

1 **H. B. 4158**

2  
3 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 14, 2014; referred to the  
6 Committee on Finance.]

**FISCAL  
NOTE**

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10 A BILL to amend and reenact §11-15-16 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §11-21-74, all  
12 relating to providing accelerated payment of consumers sales  
13 and service and use tax and employee withholding taxes for  
14 certain taxpayers and employers.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §11-15-16 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted; and that §11-21-74 be amended and  
18 reenacted, all to read as follows:

19 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

20 **§11-15-16. Tax return and payment; exception; requiring a**  
21 **combined return.**

22 (a) *Payment of tax.* -- Subject to the exceptions set forth in  
23 subsection (b) of this section, the taxes levied by this article

1 are due and payable in monthly installments, on or before the  
2 twentieth day of the month next succeeding the month in which the  
3 tax accrued, except as otherwise provided in this article.

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

5 (1) The Tax Commissioner shall, no later than June 15, 2008,  
6 design a return that combines filing of the taxes levied by this  
7 article and article fifteen-a of this chapter.

8 (2) Beginning July 1, 2008, each person required to file a  
9 return required by this article or article fifteen-a of this  
10 chapter, or both this article and article fifteen-a of this  
11 chapter, shall complete and file the return required by the Tax  
12 Commissioner.

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

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

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

24 (2) The gross proceeds of the vendor's business upon which the

1 tax is based;

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

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

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

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

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

15 (2) Any sales tax collected by the Alcohol Beverage Control  
16 Commissioner from persons or organizations licensed under authority  
17 of article seven, chapter sixty of this code shall be paid into a  
18 revolving fund account in the State Treasury, designated the Drunk  
19 Driving Prevention Fund, to be administered by the Commission on  
20 Drunk Driving Prevention, subject to appropriations by the  
21 Legislature.

22 (f) *Return to be signed.* -- A return shall be signed by the  
23 taxpayer or the taxpayer's duly authorized agent, when a paper  
24 return is prepared and filed. When the return is filed

1 electronically, the return shall include the digital mark or  
2 digital signature, as defined in article three, chapter  
3 thirty-nine-a of this code, or the personal identification number  
4 of the taxpayer, or the taxpayer's duly authorized agent, made in  
5 accordance with any procedural rule that may be promulgated by the  
6 Tax Commissioner.

7 (g) *Accelerated payment.* --

8 (1) Taxpayers whose average monthly payment of the taxes  
9 levied by this article and article fifteen-a of this chapter during  
10 the previous calendar year exceeds \$100,000, shall remit the tax  
11 attributable to the first fifteen days of June each year ~~on or~~  
12 ~~before~~ by June 20: *Provided, That ~~on and~~ after ~~June 1,~~ May 31,*  
13 2007, the provisions of this subsection that require the  
14 accelerated payment ~~on or before~~ by June 20 of the tax imposed by  
15 this article and article fifteen-a of this chapter are no longer  
16 effective and any such tax due and owing ~~shall be~~ is payable in  
17 accordance with subsection (a) of this section: *Provided, however,*  
18 *That after June 30, 2014, the provisions of this subsection that*  
19 *require the accelerated payment by June 20 of the tax imposed by*  
20 *this article and article fifteen-a of this chapter become effective*  
21 *again and any such tax due and owing is payable in accordance with*  
22 *this subsection.*

23 (2) For purposes of complying with subdivision (1) of this  
24 subsection, the taxpayer shall remit an amount equal to the amount

1 of tax imposed by this article and article fifteen-a of this  
2 chapter on actual taxable sales of tangible personal property and  
3 custom software and sales of taxable services during the first  
4 fifteen days of June or, at the taxpayer's election, the taxpayer  
5 may remit an amount equal to fifty percent of the taxpayer's  
6 liability for tax under this article on taxable sales of tangible  
7 personal property and custom software and sales of taxable services  
8 made during the preceding month of May.

9       (3) For a business which has not been in existence for a full  
10 calendar year, the total tax due from the business during the prior  
11 calendar year shall be divided by the number of months, including  
12 fractions of a month, that it was in business during the prior  
13 calendar year; and if that amount exceeds \$100,000, the tax  
14 attributable to the first fifteen days of June each year shall be  
15 remitted ~~on or before~~ by June 20 as provided in subdivision (2) of  
16 this subsection.

17       (4) When a taxpayer required to make an advanced payment of  
18 tax under subdivision (1) of this subsection makes out its return  
19 for the month of June, which is due ~~on~~ by July 20, the taxpayer may  
20 claim as a credit against liability under this article for tax on  
21 taxable transactions during the month of June the amount of the  
22 advanced payment of tax made under subdivision (1) of this  
23 subsection.

24 **ARTICLE 21. PERSONAL INCOME TAX.**

1 **§11-21-74. Filing of employer's withholding return and payment of**  
2 **withheld taxes; annual reconciliation; e-filing**  
3 **required for certain tax preparers and employer.**

4 (a) *General.* -- Every employer required to deduct and withhold  
5 tax under this article shall, for each calendar quarter, on or  
6 before the last day of the month following the close of the  
7 calendar quarter, file a withholding return as prescribed by the  
8 Tax Commissioner and pay over to the Tax Commissioner the taxes  
9 required to be deducted and withheld. Where the average quarterly  
10 amount deducted and withheld by any employer is less than \$150 and  
11 the aggregate for the calendar year can reasonably be expected to  
12 be less than \$600, the Tax Commissioner may by ~~regulation~~ rule  
13 permit an employer to file an annual return and pay over to the Tax  
14 Commissioner the taxes deducted and withheld on or before the last  
15 day of the month following the close of the calendar year. The Tax  
16 Commissioner may, by nonemergency legislative rules promulgated  
17 pursuant to article three, chapter twenty-nine-a of this code,  
18 change the minimum amounts established by this subsection. The Tax  
19 Commissioner may, if he or she determines necessary for the  
20 protection of the revenues, require any employer to make the return  
21 and pay to him or her the tax deducted and withheld at any time or  
22 from time to time. Notwithstanding the provisions of this  
23 subsection, ~~on or after January 1, 2009~~ December 31, 2008, every  
24 employer required to deduct and withhold tax under this article

1 shall file a withholding return as prescribed by the Tax  
2 Commissioner and pay over to the Tax Commissioner the taxes  
3 required to be deducted and withheld, in accordance with the  
4 procedures established by the Internal Revenue Service pursuant to  
5 Section 3402 of the Internal Revenue Code.

6 (b) *Monthly returns and payments of withheld tax* ~~on and after~~  
7 ~~January 1, 2001~~ December 31, 2000. -- Notwithstanding the  
8 provisions of subsection (a) of this section, ~~on and after January~~  
9 ~~1, 2001~~ December 31, 2000, every employer required to deduct and  
10 withhold tax under this article shall, for each of the first eleven  
11 months of the calendar year, ~~on or before~~ by the twentieth day of  
12 the succeeding month and for the last calendar month of the year,  
13 ~~on or before~~ by the last day of the succeeding month, file a  
14 withholding return as prescribed by the Tax Commissioner and pay  
15 over to the Tax Commissioner the taxes required to be deducted and  
16 withheld, if the withheld taxes aggregate \$250 or more for the  
17 month, except any employer with respect to whom the Tax  
18 Commissioner may have by ~~regulation~~ rule provided otherwise in  
19 accordance with the provisions of subsection (a) of this section.  
20 Notwithstanding the provisions of this subsection, ~~on and after~~  
21 ~~January 1, 2009~~ December 31, 2008, every employer required to  
22 deduct and withhold tax under this article shall file a withholding  
23 return as prescribed by the Tax Commissioner and pay over to the  
24 Tax Commissioner the taxes required to be deducted and withheld.

1 The due dates for returns and payments shall be established by the  
2 Tax Commissioner to match as closely as practicable the due dates  
3 in effect for federal income tax purposes, in accordance with the  
4 procedures established by the Internal Revenue Service pursuant to  
5 Section 3402 of the Internal Revenue Code.

6       (c) *Annual returns and payments of withheld tax of certain*  
7 *domestic and household employees.* -- Employers of domestic and  
8 household employees whose withholdings of federal income tax are  
9 annually paid and reported by the employer pursuant to the filing  
10 of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ,  
11 1040SS or 1041 may, on or before January 31 next succeeding the end  
12 of the calendar year for which withholdings are deducted and  
13 withheld, file an annual withholding return with the Tax  
14 Commissioner and annually remit to the Tax Commissioner West  
15 Virginia personal income taxes deducted and withheld for the  
16 employees. The Tax Commissioner may promulgate legislative or  
17 other rules pursuant to article three, chapter twenty-nine-a of  
18 this code for implementation of this subsection. Notwithstanding  
19 the provisions of this subsection, ~~on or after January 1, 2009~~  
20 December 31, 2008, every employer required to deduct and withhold  
21 tax under this article shall file a withholding return as  
22 prescribed by the Tax Commissioner and pay over to the Tax  
23 Commissioner the taxes required to be deducted and withheld. The  
24 due dates for annual returns and payments shall be established by

1 the Tax Commissioner to match as closely as practicable the due  
2 dates in effect for federal income tax purposes in accordance with  
3 the procedures established by the Internal Revenue Service pursuant  
4 to Section 3402 of the Internal Revenue Code.

5       (d) *Deposit in trust for Tax Commissioner.* -- Whenever any  
6 employer fails to collect, truthfully account for or pay over the  
7 tax, or to make returns of the tax as required in this section, the  
8 Tax Commissioner may serve a notice requiring the employer to  
9 collect the taxes which become collectible after service of the  
10 notice, to deposit the taxes in a bank approved by the Tax  
11 Commissioner, in a separate account, in trust for and payable to  
12 the Tax Commissioner and to keep the amount of the tax in the  
13 separate account until payment over to the Tax Commissioner. The  
14 notice ~~shall remain~~ remains in effect until a notice of  
15 cancellation is served by the Tax Commissioner.

16       (e) *Accelerated payment.* -- (1) Notwithstanding the provisions  
17 of subsections (a) and (b) of this section, for calendar years  
18 beginning after December 31, 1990, every employer required to  
19 deduct and withhold tax whose average payment per calendar month  
20 for the preceding calendar year under subsection (b) of this  
21 section exceeded \$100,000 shall remit the tax attributable to the  
22 first fifteen days of June each year ~~on or before~~ by June 23:  
23 *Provided, That* ~~on and after June 1,~~ May 31, 2007, the provisions of  
24 this subsection that require the accelerated payment ~~on or before~~

1 by June 23 of the tax imposed by this article are no longer  
2 effective and any tax due and owing ~~shall be~~ is payable in  
3 accordance with subsection (a) of this section: Provided, however,  
4 That after June 30, 2014, the provisions of this subsection that  
5 require the accelerated payment by June 23 of the tax imposed by  
6 this article become effective again and any such tax due and owing  
7 is payable in accordance with this subsection.

8       (2) For purposes of complying with subdivision (1) of this  
9 subsection, the employer shall remit an amount equal to the  
10 withholding tax due under this article on employee compensation  
11 subject to withholding tax payable or paid to employees for the  
12 first fifteen days of June or, at the employer's election, the  
13 employer may remit an amount equal to fifty percent of the  
14 employer's liability for withholding tax under this article on  
15 compensation payable or paid to employees for the preceding month  
16 of May.

17       (3) For an employer which has not been in business for a full  
18 calendar year, the total amount the employer was required to deduct  
19 and withhold under subsection (b) of this section for the prior  
20 calendar year shall be divided by the number of months, including  
21 fractions of a month, that it was in business during the prior  
22 calendar year and if that amount exceeds \$100,000, the employer  
23 shall remit the tax attributable to the first fifteen days of June  
24 each year ~~on or before~~ by June 23, as provided in subdivision (2)

1 of this subsection.

2 (4) When an employer required to make an advanced payment of  
3 withholding tax under subdivision (1) of this subsection makes out  
4 its return for the month of June, which is due ~~on~~ by July 20, that  
5 employer may claim as a credit against its liability under this  
6 article for tax on employee compensation paid or payable for  
7 employee services rendered during the month of June the amount of  
8 the advanced payment of tax made under subdivision (1) of this  
9 subsection.

10 (f) The amendments to this section enacted in the year 2006  
11 are effective for tax years beginning ~~on or after January 1, 2006~~  
12 December 31, 2005.

13 (g) An annual reconciliation of West Virginia personal income  
14 tax withheld shall be submitted by the employer ~~on or before~~ by  
15 February 28 following the close of the calendar year, together with  
16 Tax Division copies of all withholding tax statements for that  
17 preceding calendar year. The reconciliation shall be accompanied  
18 by a list of the amounts of income withheld for each employee in  
19 such form as the Tax Commissioner prescribes and shall be filed  
20 separately from the employer's monthly or quarterly return.

21 (h) Any employer required to file a withholding return for two  
22 hundred fifty or more employees shall file its return using  
23 electronic filing as defined in section fifty-four of this article:  
24 *Provided, That for any tax period beginning ~~on or after January 1,~~*

1 ~~2011,~~ December 31, 2010, any employer with fifty or more employees  
2 shall file its return using electronic filing as defined in section  
3 fifty-four of this article. An employer that is required to file  
4 electronically but does not do so is subject to a penalty in the  
5 amount of \$25 per employee for whom the return was not filed  
6 electronically, unless the employer shows that the failure is due  
7 to a technical inability to comply.

NOTE: The purpose of this bill is to require accelerated payment of consumers sales and service and use tax and employee withholding taxes in June of the taxable year.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.