

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2475

BY DELEGATE STORCH, WESTFALL, MOORE, WHITE,

FRICH AND WARD

[Introduced February 15, 2017; 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.* --
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~~ 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, 2018, 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. Where
40 the vendor or contractor is not in good standing for reasons other than tax, interest or penalty
41 being owed, the Tax Commissioner shall certify as such and the Auditor shall notify the contractor
42 that the contractor is not in good standing, and the reasons therefore, and withhold payment until
43 the contractor is in good standing. For purposes of this subdivision the terms "vendor" and
44 "contractor" do not include employees of this state who for the taxable year receive wages or
45 salary reported on federal form W-2 for purposes of the United States Internal Revenue Code or
46 who receive reimbursements for employment related expenses: *Provided*, That any employee
47 who receives nonemployee compensation, as determined for federal income tax purposes, from
48 this state is still subject to the provisions of this subdivision to the extent of that nonemployee
49 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, 2018, 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 municipal
61 officers and agents any delinquent payee and the amount of any tax, interest additions to tax or
62 penalties. The state, county, district and municipal officers and agents shall notify the vendor or
63 contractor of the amount being withheld; forward to the Tax Commissioner the lesser of the entire
64 payment or the amount certified, and pay any amount in excess of the certified amount to the
65 vendor or contractor. Where the vendor or contractor is not in good standing for reasons other
66 than tax, interest, additions to tax or penalty being owed, the state, county, district and municipal
67 officers and agents shall notify the contractor that the contractor is not in good standing, and the
68 reasons therefore, and withhold payment until the contractor is in good standing. For purposes
69 of this subdivision the terms "vendor" and "contractor" do not include employees of this state, or
70 any county, district or any political subdivision thereof who for the taxable year receive wages or
71 salary reported on federal form W-2 for purposes of the United States Internal Revenue Code or
72 who receive reimbursements for employment related expenses: *Provided*, That any employee
73 who receives nonemployee compensation, as determined for federal income tax purposes, from
74 this state is still subject to the provisions of this subdivision to the extent of that nonemployee
75 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, or
101 its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and
102 interest imposed by this article or any of the other articles of this chapter to which this article is
103 applicable shall become due and payable immediately and that person shall, within thirty days

104 after selling out his or her, or its business or stock of goods or ceasing to do business, make a
105 final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a
106 lien upon the property of that person.

107 (2) The successor in business of any person who sells out his or her, or its business or
108 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 fiduciary.*
119 -- All taxes due and unpaid under this article shall be paid from the first money available for
120 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 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 as
146 a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of
147 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: *Provided*,
149 *however*, That the amount of the offset fee imposed by the Internal Revenue Service shall be
150 added to the taxes, interest and penalties owed by the taxpayer to this state: *Provided further*,
151 That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the
152 moneys retained from the taxpayer's state tax refund and then deposited in the special revolving
153 fund which is hereby created and established in the State Treasury and designated as the Tax
154 Offset Fee Administration Fund: *And provided further*, That the fees deposited in the Tax Offset

155 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 a heading or the present law and underscoring indicates new language that would be added.