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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

House Bill No. 3009

(By Delegates Beane, Browning and G. White)



Passed April 12, 2001

In Effect Ninety Days from Passage

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H. B. 3009

(BY DELEGATES BEANE, BROWNING AND G. WHITE)

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AN ACT to repeal section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three, chapter twenty-nine of said code; to amend and reenact section fifteen, article two, chapter thirty-three of said code; to amend and reenact sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter; to amend and reenact section five, article thirty-two of said chapter; and to amend said chapter by adding thereto a new article, designated article forty-three, all relating to the procedures for administering taxes and fees required to be paid or remitted to the commissioner of insurance; the tax on insurers pursuant to the fire prevention and control act; the commissioner's annual report to the governor on the condition of insurers; the filing of annual financial statements and premium tax returns; the computation and payment of taxes to the insurance commissioner; fire and casualty insurance premium tax; the surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund; the premium tax imposed upon risk retention

groups; the enactment of an insurance tax procedures act; the power of the commissioner to conduct hearings and impose penalties for failure to comply with tax statutes and rules; authority of the commissioner to bring or join suit; the obligation to file tax returns; imposition of penalties for taxpayer's failure to file or pay tax liability; the issuance of tax assessments; the right to hearing and appeal; the procedure for claiming tax refunds and credits; the imposition of interest on unpaid assessments; the allocation of payments; notice of overpayments and underpayments; and retroactive monetary relief for unconstitutional taxes.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-two, article three, chapter twenty-nine of said code be amended and reenacted; that section fifteen, article two, chapter thirty-three of said code be amended and reenacted; that sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter be amended and reenacted; that section five, article thirty-two of said chapter be amended and reenacted; and that said chapter be amended by adding thereto a new article, designated article forty-three, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-22. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except farmers' mutual fire insurance companies, shall pay to
3 the state insurance commissioner annually on or before the first
4 day of March, in addition to the taxes now required by law to be
5 paid by the companies, one half of one percent of the taxable
6 premiums of the companies on insurance against the hazard of
7 fire and on that portion of all other taxable premiums reason-

8 ably applicable to insurance against the hazard of fire which are
9 included in other coverages, and received by it for insurance on
10 property or risks in this state during the calendar year next
11 preceding as shown by their annual statement under oath to the
12 insurance department. The money so received by the state
13 insurance commissioner is paid by him or her into the treasury
14 and credited to the state general revenue fund.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15. Annual report by commissioner.

1 The commissioner shall annually, on or before the first day
2 of November, submit to the governor a report for the previous
3 calendar year of his or her official acts, and of the condition of
4 insurers doing business in this state, with a condensed statement
5 of their reports to him or her, abstracts of all accounts rendered
6 to any court by receivers of insolvent insurers, abstracts or
7 reports to the commissioner by the receivers, together with a
8 statement of all assessments, fees, taxes and related charges
9 received from insurers and other licensees and paid by him or
10 her into the state treasury.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

1 (a) Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day of
3 March, each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the commis-
5 sioner. The insurer shall also, on or before the first day of
6 March of each year subject to the provisions of section

7 fourteen-c of this article, under the oath of its president or
8 secretary, make a premium tax return for the previous calendar
9 year, on a form prescribed by the commissioner showing the
10 gross amount of direct premiums, whether designated as a
11 premium or by some other name, collected and received by it
12 during the previous calendar year on policies covering risks
13 resident, located or to be performed in this state and compute
14 the amount of premium tax chargeable to it in accordance with
15 the provisions of this article, deducting the amount of quarterly
16 payments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium and also
22 includes any additional tax due under section fourteen-a of this
23 article.

24 (b) There is created in the state treasury a special revenue
25 fund, administered by the treasurer, designated the "insurance
26 tax fund." This fund is not part of the general revenue fund of
27 the state. It consists of all taxes received by the commissioner
28 not allocated to another fund, any appropriations to the fund, all
29 interest earned from investment of the fund and any gifts, grants
30 or contributions received by the fund.

31 (c) The treasurer shall dedicate and transfer from the
32 insurance tax fund to the regional jail and correctional facility
33 investment fund created under the provisions of section twenty-
34 one, article six, chapter twelve of this code, on or before the
35 tenth day of each month, an amount equal to one twelfth of the
36 projected annual investment earnings to be paid and the capital
37 invested to be returned, as certified to the treasurer by the
38 investment management board: *Provided*, That the amount
39 dedicated and transferred may not exceed twenty million dollars
40 in any fiscal year. In the event there are insufficient funds

41 available in any month to transfer the amount required pursuant
42 to this subsection to the regional jail and correctional facility
43 investment fund, the deficiency shall be added to the amount
44 transferred in the next succeeding month in which revenues are
45 available to transfer the deficiency. Each month a lien on the
46 revenues generated from the insurance premium tax, the
47 annuity tax and the minimum tax, provided in this section and
48 sections fifteen and seventeen of this article, up to a maximum
49 amount equal to one twelfth of the projected annual principal
50 and return is granted to the investment management board to
51 secure the investment made with the regional jail and correc-
52 tional facility authority pursuant to section twenty, article six,
53 chapter twelve of this code. The treasurer shall, no later than the
54 last business day of each month, transfer amounts the treasurer
55 determines are not necessary for making refunds under this
56 article to meet the requirements of subsection (d), section
57 twenty-one, article six, chapter twelve of this code, to the credit
58 of the general revenue fund.

59 (d) The amendment to this section enacted during the
60 regular session of the Legislature in the year one thousand nine
61 hundred ninety-eight, is effective on the first day of July, one
62 thousand nine hundred ninety-eight.

§33-3-14a. Additional premium tax.

1 For the purpose of providing additional revenue for the
2 state general revenue fund, there is hereby levied and imposed,
3 in addition to the taxes imposed by section fourteen of this
4 article, an additional premium tax equal to one percent of
5 taxable premiums. Except as otherwise provided in this section,
6 all provisions of this article relating to the levy, imposition and
7 collection of the regular premium tax shall be applicable to the
8 levy, imposition and collection of the additional tax. All
9 moneys received from the additional tax imposed by this
10 section, less deductions allowed by this article for refunds and

11 for costs of administration, shall be received by the commis-
12 sioner and shall be paid by him or her into the state treasury for
13 the benefit of the state fund.

§33-3-14c. Computation and payment of tax.

1 The taxes levied hereunder shall be due and payable in
2 quarterly installments on or before the twenty-fifth day of the
3 month succeeding the end of the quarter in which they accrue,
4 except for the fourth quarter, for which taxes shall be due and
5 payable on or before the first day of March of the succeeding
6 year. The insurer subject to making the payments shall, by the
7 due date, prepare an estimate of the tax based on the estimated
8 amount of taxable premium during the preceding quarter, and
9 mail the estimate together with a remittance of the amount of
10 tax to the office of the commissioner.

**§33-3-14d. Additional fire and casualty insurance premium tax;
allocation of proceeds; effective date.**

1 (a) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds
3 and the teachers retirement system reserve fund and for
4 volunteer and part volunteer fire companies and departments,
5 there is hereby levied and imposed an additional premium tax
6 equal to one percent of taxable premiums for fire insurance and
7 casualty insurance policies. For purposes of this section,
8 casualty insurance does not include insurance on the life of a
9 debtor pursuant to or in connection with a specific loan or other
10 credit transaction or insurance on a debtor to provide indemnity
11 for payments becoming due on a specific loan or other credit
12 transaction while the debtor is disabled as defined in the policy.

13 All moneys collected from this additional tax shall be
14 received by the commissioner and paid by him or her into a
15 special account in the state treasury, designated the municipal
16 pensions and protection fund. The net proceeds of this tax after

17 appropriation thereof by the Legislature is distributed in
18 accordance with the provisions of this section.

19 (b)(1) Before the first day of August of each calendar year,
20 the treasurer of each municipality in which a municipal
21 policemen's or firemen's pension and relief fund has been
22 established shall report to the state treasurer the average
23 monthly number of members who worked at least one hundred
24 hours per month and the average monthly number of retired
25 members of municipal policemen's or firemen's pension
26 systems during the preceding fiscal year.

27 (2) Before the first day of September of each calendar year,
28 the state treasurer shall allocate and authorize for distribution
29 the revenues in the municipal pensions and protection fund
30 which were collected during the preceding calendar year for the
31 purposes set forth in this section. Sixty-five percent of the
32 revenues are allocated to municipal policemen's and firemen's
33 pension and relief funds; twenty-five percent of the revenues
34 shall be allocated to volunteer and part volunteer fire companies
35 and departments; and ten percent of such allocated revenues are
36 allocated to the teachers retirement system reserve fund created
37 by section eighteen, article seven-a, chapter eighteen of this
38 code: *Provided*, That in any year the actuarial report required
39 by section twenty, article twenty-two, chapter eight of this code
40 indicates no actuarial deficiency in the municipal policemen's
41 or firemen's pension and relief fund, no revenues may be
42 allocated from the municipal pensions and protection fund to
43 that fund. The revenues from the municipal pensions and
44 protection fund shall then be allocated to all other pension funds
45 which have an actuarial deficiency.

46 (3) The moneys, and the interest earned thereon, in the
47 municipal pensions and protection fund allocated to volunteer
48 and part volunteer fire companies and departments shall be
49 allocated and distributed quarterly to the volunteer fire compa-

50 nies and departments. Before each distribution date, the state
51 fire marshal shall report to the state treasurer the names and
52 addresses of all volunteer and part volunteer fire companies and
53 departments within the state which meet the eligibility require-
54 ments established in section eight-a, article fifteen, chapter
55 eight of this code.

56 (c) (1) Each municipal pension and relief fund shall have
57 allocated and authorized for distribution a pro rata share of the
58 revenues allocated to municipal policemen's and firemen's
59 pension and relief funds based upon the corresponding munici-
60 pality's average monthly number of members who worked at
61 least one hundred hours per month during the preceding fiscal
62 year. On and after the first day of July, one thousand nine
63 hundred ninety-seven, from the growth in any moneys collected
64 pursuant to the tax imposed by this section there shall be
65 allocated and authorized for distribution to each municipal
66 pension and relief fund, a pro rata share of the revenues
67 allocated to municipal policemen's and firemen's pension and
68 relief funds based upon the corresponding municipalities
69 average number of members who worked at least one hundred
70 hours per month and average monthly number of retired
71 members. For the purposes of this subsection, the growth in
72 moneys collected from the tax collected pursuant to this section
73 is determined by subtracting the amount of the tax collected
74 during the fiscal year ending the thirtieth day of June, one
75 thousand nine hundred ninety-six, from the tax collected during
76 the fiscal year for which the allocation is being made. All
77 moneys received by municipal pension and relief funds under
78 this section may be expended only for those purposes described
79 in sections sixteen through twenty-eight, inclusive, article
80 twenty-two, chapter eight of this code.

81 (2) Each volunteer fire company or department shall
82 receive an equal share of the revenues allocated for volunteer
83 and part volunteer fire companies and departments.

84 (3) In addition to the share allocated and distributed in
85 accordance with subdivision (1) of this subsection, each
86 municipal fire department composed of full-time paid members
87 and volunteers and part volunteer fire companies and depart-
88 ments shall receive a share equal to the share distributed to
89 volunteer fire companies under subdivision (2) of this subsec-
90 tion reduced by an amount equal to the share multiplied by the
91 ratio of the number of full-time paid fire department members
92 who are also members of a municipal firemen's pension system
93 to the total number of members of the fire department.

94 (d) The allocation and distribution of revenues provided for
95 in this section are subject to the provisions of section twenty,
96 article twenty-two, and sections eight-a and eight-b, article
97 fifteen, chapter eight of this code.

**§33-3-33. Surcharge on fire and casualty insurance policies to
benefit volunteer and part volunteer fire depart-
ments; special fund created; allocation of proceeds;
effective date.**

1 (a) For the purpose of providing additional revenue for
2 volunteer fire departments, part-volunteer fire departments,
3 certain retired teachers and the teachers retirement reserve fund,
4 there is hereby authorized and imposed on and after the first
5 day of July, one thousand nine hundred ninety-two, on the
6 policyholder of any fire insurance policy or casualty insurance
7 policy issued by any insurer, authorized or unauthorized, or by
8 any risk retention group, a policy surcharge equal to one
9 percent of the taxable premium for each such policy. For
10 purposes of this section, casualty insurance may not include
11 insurance on the life of a debtor pursuant to or in connection
12 with a specific loan or other credit transaction or insurance on
13 a debtor to provide indemnity for payments becoming due on a
14 specific loan or other credit transaction while the debtor is
15 disabled as defined in the policy. The policy surcharge may not

16 be subject to premium taxes, agent commissions or any other
17 assessment against premiums.

18 (b) The policy surcharge shall be collected and remitted to
19 the commissioner by the insurer or in the case of excess lines
20 coverage, by the resident excess lines broker, or if the policy is
21 issued by a risk retention group, by the risk retention group.
22 The amount required to be collected under this section shall be
23 remitted to the commissioner on a quarterly basis on or before
24 the twenty-fifth day of the month succeeding the end of the
25 quarter in which they are collected, except for the fourth quarter
26 for which the surcharge shall be remitted on or before the first
27 day of March of the succeeding year.

28 (c) Any person failing or refusing to collect and remit to the
29 commissioner any policy surcharge and whose surcharge
30 payments are not postmarked by the due dates for quarterly
31 filing is liable for a civil penalty of up to one hundred dollars
32 for each day of delinquency, to be assessed by the commis-
33 sioner. The commissioner may suspend the insurer, broker or
34 risk retention group until all surcharge payments and penalties
35 are remitted in full to the commissioner.

36 (d) One half of all money from the policy surcharge shall
37 be collected by the commissioner who shall disburse the money
38 received from the surcharge into a special account in the state
39 treasury, designated the "fire protection fund." The net proceeds
40 of this portion of the tax, and the interest thereon after appropri-
41 ation by the Legislature shall be distributed quarterly on the
42 first day of the months of January, April, July and October to
43 each volunteer fire company or department on an equal share
44 basis by the state treasurer.

45 (1) Before each distribution date, the state fire marshal shall
46 report to the state treasurer the names and addresses of all
47 volunteer and part volunteer fire companies and departments

48 within the state which meet the eligibility requirements
49 established in section eight-a, article fifteen, chapter eight of
50 this code.

51 (2) The remaining fifty percent of the moneys collected
52 shall be transferred to the teachers retirement system to be
53 disbursed according to the provisions of sections twenty-six-j,
54 twenty-six-k and twenty-six-l, article seven-a, chapter eighteen
55 of this code. Any balance remaining after the disbursements
56 authorized by this subdivision have been paid shall be paid by
57 the teachers retirement system into the teachers retirement
58 system reserve fund.

59 (e) The allocation, distribution and use of revenues pro-
60 vided in the fire protection fund are subject to the provisions of
61 sections eight-a and eight-b, article fifteen, chapter eight of this
62 code.

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall pay to the commissioner,
2 on the first day of March of each year, a tax at the rate of two
3 percent of the taxable premiums on policies or contracts of
4 insurance covering property or risks in this state and on risk and
5 property situated elsewhere upon which no premium tax is
6 otherwise paid during the previous year. Each risk retention
7 group shall also be subject to the additional premium taxes
8 levied by sections fourteen-a and fourteen-d of article three of
9 this chapter and the examination assessment fee levied by
10 section nine of article two of this chapter.

11 (b) The taxes provided for in this section shall constitute all
12 taxes collectible under the laws of this state from any risk
13 retention group, and no other premium tax or other taxes shall
14 be levied or collected from any risk retention group by the state

15 or any county, city or municipality within this state, except ad
16 valorem taxes. Each risk retention group shall be subject to the
17 same interests, additions, fines and penalties for nonpayment as
18 are generally applicable to insurers.

19 (c) To the extent that a risk retention group utilizes insur-
20 ance agents, each agent shall keep a complete and separate
21 record of all policies procured from each risk retention group,
22 which record shall be open to examination by the commis-
23 sioner, as provided in section nine, article two of this chapter.
24 These records shall, for each policy and each kind of insurance
25 provided thereunder, include the following:

26 (1) The limit of liability;

27 (2) The time period covered;

28 (3) The effective date;

29 (4) The name of the risk retention group which issued the
30 policy;

31 (5) The gross premium charged; and

32 (6) The amount of return premiums, if any.

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-1. Short title.

1 This article shall be known and may be referred to as the
2 "Insurance Tax Procedures Act."

§33-43-2. Application.

1 (a) The provisions of this article applies to all taxes,
2 surcharges, assessments, penalties and fees, however denomi-
3 nated, which are remitted to the commissioner.

4 (b) This article supersedes any provisions in this code
5 which concern the matters addressed in this article, but only to
6 the extent that those other provisions are inconsistent with this
7 article.

§33-43-3. Definitions.

1 For the purposes of this article and where not otherwise
2 defined in this chapter:

3 (a) "Assessment" means a written notice by the commis-
4 sioner of an amount due by a taxpayer for payment of any tax,
5 fee, penalty or related charge administered under this article.

6 (b) "Days" means calendar days.

7 (c) "Filing date" for a return means the date prescribed by
8 the Legislature for the filing of a return, or if no date is pre-
9 scribed, the payment date for the tax which is the subject of the
10 return.

11 (d) "Final decision" means a decision for which the
12 availability of an appeal has been exhausted, either because the
13 time for filing a petition has elapsed or because the petition has
14 been denied.

15 (e) "Payment date" for a tax means the date prescribed by
16 the Legislature for the payment of the tax, or if no date is
17 prescribed, on the first day of March next following the end of
18 the taxable year for the tax.

19 (f) "Related charges" includes fees, and additions and
20 interest called for by this article.

21 (g) "Surcharge" means a tax payable by a policyholder but
22 collected and remitted to the commissioner by the insurer.

23 (h) "Tax" means any tax to which this article applies.

24 (i) "Taxable premium" means the amount of the gross
25 direct premiums, annuity considerations or dividends on
26 participating policies applied in reduction of premiums less
27 premiums returned to policyholders due to cancellation of
28 policies.

29 (j) "Taxpayer" includes any legal entity which is liable for
30 the remittance of a tax to the commissioner in a particular
31 taxable year, and any legal entity that is required to file a return
32 under this article.

§33-43-4. Powers of the commissioner.

1 (a) All powers granted to the commissioner by this article
2 are in addition to those powers granted to the commissioner
3 elsewhere in this code, and no provision of this article may be
4 construed to eliminate or diminish the other powers.

5 (b) The commissioner may prescribe any forms as he or she
6 considers necessary for the fair, uniform and efficient adminis-
7 tration of taxes. All forms now used by the commissioner shall
8 be prescribed until the commissioner requires otherwise.

9 (c) The commissioner may propose rules for legislation
10 approval in accordance with the provisions of article three,
11 chapter twenty-nine-a of this code which he or she considers
12 necessary for the fair, uniform and efficient administration of
13 taxes. All currently existing rules remain in effect until
14 amended or repealed.

15 (d) For the purpose of ascertaining the application of this
16 article to a taxpayer, the commissioner may:

17 (1) Examine any books, papers, records, memoranda or
18 property of the taxpayer, legal entity, or any other person which
19 may be relevant in determining its tax liability, compliance or
20 taxpayer status;

21 (2) Require the attendance for the purpose of giving
22 testimony of the taxpayer or legal entity, or of an employee,
23 officer or agent of the taxpayer or legal entity who reasonably
24 is believed to possess knowledge which may be relevant in
25 determining its tax liability, compliance or taxpayer status;

26 (3) Exercise any of the powers conferred by sections four
27 through eight of article two of this chapter.

28 (e) If the commissioner determines, after notice and
29 hearing, that a person has failed or refused to comply with the
30 provisions of this article, or of any legislative rule proposed by
31 the commissioner and approved by the Legislature pursuant to
32 this article, the commissioner may order that the person comply
33 with the provisions and that the person take any other steps as
34 are reasonably necessary to allow the provisions to be enforced.
35 If the person holds a license issued by the commissioner, the
36 commissioner may revoke that license upon the person's failure
37 or refusal to obey an order issued under this subsection or in the
38 commissioner's discretion may in the alternative assess a
39 penalty against the person in an amount up to five thousand
40 dollars per occurrence.

41 (f) The commissioner has exclusive authority to bring or
42 join suit in a court of competent jurisdiction, or to pursue any
43 other action allowed by law, to enforce the provisions of this
44 article, or of legislative rules proposed pursuant to this article
45 and approved by the Legislature, or to enforce any order,
46 subpoena or other directive issued by the commissioner
47 pursuant to this article to best promote the fair, uniform and
48 efficient administration of taxes.

§33-43-5. Limitation on actions.

1 The commissioner has exclusive authority to bring or join
2 suit in a court of competent jurisdiction, or pursue any other
3 action allowed by law, to obtain the payment of taxes and

4 related charges: *Provided*, That the commissioner must so act
5 within ten years following the date upon which the assessment
6 or order establishing the taxpayer's liability becomes final.

§33-43-6. Returns.

1 (a) Any person who is subject to a tax in a given taxable
2 year shall file a return for that tax and that taxable year, even if
3 the person has no tax liability for that taxable year.

4 (1) Each return shall be filed by the applicable filing date.
5 The commissioner at his or her discretion may accept a return
6 after the filing date.

7 (2) Should a taxpayer file more than one return for the same
8 tax, only the return last filed shall be effective. The commis-
9 sioner at his or her discretion may approve the withdrawal of a
10 return by the taxpayer.

11 (b) Each return shall be executed by the taxpayer in a
12 manner prescribed by the commissioner. Each return so
13 executed shall constitute a sworn statement by the signatory
14 that to the best of his or her knowledge and belief, the informa-
15 tion provided in the return or in any supporting materials which
16 accompany the return is true and accurate.

17 (c) All returns shall be prepared on forms prescribed by the
18 commissioner. If no form has been prescribed for a particular
19 tax, the return may be in a form chosen by the taxpayer but
20 shall clearly set forth the following information: The taxpayer's
21 name, address and telephone number; the identification number
22 used by the taxpayer in filing federal income tax returns; the tax
23 and taxable year to which the return applies; and all information
24 used to calculate the tax liability of the taxpayer.

25 (d) For purposes of this article, a return is not regarded as
26 filed if:

27 (1) It is not filed by the applicable filing date, unless the
28 commissioner accepts the return; or

29 (2) It has not been received by the commissioner; or

30 (3) It has not been properly executed by the taxpayer; or

31 (4) It is not in the proper form; or

32 (5) It is incomplete or inaccurate in any material respect; or

33 (6) It is not accompanied by supporting material required
34 by the commissioner; or

35 (7) It is withdrawn by the taxpayer with the approval of the
36 commissioner; or

37 (8) It is not accompanied by the payment for any tax due.

38 (e) If a tax is to be paid in installments, the taxpayer shall
39 file an appropriate return for each period for which an install-
40 ment payment is calculated, even if the taxpayer is not required
41 to make an installment payment for that period. The returns
42 shall satisfy all requirements established for annual returns by
43 this section except that the filing date for an installment return
44 is the date prescribed for the installment payment for the period
45 described by the return.

46 (f) If a taxpayer has failed to file a return by the applicable
47 filing date, or has filed a false or fraudulent return, the commis-
48 sioner may use any information which is available to him or her
49 to determine the taxpayer's tax liability: *Provided*, That a
50 determination of tax liability by the commissioner pursuant to
51 this subsection does not relieve the taxpayer of the duty to file
52 a true, accurate and complete return and does not reduce or
53 preclude any penalty based upon the taxpayer's failure to file.

54 (g) A taxpayer to whom a credit has been issued may apply
55 the credit as payment for any like tax due to be remitted by the
56 taxpayer upon written notice to the commissioner stating the
57 amount of the credit to be so applied.

§33-43-7. Penalties.

1 (a) If any taxpayer fails to file a return by the applicable
2 filing date, then for each day throughout which the taxpayer
3 fails to file, the taxpayer is liable for a penalty of twenty-five
4 dollars.

5 (b) If a taxpayer fails to pay a tax liability in full by the
6 applicable payment date, then for each day throughout which a
7 portion of the liability remains unpaid, the taxpayer is liable for
8 a penalty in an amount equal to one percent of the unpaid
9 portion: *Provided*, That the sum of the penalties imposed under
10 this subsection may not exceed one hundred percent of the tax
11 liability.

12 (c) A penalty imposed under this section may be waived or
13 reduced by the commissioner if the taxpayer establishes, to the
14 satisfaction of the commissioner, that the failure upon which
15 the penalty is based was not, in whole or in part, willful or due
16 to the neglect of the taxpayer.

17 (d) The assessment of a penalty under this section is
18 automatic unless a waiver or reduction of the penalty is agreed
19 to by the commissioner in writing.

§33-43-8. Assessments.

1 (a) The commissioner may issue assessments for tax
2 liabilities and related charges, or any portions thereof, which
3 are due and payable but unpaid. At any time before an assess-
4 ment becomes final, the commissioner may amend the assess-
5 ment, in whole or in part. Except as otherwise provided in this

6 article, an assessment which is amended by the commissioner
7 shall be regarded as a new assessment.

8 (b) The commissioner shall give the taxpayer notice of
9 every assessment or amendment thereto. The date upon which
10 the notice is sent to the taxpayer shall be regarded as the date
11 upon which the assessment is issued.

12 (c) The notice of assessment shall specify the amount of
13 each tax liability or related charge which is the subject of the
14 assessment: *Provided*, That the notice may list interest and
15 penalties which accrue or are imposed from the time that the
16 assessment is issued to the time that the assessment is paid.

17 (d) Notwithstanding any other provisions of this article,
18 assessments may be issued only within the following time
19 periods:

20 (1) For tax liabilities, if the taxpayer has filed a return for
21 the tax and taxable year at issue, within three years of the filing
22 date for the return or the date upon which the return actually
23 was filed, whichever comes later;

24 (2) For fees, within three years of the date prescribed for
25 payment of the fee;

26 (3) For penalties based upon a failure to pay a tax, at any
27 time.

28 (e) The commissioner shall, within ninety days of a written
29 request by a taxpayer, issue an assessment: *Provided*, That the
30 commissioner may refuse to issue an assessment until the
31 taxpayer has provided the commissioner with all information
32 necessary to determine or verify the taxpayer's outstanding
33 liabilities for taxes and related charges.

34 (f) If the taxpayer does not timely request a hearing on an
35 assessment pursuant to section nine of this article, the assess-
36 ment shall become final. A final assessment is conclusive of the
37 liability of the taxpayer and is not subject to either administra-
38 tive or judicial review.

§33-43-9. Hearing and appeal; judicial review.

1 (a) Within sixty days of the issuance of an assessment or
2 imposition of a penalty, a taxpayer may request a hearing
3 before the commissioner on the amount or validity of the
4 assessment or penalty. Except as otherwise provided in this
5 article or in legislative rules proposed and approved by the
6 Legislature thereto, the hearings are subject to the requirements
7 established in sections thirteen and fourteen, article two of this
8 chapter.

9 (b) A request for a hearing shall be in writing and shall set
10 forth with reasonable particularity the taxpayer's objections to
11 the assessment or penalty and the factual basis therefore. At any
12 time prior to the hearing, the commissioner may allow a
13 taxpayer to amend the request.

14 (c) The taxpayer's request shall be executed by the taxpayer
15 in a manner prescribed by the commissioner, and a request so
16 executed shall constitute a sworn statement by the signatory
17 that to the best of his or her knowledge and belief, the informa-
18 tion provided in the request is true and accurate.

19 (d) Assessments issued by the commissioner shall be
20 presumed correct, and the taxpayer shall bear the burden of
21 proving, by a preponderance of the evidence, that the assess-
22 ment is incorrect or contrary to law.

23 (e) If the taxpayer does not timely appeal the commis-
24 sioner's order, that order shall become final as of the expiration
25 of the period during which the taxpayer may have brought an

26 appeal. Upon becoming final, an order shall be conclusive of
27 the liability of the taxpayer and is not subject to either adminis-
28 trative or judicial review.

29 (f) An agreed order signed by the taxpayer and the commis-
30 sioner is final and shall constitute a waiver of the taxpayer's
31 right to a hearing or appeal under this chapter.

§33-43-10. Refunds and credits.

1 (a) This section is the sole method of receiving a refund or
2 credit for any tax or related charge administered under this
3 article.

4 (b) Any taxpayer claiming to be due a refund or credit for
5 overpayment of any tax or related charge administered under
6 this article may, within five years from the date of the filing of
7 the return under which the tax was imposed or within four years
8 from the date the tax was paid, whichever term expires later,
9 file with the commissioner a petition in writing requesting a
10 refund of the tax or any part thereof:

11 (1) If the petition and the proofs filed in support thereof
12 persuades the commissioner that the payment of the tax or
13 related charges or any part thereof was improperly required, he
14 or she shall refund or issue a credit to the taxpayer for the
15 improper amounts;

16 (2) If the commissioner is in doubt as to whether or not the
17 taxes or related charges were proper, or if the commissioner is
18 of the opinion that the payment of the tax collected, or any part
19 thereof was proper, then the commissioner shall within thirty
20 days hold a hearing to determine the issue;

21 (3) If a taxpayer is considered to be due a credit or refund,
22 the commissioner shall, if the amount exceeds one thousand
23 dollars, at his or her discretion, pay the amount in equal, annual

24 installments over not more than three years. The commissioner
25 may issue a credit against future taxes in lieu of a refund
26 payment, whether lump sum or installment;

27 (4) The payment of refunds or issuance of credits to a
28 taxpayer pursuant to this section shall constitute a complete and
29 final settlement of all of the taxpayer's claims for which the
30 refunds or credits are paid. No cause of action or liability,
31 whether for damages, attorney's fees, costs or of any other
32 nature, shall arise against the commissioner or against his or her
33 agents for administering or litigating the constitutionality of a
34 tax subsequently determined to be unconstitutional.

§33-43-11. Interest.

1 A taxpayer shall be liable for interest on any unpaid final
2 assessment or penalty or portion thereof: *Provided*, That
3 interest may not be charged on interest. Interest shall be
4 calculated using the annual rates which are established by the
5 tax commissioner pursuant to section seventeen-a of article ten,
6 chapter eleven of this code and shall accrue daily.

§33-43-12. Allocation of payments.

1 (a) Payments made by a taxpayer, other than installment
2 payments of a tax liability which is required to be paid in
3 installments, shall be allocated to the taxpayer's outstanding
4 liabilities as follows:

5 (1) First, to any assessment which has become final;

6 (2) Next, to any fee which has not yet been assessed;

7 (3) Next, to any tax or related charge which has not yet
8 been assessed;

9 (4) Finally, to any assessment which has not yet become
10 final.

§33-43-13. Overpayments and underpayments.

1 (a) Upon discovering that a taxpayer has made payments in
2 excess of the taxpayer's outstanding liabilities, the commis-
3 sioner shall give notice of the overpayment to the taxpayer.

4 (b) Payments by a taxpayer in excess of the amounts
5 required to satisfy the taxpayer's liabilities for taxes and related
6 charges shall give rise to a credit against the taxpayer's future
7 liabilities unless the taxpayer, within thirty days of receiving
8 the notice, either requests a refund under this article and is
9 granted the refund, or establishes to the satisfaction of the
10 commissioner that no future liabilities will be incurred by the
11 taxpayer.

12 (c) Upon discovering that a taxpayer has made payments
13 less than the taxpayer's outstanding liabilities, or that the
14 taxpayer has made no payments, the commissioner shall give
15 notice of the underpayment to the taxpayer, which notice will
16 be considered an assessment of the amount due.

§33-43-14. Retroactive monetary relief for unconstitutional taxes.

1 (a) The remedies provided by this article are exclusive and
2 shall be in lieu of any and all remedies provided by common
3 law or by other provisions of this code.

4 (b) Retroactive monetary relief for an unconstitutional tax
5 shall be granted only at the express order of a court of compe-
6 tent jurisdiction which appears in a final decision of that court.
7 Notwithstanding any other provision of this code, a final
8 decision ordering retroactive monetary relief may not be
9 considered to override any statute of limitations contained
10 within this article, or to require relief for any claim which is *res*
11 *judicata*.

12 (c) Retroactive monetary relief shall comprise only a refund
13 of the unconstitutional tax, or of the portion thereof that the
14 court has ordered refunded, which actually has been paid by the
15 taxpayer, together with any penalties or interest which are based
16 upon the taxpayer's failure to pay the unconstitutional tax and
17 which actually have been paid by the taxpayer.

18 (1) Except as otherwise provided in this section, retroactive
19 monetary relief shall be paid to the taxpayer in a lump sum
20 within one hundred eighty days of the final decision which
21 orders the relief.

22 (2) If the amount of retroactive monetary relief due to any
23 individual taxpayer exceeds one thousand dollars or the
24 aggregate amount of the relief due to all taxpayers exceeds one
25 hundred thousand dollars, the commissioner at his or her
26 discretion may pay all refunds issued pursuant to the final
27 decision in equal, annual installments over not more than three
28 years. For purposes of this subsection, a year shall be a period
29 of twelve calendar months measured from the date upon which
30 the final decision which orders the relief is entered.

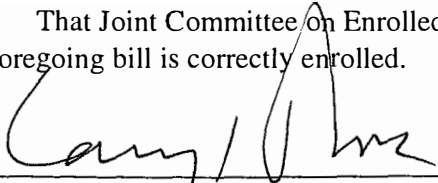
31 (3) With the approval of the taxpayer, the commissioner
32 may issue a credit against future taxes in lieu of a refund
33 payment due pursuant to this section, whether lump sum or
34 installment.

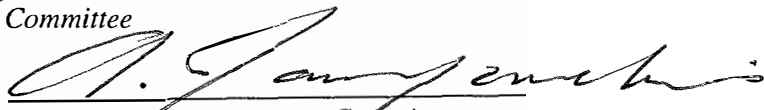
35 (d) The payment of refunds or issuance of credits to a
36 taxpayer pursuant to this section shall constitute a complete and
37 final settlement of all of the taxpayer's claims which are based
38 upon the unconstitutional tax for which the refunds are paid or
39 the credits issued. No cause of action or liability, whether for
40 damages, attorney's fees, costs or of any other nature, shall
41 arise against the commissioner or against his or her agents for
42 administering or litigating the constitutionality of a tax subse-
43 quently determined to be unconstitutional.

§33-43-15. Taxes collected on behalf of the commissioner.

1 When a person is required to collect a tax or surcharge from
2 another and remit the amount thus collected to the commis-
3 sioner, the moneys collected are considered to be held by that
4 person in trust for the state of West Virginia. With respect to
5 the filing of returns, assessments and interest, taxes that are
6 collected by a person to be remitted to the commissioner are
7 treated as would a tax paid directly by that person to the
8 commissioner. The person collecting the tax shall return to the
9 policyholder or person paying the tax or surcharge any refund
10 made for overpayment of the amount collected.

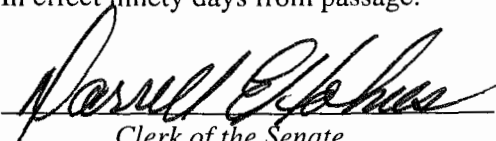
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

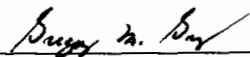

Chairman Senate Committee

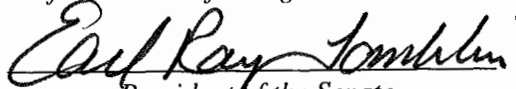

Chairman House Committee

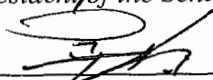
Originating in the House.

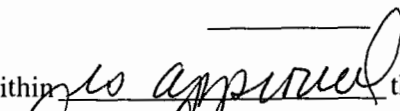
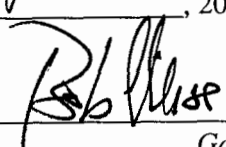
In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  is approved this the 30th
day of April, 2001.

Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:15 pm