

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSSION

ENROLLED

Senate Bill 2002

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-10-5cc; and to amend and reenact §11-10-11 of said code, all relating
3 generally to allowing certain tax information to be shared with designated employees of
4 Commissioner of Highways pursuant to written agreement; specifying information that
5 may be disclosed; defining “good standing”; permitting agreement to be amended from
6 time to time; clarifying scope of confidentiality and protection of information in hands of
7 Commissioner of Highways; and clarifying that failure to remit personal income taxes
8 required to be withheld by a contractor is grounds for withholding payment in final
9 settlement of a contract.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11-10-5cc; and that §11-10-11 of said code be amended and reenacted, all
3 to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5cc. Disclosure of certain tax information to Commissioner of Highways.

1 (a) Notwithstanding any provision of this article to the contrary, the Tax Commissioner
2 shall enter into a written agreement with the Commissioner of Highways of this state to disclose
3 to designated employees of the Division of Highways:

4 (1) Whether a bidder for a contract with the Division of Highways has a current business
5 registration certificate under article twelve of this chapter;

6 (2) Whether a contractor with the Division of Highways, or any subcontractor of that
7 contractor, has had its current business registration certificate revoked or suspended under article
8 twelve of this chapter;

9 (3) Whether a cease and desist order has been issued under article twelve of this chapter
10 to a contractor working on a project for the Division of Highways or a subcontractor of that
11 contractor working on a road construction or repair project;

12 (4) Whether a contractor bidding on a contract for a road construction project or repair
13 project appears to be in compliance with the employer withholding tax requirements of this state
14 as set forth in article twenty-one of this chapter based on information in Tax Division databases;

15 (5) Whether a contractor who has a contract with the Division of Highways for a road
16 construction project or repair project appears to be in compliance with the employer withholding
17 tax requirements of this state as set forth in article twenty-one of this chapter based on information
18 in Tax Division databases;

19 (6) Whether a subcontractor of any contractor who has a contract with the Division of
20 Highways for a road construction project or repair project appears to be in compliance with the
21 employer withholding tax requirements of this state as set forth in article twenty-one of this chapter
22 based on information in Tax Division databases;

23 (7) Whether a bidder for a highway construction contract is in good standing with the Tax
24 Commissioner;

25 (8) Whether a contractor or subcontractor working on a project for the Division of Highways
26 is in good standing with the Tax Commissioner and, if not in good standing, an explanation of why
27 the contractor or subcontractor is not in good standing; and

28 (9) Whether a bidder, contractor or subcontractor currently has pending before the Office
29 of Tax Appeals a contest concerning any assessment for additional tax or denial of a claim for
30 refund or credit.

31 (b) For purposes of this section, the term “good standing” means that the bidder, contractor
32 or subcontractor has: (1) Filed all required tax returns due for taxes administered under this article;
33 (2) paid all taxes shown to be due in the filed returns, including any interest and additions to tax;
34 and (3) paid all withholding taxes for employees of the bidder, contractor or subcontractor required
35 to be paid under this code.

36 (c) An agreement executed under subsection (a) of this section may be amended, from
37 time to time, by the Tax Commissioner and the Commissioner of Highways.

38 (d) Information in the hands of the Commissioner of Highways or his or her designees
39 pursuant to an agreement under this section shall enjoy the same level of confidentiality and
40 protection as the information would enjoy in the hands of the Tax Commissioner.

§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.* —
20 The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal
21 in the case of any corporation organized under the laws of this state, or organized under the laws
22 of 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 of contract with this state or political subdivision;*
27 *penalty.* — All state, county, district and municipal officers and agents making contracts on behalf
28 of this state or any political subdivision thereof shall withhold payment, in the final settlement of
29 any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the
30 taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the
31 contractor, or required to be withheld by the contractor, have been paid or provided for. If the
32 transaction embodied in the contract or the subject matter of the contract is subject to county or
33 municipal business and occupation tax, then the payment shall also be withheld until receipt of a
34 release from the county or municipality to the effect that all county or municipal business and
35 occupation taxes levied or accrued against the contractor have been paid. Any official violating
36 this section is subject to a civil penalty of \$1,000, recoverable as a debt in a civil action brought
37 by the Tax Commissioner.

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

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

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

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

60 (g) *Priority in distribution of estate or property in receivership; personal liability of fiduciary.*
61 — All taxes due and unpaid under this article shall be paid from the first money available for
62 distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of
63 any person, firm or corporation, in priority to all claims, except taxes and debts due the United
64 States which under federal law are given priority over the debts and liens created by this article.
65 Any trustee, receiver, administrator, executor or person charged with the administration of an
66 estate who violates the provisions of this section is personally liable for any taxes accrued and
67 unpaid under this article, which are chargeable against the person, firm or corporation whose
68 estate is in administration.

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

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

77 (j) *Refunds; credits; right to offset.* —

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

83 (2) The Tax Commissioner may enter into agreements with the Internal Revenue Service
84 that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax
85 refunds against state tax liabilities; and establishing the amount of the offset fee per transaction
86 which both agencies may charge each other: *Provided*, That offsets under subdivision (1) of this
87 subsection shall occur prior to offset under this subdivision. At the times moneys are received as
88 a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of
89 the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount
90 of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: *Provided*
91 *however*, That the amount of the offset fee imposed by the Internal Revenue Service shall be
92 added to the taxes, interest and penalties owed by the taxpayer to this state: *Provided further*,
93 That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the
94 moneys retained from the taxpayer's state tax refund and then deposited in the special revolving
95 fund which is hereby created and established in the state Treasury and designated as the Tax
96 Offset Fee Administration Fund: *And provided further*, That the fees deposited in the Tax Offset
97 Fee Administration Fund may be expended by the Tax Commissioner for the general
98 administration of the taxes administered under the authority of this article.

99 (k) *Spouse relieved of liability in certain cases.* —

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

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

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

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

106 (D) Taking into account all the facts and circumstances, it is inequitable to hold the other
107 spouse liable for the deficiency in tax for the taxable year attributable to the substantial
108 understatement, then the other spouse is relieved of any liability for tax, including interest,
109 additions to tax, and other amounts for the taxable year to the extent the liability is attributable to
110 the substantial understatement.

111 (2) *Grossly erroneous items.* — For purposes of this subsection, the term “grossly
112 erroneous items” means, with respect to any spouse:

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

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

117 (3) *Substantial understatement.* — For purposes of this subsection, the term “substantial
118 understatement” means any understatement, as defined in regulations prescribed by the Tax
119 Commissioner which exceed \$500.

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

121 (A) *Adjusted gross income of \$20,000 or less.* — If the spouse's adjusted gross income
122 for the readjustment year is \$20,000 or less, this subsection applies only if the liability described
123 in subdivision (1) of this subsection is greater than ten percent of the adjusted gross income.

124 (B) *Adjusted gross income of more than \$20,000.* — If the spouse's adjusted gross income
125 for the readjustment year is more than \$20,000, paragraph (A) of this subdivision is applied by
126 substituting “twenty-five percent” for “ten percent”.

127 (C) *Readjustment year.* — For purposes of this paragraph, the term “readjustment year”
128 means the most recent taxable year of the spouse ending before the date the deficiency notice is
129 mailed.

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

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

135 (5) *Adjusted gross income.* — For purposes of this subsection, the term “adjusted gross
136 income” means the West Virginia adjusted gross income of the taxpayer, determined under article
137 twenty-one of this chapter.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2017.

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Governor