

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **House Bill 2988**

**FISCAL  
NOTE**

**2015 Carryover**

(BY DELEGATES STORCH, ANDERSON, DUKE, A. EVANS

AND PETHTEL)

[Introduced January 13, 2016; referred to the  
Committee on Government Organization then  
Finance.]

1 A BILL to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating  
2 to authorizing the Tax Commissioner to collect tax, interest and penalties due and owing  
3 from payments to vendors and contractors from the Auditor and other state, county, district  
4 or municipal officers and agents; requiring the Auditor and other state, county, district or  
5 municipal officers and agents to certify to the Tax Commissioner the identity of payees  
6 prior to the first payment and prior to any subsequent payments; authorizing the Tax  
7 Commissioner to identify those payees who are not in good standing with the Tax  
8 Department; requiring the Auditor or issuing officer or agent to forward to the Tax  
9 Commissioner the lesser of the amount owed or the remaining amount of payment;  
10 requiring the Auditor or issuing officer or agent to notify the vendor or contractor of the  
11 amount being withheld; requiring payment be withheld until the vendor or contractor is in  
12 good standing with the Tax Department; specifying that, for contracts which are subject to  
13 county or municipal business and occupation tax, payments are withheld until released by  
14 the county or municipality after all business and occupation taxes have been paid,  
15 including any authorized transaction fee, additions to tax, interest and penalty; defining  
16 terms, excluding employees of this state, or any county, district or political subdivision  
17 thereof who receive no nonemployee compensation from treatment as vendors and  
18 contractors for purposes of specified provisions, authorizing the Tax Commissioner to  
19 enter into agreements to comply with mandates of the provision and to protect taxpayer  
20 information; authorizing the Tax Commissioner and the Auditor to propose legislative  
21 rules; and specifying effective date.

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

1 That §11-10-11 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

**§11-10-11. Collection of tax.**

1           (a) *General.* -- The Tax Commissioner shall collect the taxes, additions to tax, penalties  
2 and interest imposed by this article or any of the other articles of this chapter to which this article  
3 is applicable. In addition to all other remedies available for the collection of debts due this state,  
4 the Tax Commissioner may proceed by foreclosure of the lien provided in section twelve, or by  
5 levy and distraint under section thirteen.

6           (b) *Prerequisite to final settlement of contracts with nonresident contractor; user personally*  
7 *liable.* --

8           (1) Any person contracting with a nonresident contractor subject to the taxes imposed by  
9 articles thirteen, twenty-one and twenty-four of this chapter, shall withhold payment, in the final  
10 settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price,  
11 as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from  
12 the Tax Commissioner to the effect that the above referenced taxes imposed against the  
13 nonresident contractor have been paid or provided for.

14           (2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that  
15 person is personally liable for the payment of all taxes attributable to the contract, not to exceed  
16 six percent of the contract price. The taxes attributable shall be recoverable by the Tax  
17 Commissioner by appropriate legal proceedings, which may include issuance of an assessment  
18 under this article.

19           (c) *Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.* -- The  
20 Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the  
21 case of any corporation organized under the laws of this state, or organized under the laws of  
22 another state and admitted to do business in this state, until the receipt of a certificate from the

23 Tax Commissioner to the effect that every tax administered under this article imposed against any  
24 corporation has been paid or provided for, or that the applicant is not liable for any tax  
25 administered under this article.

26 (d) *Prerequisite to ~~final settlement~~ payment of contract with this state or political*  
27 *subdivision; authorization for tax commissioner to enter agreements; rule-making authority;*  
28 *penalty; effective date. --*

29 (1) Notwithstanding the provisions of section five-d of this article or any other provision of  
30 this code, for all contracts made on behalf of this state or any political subdivision thereof for which  
31 payment is made by the Auditor on and after January 1, 2016, the Auditor shall provide to the Tax  
32 Commissioner, by electronic or other means, no less than three days prior to the first payment  
33 and upon all subsequent payments, a list showing the name and the social security number or  
34 federal tax identification number of all vendors and contractors who are payees, and such other  
35 information as the Tax Commissioner may require. From the certified list, the Tax Commissioner  
36 shall certify to the Auditor each delinquent payee and the amount of tax, interest, additions to tax  
37 or penalties due and payable. The Auditor shall notify the vendor or contractor of the amount  
38 being withheld; forward to the Tax Commissioner the lesser of the entire payment or the amount  
39 certified, and pay any amount in excess of the certified amount to the vendor or contractor.  
40 Where the vendor or contractor is not in good standing for reasons other than tax, interest or  
41 penalty being owed, the Tax Commissioner shall certify as such and the Auditor shall notify the  
42 contractor that the contractor is not in good standing, and the reasons therefore, and withhold  
43 payment until the contractor is in good standing. For purposes of this subdivision the terms  
44 "vendor" and "contractor" do not include employees of this state who for the taxable year receive  
45 wages or salary reported on federal form W-2 for purposes of the United States Internal Revenue  
46 Code or who receive reimbursements for employment related expenses: *Provided, That any*

47 employee who receives nonemployee compensation, as determined for federal income tax  
48 purposes, from this state is still subject to the provisions of this subdivision to the extent of that  
49 nonemployee compensation.

50 (2) Notwithstanding the provisions of section five-d of this article or any other provision of  
51 this code, on and after January 1, 2016, all state, county, district and municipal officers and agents  
52 making contracts on behalf of this state or any political subdivision thereof, for which payment is  
53 not made by the Auditor, shall withhold payment, in the final settlement of any contract, until the  
54 receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by articles  
55 thirteen, twenty-one and twenty-four of this chapter against the contractor have been paid or  
56 provided for shall provide to the Tax Commissioner, by electronic or other means, no less than  
57 three days prior to the first payment and upon all subsequent payments, a list showing the name  
58 and the social security number or federal tax identification number of all vendors and contractors  
59 who are payees under such contracts and such other information as the Tax Commissioner may  
60 require. From the list, the Tax Commissioner shall certify to the state, county, district or  
61 municipal officers and agents any delinquent payee and the amount of any tax, interest additions  
62 to tax or penalties. The state, county, district and municipal officers and agents shall notify the  
63 vendor or contractor of the amount being withheld; forward to the Tax Commissioner the lesser  
64 of the entire payment or the amount certified, and pay any amount in excess of the certified  
65 amount to the vendor or contractor. Where the vendor or contractor is not in good standing for  
66 reasons other than tax, interest, additions to tax or penalty being owed, the state, county, district  
67 and municipal officers and agents shall notify the contractor that the contractor is not in good  
68 standing, and the reasons therefore, and withhold payment until the contractor is in good standing.  
69 For purposes of this subdivision the terms "vendor" and "contractor" do not include employees of  
70 this state, or any county, district or any political subdivision thereof who for the taxable year

71 receive wages or salary reported on federal form W-2 for purposes of the United States Internal  
72 Revenue Code or who receive reimbursements for employment related expenses: *Provided,*  
73 That any employee who receives nonemployee compensation, as determined for federal income  
74 tax purposes, from this state is still subject to the provisions of this subdivision to the extent of  
75 that nonemployee compensation.

76 (3) If the transaction embodied in the contract or the subject matter of the contract is  
77 subject to county or municipal business and occupation tax, then the first payment and  
78 subsequent payments shall also be withheld until receipt of a release from the county or  
79 municipality to the effect that all county or municipal business and occupation taxes levied or  
80 accrued against the contractor have been paid.

81 (4) Any authorized transaction fee which may be charged, is in addition to the tax, interest  
82 or penalties owed. The Tax Commissioner is authorized to impose an administrative fee, to be  
83 set by rule for each offset, under this section, of any payment resulting from tax, interest or penalty  
84 owed.

85 (5) The Tax commissioner is authorized to enter into agreements with the Auditor and any  
86 state, county, district and municipal officers and agents in order to fulfill this section and to protect  
87 a taxpayer's return information as defined in section five-d of this article.

88 (6) The Tax Commissioner may propose rules for legislative approval in accordance with  
89 the provisions of article three, chapter twenty-nine-a of this code to administer and implement this  
90 section and any agreements authorized by this section.

91 (7) The Auditor may propose rules for legislative approval in accordance with the  
92 provisions of article three, chapter twenty nine-a of this code to administer and implement this  
93 section.

94 (8) Any official violating this section is subject to a civil penalty of \$1,000, recoverable as

95 a debt in a civil action brought by the Tax Commissioner.

96 (e) *Limited effect of Tax Commissioner's certificates.* -- The certificates of the Tax  
97 Commissioner provided in subsections (b), (c) and (d) of this section shall not bar subsequent  
98 investigations, assessments, refunds and credits with respect to the taxpayer.

99 (f) *Payment when person sells out or quits business; liability of successor; lien.* --

100 (1) If any person subject to any tax administered under this article sells out his or her, her  
101 or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties  
102 and interest imposed by this article or any of the other articles of this chapter to which this article  
103 is applicable shall become due and payable immediately and that person shall, within thirty days  
104 after selling out his or her, her or its business or stock of goods or ceasing to do business, make  
105 a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax  
106 is a lien upon the property of that person.

107 (2) The successor in business of any person who sells out his or her, her or its business  
108 or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions  
109 to tax, penalties and interest unpaid after expiration of the thirty-day period allowed for payment:  
110 *Provided*, That if the business is purchased in an arms-length transaction, and if the purchaser  
111 withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax,  
112 penalties and interest which may be due until the seller produces a receipt from the Tax  
113 Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes  
114 attributable to the former owner of the business unless the contract of sale provides for the  
115 purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties  
116 and interest for which the successor is liable is a lien on the property of the successor, which shall  
117 be enforced by the Tax Commissioner as provided in this article.

118 (g) *Priority in distribution of estate or property in receivership; personal liability of*

119 *fiduciary.* -- All taxes due and unpaid under this article shall be paid from the first money available  
120 for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of  
121 any person, firm or corporation, in priority to all claims, except taxes and debts due the United  
122 States which under federal law are given priority over the debts and liens created by this article.  
123 Any trustee, receiver, administrator, executor or person charged with the administration of an  
124 estate who violates the provisions of this section is personally liable for any taxes accrued and  
125 unpaid under this article, which are chargeable against the person, firm or corporation whose  
126 estate is in administration.

127 (h) *Injunction.* -- If the taxpayer fails for a period of more than sixty days to fully comply  
128 with any of the provisions of this article or of any other article of this chapter to which this article  
129 is applicable, the Tax Commissioner may institute a proceeding to secure an injunction to restrain  
130 the taxpayer from doing business in this state until the taxpayer fully complies with the provisions  
131 of this article or any other articles. No bond is required of the Tax Commissioner in any action  
132 instituted under this subsection.

133 (i) *Costs.* -- In any proceeding under this section, upon judgment or decree for the Tax  
134 Commissioner, he or she shall be awarded his or her costs.

135 (j) *Refunds; credits; right to offset.* --

136 (1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax  
137 administered under this article, the Tax Commissioner may reduce the amount of the refund or  
138 credit by the amount of any tax administered under this article, whether it be the same tax or any  
139 other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this  
140 section.

141 (2) The Tax Commissioner may enter into agreements with the Internal Revenue Service  
142 that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax

143 refunds against state tax liabilities; and establishing the amount of the offset fee per transaction  
144 which both agencies may charge each other: *Provided*, That offsets under subdivision (1) of this  
145 subsection shall occur prior to offset under this subdivision. At the times moneys are received  
146 as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e)  
147 of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount  
148 of the offset less a deduction for the offset fee imposed by the Internal Revenue Service:  
149 *Provided, however*, That the amount of the offset fee imposed by the Internal Revenue Service  
150 shall be added to the taxes, interest and penalties owed by the taxpayer to this state: *Provided*  
151 *further*, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted  
152 from the moneys retained from the taxpayer's state tax refund and then deposited in the special  
153 revolving fund which is hereby created and established in the State Treasury and designated as  
154 the Tax Offset Fee Administration Fund: *And provided further*, That the fees deposited in the  
155 Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general  
156 administration of the taxes administered under the authority of this article.

157 (k) *Spouse relieved of liability in certain cases. --*

158 (1) *In general. --* Under regulations prescribed by the Tax Commissioner, if:

159 (A) A joint personal income tax return has been made for a taxable year;

160 (B) On the return there is a substantial understatement of tax attributable to grossly  
161 erroneous items of one spouse;

162 (C) The other spouse establishes that in signing the return he or she did not know, and  
163 had no reason to know, that there was a substantial understatement; and

164 (D) Taking into account all the facts and circumstances, it is inequitable to hold the other  
165 spouse liable for the deficiency in tax for the taxable year attributable to the substantial  
166 understatement, then the other spouse is relieved of any liability for tax, including interest,

167 additions to tax, and other amounts for the taxable year to the extent the liability is attributable to  
168 the substantial understatement.

169 (2) *Grossly erroneous items.* -- For purposes of this subsection, the term "grossly  
170 erroneous items" means, with respect to any spouse:

171 (A) Any item of gross income attributable to a spouse which is omitted from gross income;  
172 and

173 (B) Any claim of a deduction, credit or basis by a spouse in an amount for which there is  
174 no basis in fact or law.

175 (3) *Substantial understatement.* -- For purposes of this subsection, the term "substantial  
176 understatement" means any understatement, as defined in regulations prescribed by the Tax  
177 Commissioner which exceed \$500.

178 (4) Understatement must exceed specified percentage of spouse's income.

179 (A) *Adjusted gross income of \$20,000 or less.* -- If the spouse's adjusted gross income for  
180 the readjustment year is \$20,000 or less, this subsection applies only if the liability described in  
181 paragraph (1) of this subsection is greater than ten percent of the adjusted gross income.

182 (B) *Adjusted gross income of more than \$20,000.* -- If the spouse's adjusted gross income  
183 for the readjustment year is more than \$20,000, subparagraph (A) of this subdivision is applied  
184 by substituting "twenty-five percent" for "ten percent".

185 (C) *Readjustment year.* -- For purposes of this paragraph, the term "readjustment year"  
186 means the most recent taxable year of the spouse ending before the date the deficiency notice is  
187 mailed.

188 (D) *Computation of spouse's adjusted gross income.* -- If the spouse is married to another  
189 spouse at the close of the readjustment year, the spouse's adjusted gross income shall include  
190 the income of the new spouse whether or not they file a joint return.

191 (E) *Exception for omissions from gross income.* -- This paragraph shall not apply to any  
192 liability attributable to the omission of an item from gross income.

193 (5) *Adjusted gross income.* -- For purposes of this subsection, the term "adjusted gross  
194 income" means the West Virginia adjusted gross income of the taxpayer, determined under article  
195 twenty-one of this chapter.

NOTE: The purpose of this bill is to require the Auditor and other state, county, district or municipal officers to certify to the Tax Commissioner the identity of payees prior to issuance of payments, and authorize the Tax Commissioner to identify those payees who are not in good standing with the Tax Department and to require the Auditor or issuing officer to forward to the Tax Commissioner the lesser of the amount of tax interest and penalty owed or the remaining amount of payment. The bill requires the Auditor or issuing officer or agent to notify the vendor or contractor of the amount being withheld, and requires payment be withheld until the vendor or contractor is in good standing. State and local employees receiving only W-2 wages or salary are excluded from the definition of "vendor" or "contractor."

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