

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 615

BY SENATORS SMITH (MR. PRESIDENT) AND WOELFEL

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 27, 2025; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-15-16, §11-15A-10, and §11-21-74 of the Code of West
2 Virginia, 1931, as amended, relating to eliminating accelerated tax payment requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

5 (b) *Combined return required.* —

6 (1) The Tax Commissioner shall, no later than June 15, 2008, design a return that
7 combines filing of the taxes levied by this article and §11-15A-1 *et seq.* of this code.

8 (2) Beginning July 1, 2008, each person required to file a return required by this article or
9 §11-15A-1 *et seq.* of this code, or both this article and §11-15A-1 *et seq.* of this code, shall
10 complete and file the return required by the Tax Commissioner.

11 (3) The Tax Commissioner may promulgate rules pursuant to §29A-3-1 *et seq.* of this code
12 and otherwise use any combination of notices, forms and instructions he or she determines
13 necessary to implement the use of the form required by subsection (c) of this section.

14 (c) *Tax return.* — The taxpayer shall, on or before the twentieth day of each month, make
15 out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by
16 the Tax Commissioner, showing:

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

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

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

(4) Any further information necessary in the computation and collection of the tax which the Tax Commissioner may require, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(d) *Remittance to accompany return.* — Except as otherwise provided in this article or §11-15B-1 *et seq.* of this code, a remittance for the amount of the tax shall accompany the return.

(e) *Deposit of collected tax.* — Tax collected by the Tax Commissioner shall be deposited as provided in §11-15-30 of this code, except that:

(1) Tax collected on sales of gasoline and special fuel shall be deposited in the State Road Fund; and

(2) Any sales tax collected by the Alcohol Beverage Control Commissioner from persons or organizations licensed under authority of §60-7-1 *et seq.* of this code shall be paid into a revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to be administered by the Commission on Drunk Driving Prevention, subject to appropriations by the Legislature.

(f) *Return to be signed.* — A return shall be signed by the taxpayer or the taxpayer's duly authorized agent, when a paper return is prepared and filed. When the return is filed electronically, the return shall include the digital mark or digital signature, as defined in §39A-3-1 *et seq.* of this code, or the personal identification number of the taxpayer, or the taxpayer's duly authorized agent, made in accordance with any procedural rule that may be promulgated by the Tax Commissioner.

(g) *Accelerated payment.* —

(1) Notwithstanding any other provision of this code to the contrary, after June 30, 2014, taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds \$100,000, shall remit the tax attributable to the first fifteen days of June each year by June 20.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15A-1 *et seq.* of this code on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first 15 days of June or, at the taxpayer's election, the taxpayer may remit an amount equal to 50 percent of the taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

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

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

(h) Effective upon passage, the provisions of §11-15-16(g) of this code shall no longer have any force or effect.

ARTICLE 15A. USE TAX.

§11-15A-10. Payment to Tax Commissioner.

(a) Each retailer required or authorized, pursuant to §11-15A-6, §11-15A-6a, or §11-15A-7 of this code, or pursuant to §11-15B-1 *et seq.* of this code, to collect the tax imposed in §11-15A-2 of this code, is required to pay to the Tax Commissioner the amount of the tax on or before the twentieth day of the month next succeeding each calendar month, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner the tax levied by this article on or before the twentieth day of the month next succeeding the calendar month in which the tax accrued, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(c) At that time, each retailer, seller or certified service provider shall file with the Tax Commissioner a return for the preceding monthly period, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code, in the form prescribed by the Tax Commissioner showing the sales price of any or all tangible personal property, custom software and taxable services sold by the retailer or seller during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the Tax Commissioner may consider necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code: *Provided*, That where the tangible personal property or custom software is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each monthly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the monthly period.

(d) The Tax Commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed 30 days for making any return and payment.

(e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and must be certified by him or her to be correct, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

(f) *Accelerated payment.* —

(1) For calendar years beginning after December 31, 2002, taxpayers whose average monthly payment of the taxes levied by this article and §11-15-1 *et seq.* of this code during the

previous calendar year exceeds \$100,000, shall remit the tax attributable to the first 15 days of June each year on or before June 20 of said month.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15-1 *et seq.* of this code on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first 15 days of June or, at the taxpayer's election, taxpayer may remit an amount equal to 50 percent of taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

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

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

(g) Effective upon passage, the provisions of §11-15A-10(f) of this code shall no longer have any force or effect.

ARTICLE 21. PERSONAL INCOME TAX.

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

(a) *General.* — Every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax

Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code except as otherwise provided in this section: *Provided*, That not later than January 31, 2019, and January 31 of each year thereafter, employers and payers shall submit to the Tax Commissioner the annual reconciliation of West Virginia income tax withheld, together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. Notwithstanding the provisions of this section, where the average quarterly amount deducted and withheld by any employer is less than \$150 and the aggregate for the calendar year can reasonably be expected to be less than \$600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year.

(b) *Annual returns and payments of withheld tax of certain domestic and household employees.* — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS, or 1041 shall, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner, and annually remit to the Tax Commissioner, West Virginia personal income taxes deducted and withheld for the employees together with state copies of all withholding tax statements reflecting West Virginia tax withholding, including, but not limited to, forms W-2, W-2G, and 1099, furnished to each employee or payee for the preceding calendar year, notwithstanding the fact that the employer or payer may

have a calendar tax year ending on December 31 or a fiscal tax year ending on a date other than December 31. The Tax Commissioner may promulgate legislative or other rules pursuant to §29A-3-1 *et seq.* of this code for implementation of this subsection.

(c) *Deposit in trust for Tax Commissioner.* — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

(d) *Accelerated payment.* —

(1) Every employer required to deduct and withhold tax whose average payment per calendar month for the preceding calendar year under §11-21-74(a) of this code exceeded \$100,000 shall remit the tax attributable to the first 15 days of June each year by June 23.

(2) For purposes of complying with §11-21-74(d)(1) of this code, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first 15 days of June or, at the employer's election, the employer may remit an amount equal to 50 percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under §11-21-74(a) of this code for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds \$100,000, the employer shall remit the tax attributable to the first 15 days of June each year by June 23, as provided in §11-21-74(d)(2) of this code.

(4) When an employer required to make an advanced payment of withholding tax under §11-21-74(d)(1) of this code makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under §11-21-74(d)(1) of this code.

(e) Effective upon passage, the provisions of §11-21-74(d) of this code shall no longer have any force or effect.

~~(e)~~(f) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by January 31, following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer's monthly or quarterly return.

~~(f)~~(g) Any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code: *Provided*, That for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in §11-21-54 of this code. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of \$25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.