next succeeding
65 the end of the calendar year for which withholdings are
66 deducted and withheld, file an annual withholding return with
67 the Tax Commissioner and annually remit to the Tax
68 Commissioner West Virginia personal income taxes deducted
69 and withheld for the employees. The Tax Commissioner may
70 promulgate legislative or other rules pursuant to article three,
71 chapter twenty-nine-a of this code for implementation of this
72 subsection. Notwithstanding the provisions of this
73 subsection, on or after the first day of January, two thousand
74 nine, every employer required to deduct and withhold tax
75 under this article shall file a withholding return as prescribed
76 by the Tax Commissioner and pay over to the Tax
77 Commissioner the taxes required to be deducted and
78 withheld. The due dates for annual returns and payments
79 shall be established by the Tax Commissioner to match as
80 closely as practicable the due dates in effect for federal
81 income tax purposes in accordance with the procedures
82 established by the Internal Revenue Service pursuant to
83 Section 3402 of the Internal Revenue Code.

84 (d) *Deposit in trust for Tax Commissioner.* -- Whenever
85 any employer fails to collect, truthfully account for or pay
86 over the tax, or to make returns of the tax as required in this
87 section, the Tax Commissioner may serve a notice requiring
88 the employer to collect the taxes which become collectible
89 after service of the notice, to deposit the taxes in a bank
90 approved by the Tax Commissioner, in a separate account, in
91 trust for and payable to the Tax Commissioner and to keep
92 the amount of the tax in the separate account until payment
93 over to the Tax Commissioner. The notice shall remain in
94 effect until a notice of cancellation is served by the Tax
95 Commissioner.

96 (e) *Accelerated payment.* -- (1) Notwithstanding the
97 provisions of subsections (a) and (b) of this section, for
98 calendar years beginning after the thirty-first day of
99 December, one thousand nine hundred ninety, every
100 employer required to deduct and withhold tax whose average
101 payment per calendar month for the preceding calendar year
102 under subsection (b) of this section exceeded one hundred
103 thousand dollars shall remit the tax attributable to the first
104 fifteen days of June each year on or before the twenty-third
105 day of June: *Provided,* That on and after the first day of
106 June, two thousand seven, the provisions of this subsection
107 that require the accelerated payment on or before the
108 twenty-third day of June of the tax imposed by this article are
109 no longer effective and any tax due and owing shall be
110 payable in accordance with subsection (a) of this section.

111 (2) For purposes of complying with subdivision (1) of
112 this subsection, the employer shall remit an amount equal to
113 the withholding tax due under this article on employee
114 compensation subject to withholding tax payable or paid to
115 employees for the first fifteen days of June or, at the
116 employer's election, the employer may remit an amount equal
117 to fifty percent of the employer's liability for withholding tax
118 under this article on compensation payable or paid to
119 employees for the preceding month of May.

120 (3) For an employer which has not been in business for
121 a full calendar year, the total amount the employer was
122 required to deduct and withhold under subsection (b) of this
123 section for the prior calendar year shall be divided by the
124 number of months, including fractions of a month, that it was
125 in business during the prior calendar year and if that amount
126 exceeds one hundred thousand dollars, the employer shall
127 remit the tax attributable to the first fifteen days of June each
128 year on or before the twenty-third day of June, as provided in
129 subdivision (2) of this subsection.

130 (4) When an employer required to make an advanced
131 payment of withholding tax under subdivision (1) of this
132 subsection makes out its return for the month of June, which
133 is due on the twentieth day of July, that employer may claim
134 as a credit against its liability under this article for tax on
135 employee compensation paid or payable for employee
136 services rendered during the month of June the amount of the
137 advanced payment of tax made under subdivision (1) of this
138 subsection.

139 (f) The amendments to this section enacted in the year
140 two thousand six are effective for tax years beginning on or
141 after the first day of January, two thousand six.

142 (g) An annual reconciliation of West Virginia personal
143 income tax withheld shall be submitted by the employer on
144 or before the twenty-eighth day of February following the
145 close of the calendar year, together with Tax Division copies
146 of all withholding tax statements for that preceding calendar
147 year. The reconciliation shall be accompanied by a list of the
148 amounts of income withheld for each employee in such form
149 as the Tax Commissioner prescribes and shall be filed
150 separately from the employer's monthly or quarterly return.

151 (h) Any employer required to file a withholding return for
152 two hundred fifty or more employees shall file its return
153 using electronic filing as defined in section fifty-four of this
154 article. An employer that is required to file electronically but
155 does not do so is subject to a penalty in the amount of
156 twenty-five dollars per employee for whom the return was
157 not filed electronically, unless the employer shows that the
158 failure is due to reasonable cause and not due to willful
159 neglect.


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



Chairman Senate Committee

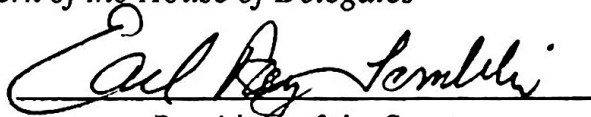

Chairman House Committee

Originating in the House.

ninety days
In effect from passage.

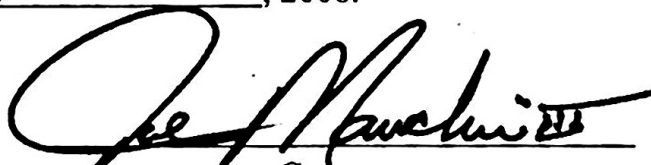

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within *is approved* this the *1st*
day of *April*, 2008.


Governor

**PRESENTED TO THE
GOVERNOR**

MAR 20 2008

Time 2:10 pm