State Tax Department
of West Virginia
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

March 9, 1984

Emergency

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

The State Tax Department filed emergency legislative rules relating to the West Virginia Personal Income Tax in the State Register on September 14, 1983.

In accordance with the provisions of W. Va. Code § 29A-3-15(b) [1983], we are today filing notice of extension of these emergency legislative rules for an additional period of 180 days.

Very truly yours,

Herschel H. Rose III
State Tax Commissioner

HHR/dse

Attachment: Notice of Extension

Obsolete

Valid March 9, 1984
to June 13, 1985

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE March 9, 1984
Administrative Law Division

State Tax Department
Leg. Reg. 11-10
Series XXI
Amended 1983

Sections 55
56
56a

Emergency

State Tax Department of West Virginia

Charleston 25305

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3/9/84
Administrative Law Division

NOTICE OF EXTENSION

OF

EMERGENCY LEGISLATIVE RULE

On September 14, 1983, this Office filed in the State Register emergency legislative rules for the West Virginia Personal Income Tax, relating to the filing of declarations of estimated tax, paying tax in installment payments and imposing of interest and additions to tax for failure to comply with the law and these emergency legislative rules.

Under W. Va. Code § 29A-3-15(a) [1983], these emergency legislative rules are effective for the period beginning September 14, 1983 and ending March 11, 1984.

By filing this notice of extension in the State Register on or before March 11, 1984, the effective period of these emergency legislative rules is extended for an additional period of 180 days. W. Va. Code § 29A-3-15(b) [1983].

Given under my hand this 9th day of March, 1984.

Herschel H. Rose III
State Tax Commissioner

HHR/dse

State Tax Department of West Virginia

Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

September 14, 1983

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit two (2) copies of Emergency Legislative Rules and Regulations promulgated by this Department relating to the filing of declarations of estimated tax and paying such in one or more installment payments as required by W. Va. Code §§ 11-21-55 and 11-21-56.

As required by W. Va. Code § 29A-3-15 (1982) fifteen (15) copies of these emergency rules and regulations will forthwith be delivered to the Legislative Rule Making Review Committee.

These emergency regulations take effect on September 14, 1983.

Very truly yours,

Herschel H Rose III

Herschel H. Rose III
State Tax Commissioner

HHR/dse

cc: Honorable Robert R. Nelson
Honorable Robert C. Chambers

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Sept. 14, 1983
Administrative Law Division

STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Herschel H. Rose, III, Commissioner
Title or Position

Tax
Department or Division, hereby submit to record in the State Register on 8 1/2 x 11" paper two (2) copies of

(x) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

( ) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

(x) findings and determinations; Statement of Emergency

(x) rules and regulations; or

(x) other - specify (LEGISLATIVE(x) PROCEDURAL ( ) INTERPRETIVE ( ) RUL

This filing pertains to

Chapter	11
Article	10
Series	XXI
Section	55, 56, and 56a
Page No.	171 to 187

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9/14/83
Administrative Law Division
9/14/83

( ) proposed rules and regulations are required to go to legislative Rule Making Committee;

( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

September 14, 1983
Date Submitted

Herschel H Rose III

TEMPORARY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
Series XXI
(1983)

Subject: Personal Income Tax -- Rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions will not be imposed.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9/14/83
Administrative Law Division

September 14, 1983

Effective: September 14, 1983

TABLE OF CONTENTS

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9/14/83
Administrative Law Division

STATEMENT OF EMERGENCY

Whereas Committee Substitute for Senate Bill No. 310 passed during the 1983 Regular Session of the West Virginia Legislature on March 12, 1983, made numerous changes in the West Virginia Personal Income Tax Act effective April 1, 1983. More particularly W. Va. Code §§ 11-21-3, 11-21-4c, 11-21-4d, 11-21-4e, 11-21-16, and 11-21-71 were amended relating to imposition of tax, rates of tax, personal exemptions and employer withholding.

Whereas, Committee Substitute for Senate Bill No. 310 substantially increased certain tax rates effective April 1, 1983, temporarily imposed a 12% surtax on West Virginia taxable incomes of more than $10,000 in the case of individuals and heads of households, and more than $20,000 in the case of individuals filing joint returns, for the period April 1, 1983 through June 30, 1985, and imposed a State minimum tax on tax preferance income which is a percentage of federal minimum or alternative minimum tax. The effect of these changes is varying from none in the lower income brackets to substantial in the highest income brackets.

Whereas, the code provisions requiring the filing of declarations of estimated tax and remittance of such tax in one or more installment payments have been part of the West Virginia Personal Income Tax Act since its passage in 1961 (See W. Va. Code §§ 11-21-55 and 11-21-56), and have not been amended, individuals have by and large ignored their statutory duty to file declarations of estimated tax and remit the same in one or more installment payments.

Whereas, the Tax Commissioner determined that the effect of these changes is not widely known and understood and will vary from taxpayer to taxpayer and that a very real potential exists for individuals, including wage earners in certain circumstances, to owe larger balances due with their 1983 annual returns due April 16, 1984 (the 15th being a Sunday), then they are prepared to pay.

Whereas, the Tax Commissioner is empowered by the provisions of W. Va. Code § 11-21-57(a) "to grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration...on such terms and conditions as he may require."

Whereas, the Tax Commissioner determined in May, 1983, that more than 30,000 individuals may be required to file declarations of estimated tax for the 1983 taxable year, but have not done so.

Whereas, the Tax Commissioner granted to all such individuals an extension of time until September 15, 1983, to file declarations of 1983 estimated tax reflecting, as appropriate, those changes in the West Virginia Personal Income Tax Act made by Committee Substitute for Senate Bill No. 310 on the condition that: (1) fifty percent (50%) of the estimated tax liability not prepaid through West Virginia employer withholding be remitted with the declaration and that the remaining fifty percent (50%) be remitted on or before Janaury 15, 1984; (2) at least eighty percent (80%) of the taxpayer's liability for 1983 taxes as shown on his or her annual return be prepaid in the manner stated above; and (3) that the interest and additions to tax provisions of W. Va. Code §§ 11-10-17 and 11-10-18 shall apply in the case of: (A) any failure to file a declaration of estimated tax when required by law or by regulations of the Tax Commissioner on or before the last day prescribed for filing (determined with regard to extensions of time); (B) any failure to accurately estimate the amount of estimated income tax for the taxable year in accordance with rules and regulations of the Tax Commissioner; and (C) any failure to timely pay any installment of estimated tax, or portion thereof, on or before its due date as prescribed by law or these regulations (determined with regard to extensions of time).

Whereas, the Tax Commissioner determined that West Virginia residents, if possible, should increase withholding on wages and salaries earned in West Virginia so that the filing of declarations of estimated tax and its remittance in one or more installment payments is not necessary.

Whereas, the Tax Commissioner determined that no taxpayer who remitted two hundred dollars or less with his or her annual return should be required to file a declaration of estimated tax.

Whereas, the Tax Commissioner determined that whenever a taxpayer remitted at least eighty percent (80%) of his or her estimated tax liability on 1983 West Virginia taxable income through employer withholding on salary and wages that taxpayer should not be required to file a declaration of estimated tax for that taxable year.

Whereas, the Tax Commissioner determined that W. Va. Code § 11-21-55 requires taxpayers to accurately estimate their tax liability for the taxable year, he further determined that guidelines and standards should be developed to assist taxpayers in estimating their tax liability and remitting such estimated tax in one or more installment payments as required by law and these regulations.

Whereas, the Tax Commissioner determined that the interest and additions to tax provisons of W. Va. Code §§ 11-10-17 and 11-10-18 should apply to any failure to file a declaration of estimated tax or remit such tax in installment payments as required by law and these regulations.

Whereas, without promulgation of these emergency regulations:

> (1) Individuals will continue to ignore their statutory duty to file declarations of estimated tax and prepay such tax in one or more installment payments.
>
> (2) In equity will be perpetuated between persons whoes primary source of income is wages subject to employer withholding and all other individuals with income not subject to withholding who fail to file declarations of

estimated tax and prepay such tax in one or more installment payments.

(3) Mathematical increases in the amount of tax due for 1983, particularly in the case of two income families, individuals with more than one job and persons with income not subject to withholding, will result in more people owing balances due with their 1983 annual return that are larger than they experience in preceding years and for which they may not be prepared to pay unless they are required to file declarations of estimated tax and prepay such tax in one or more installment payments or to increase employer withholding, or a combination thereof.

(4) The State will unnecessarily forego collection and use of its tax revenue until at least April of 1984 or later (for taxes not remitted), rather than at the time it is lawfully due, resulting in the loss of investment income.

Whereas, the Tax Commissioner determined that an emergency exists requiring the immediate promulgation of regulations on this subject in order to comply with time limitations (effective dates) established by the West Virginia Code, and to prevent substantial harm to the public interest.

Wherefore, the Tax Commissioner determined that it was and in the best interest of taxpayers and this State for the following emergency regulations to be filed in the State Register in order that the procedures and provisions contained therein become effective immediately upon filing, as provided in W. Va. Code § 29A-3-15, so that the Tax Commissioner may utilize them to educate taxpayers and concerning their duty under the law and to determine delinquent taxpayers and assess them with interest and monetary penalties (additions to tax) for their failure to comply with the law.

State Tax Department
Leg. Reg. 11-10
Series XXI
Amended 1983

TEMPORARY
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
Series XXI
(1983)
(Filed September 14, 1983)

Subject: Personal Income Tax -- Rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions will not be imposed.

Section 1. General.

1.01. Type of Regulations. -- These are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

1.02. Scope. -- These emergency legislative regulations provide rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions to tax will not be imposed.

1.03. Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-10-5(a) and 29A-3-15.

1.04. Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on September 14, 1983.

(a) Amendments are made in Section 55 which was refiled in the State Register on Decmeber 29, 1982.

(b) Amendments are made in Section 56 which was refiled in the State Register on December 29, 1982.

(c) Section 56a is new.

1.05. Effective Date. -- These emergency legislative regulations became effective on September 14, 1983.

1.06. Citation. -- These regulations may be cited as:

Emergency W. Va. Leg. Reg. (PIT) 11-10,
Ser. XXI §____________, page ________
(effective September 14, 1983)

1.07. Underscoring indicates language that is new. Strike throughs indicate language that is being superceded. Section 56a is new. Therefore, underscoring has been omitted.

Section 55. Declarations of Estimated Tax.

55.01 Requirement of Declaration.

(a) In General. -- ~~If an individual's West Virginia adjusted gross income not subject to withholding can be reasonably expected to exceed four hundred dollars plus the sum of his personal exemptions, he shall make a declaration of estimated tax for the taxable year. The declaration of estimated tax shall be made whether the individual is a resident or nonresident.~~

(1) Every resident and nonresident individual whose West Virginia adjusted gross income (other than from wages on which the proper amount of tax is withheld under W. Va. Code § 11-21-71) can reasonably be expected to exceed four hundred dollars ($400) shall make and file a West Virginia declaration of estimated tax for the taxable year unless:

(A) The estimated tax otherwise due in installment payments is remitted through additional withholding by the employer from the employee's wages during the taxable year; or

(B) Withholding satisfies at least eighty percent (80%) of the annual tax liability, or the amount not satisfied by withholding is less than two hundred dollars ($200).

(2) If an individual receives income from wages subject to West Virginia withholding and other income, the total of his or her allowable exemptions can be counted only one time for purposes of determining the amount of withholding taxes and estimating the tax due on other income. In other words, the amount of West Virginia personal income taxes owed for the taxable year (determined before application of credit for employer withholding) must be prepaid either by employer withholding, installment payments, or a combination of both. Taxpayers are encouraged to increase the amount withheld from wages under W. Va. Code § 11-21-71 whenever practicable in order to satisfy this requirement in lieu of filing declaration of estimated tax and remitting quarterly installment payments.

(A) W. Va. Personal Exemptions. The West Virginia personal exemption of resident and nonresident individuals, allowed by W. Va. Code § 11-21-36, is as follows:

(1) For any taxable year beginning

prior to January 1, 1983, the West Virginia personal exemption is six hundred dollars ($600) for each exemption for which the taxpayer is allowed a federal exemption for the taxable year.

(2) For a taxable year beginning after December 31, 1982, but before January 1, 1984, the West Virginia personal exemption is increased to seven hundred dollars ($700).

(3) For any taxable year beginning after December 31, 1983, the West Virginia personal exemption is increased to eight hundred dollars ($800), until amended by the Legislature.

(B) Whether or not a taxpayer is required to file a federal declaration of estimated tax for the taxable year or remit installment payments of estimated federal income tax is not relevant to determining whether or not the taxpayer is required to file a West Virginia declaration of estimated tax for the taxable year.

(b) Examples. -- Application of the provisions of Section 55.01 may be illustrated by the following examples. Applicability of safety zones is not considered in any of these examples. See Section 56a.05 for discussion of safety zones.

Example(1). -- X, a taxpayer making his return on the calendar year basis, is married and has two dependent children. X is sole proprietor of a retail business which is his only source of income. X can reasonably ~~expects~~ expect to realize ~~$5,000~~ $25,000 from the business during 1983, based on prior year's earnings. Therefore, X is required to make a declaration of estimated tax, for his income can be reasonably expected to exceed the sum of his personal exemptions plus four hundred dollars ~~($2,800)~~ ($700 x 4) + $400 = $3,200 for 1983.

Example (2). -- Y is a cash basis taxpayer with three exemptions including himself. Y is employed and expects to receive ~~$3,000~~ $23,000 subject to withholding during calendar year 1983. Also, Y expects to receive ~~$2,000~~ ($12,00) of income during the taxable year from the practice of a profession on his own account. Y is required to file a West Virginia declaration of estimated tax, for Y's ~~wages~~ ~~($2,000)~~ income ($12,000) not subject to withholding ~~do~~ exceeds four hundred dollars. The sum of his personal exemptions ~~($2,200)~~ ($700 X 3 = $2,100) was considered in determining the amount withheld from his wages for the 1983 taxable year. Alternatively, Y could increase the amount being withheld for West Virginia personal income taxes by his employer. If the amount of estimated tax due on Y's other income is remitted through additional withholding, Y will not be required to file a declaration of estimated tax and make quarterly installment payments.

Example (3). -- P is a taxpayer making his return on a calendar year basis. P is engaged in the practice of his profession as a sole practitioner and has West Virginia adjusted gross income of $2,000 from his practice for each month in the first quarter of 1983. He can reasonably expect that his West Virginia adjusted gross income from his profession will continue to average $2,000 for each month throughout the year, and that he will not have income from any other source during 1983.

Since P's gross income is not subject to withholding, he is required to file a declaration of estimated tax for that year, on or before April 15, 1983. Since P's West Virginia adjusted gross income from sources other than wages subject to withholding exceeds $1,100 (personal exemption plus $400), and he can reasonably expect his tax for the year to be in excess of $200, P is required to file a declaration of estimated tax for the 1983 tax year on or before April 15, 1983, and make quarterly installment payments.

Example (4). -- S, a married taxpayer, has been regularly employed for many years. As of January 1, 1983, his salary was $16,000 per year. S also owns stocks and other investments which he inherited when his father died in 1980, and which pays S approximately $3,000 a year. Since his West Virginia adjusted gross income not subject to withholding taxes exceeds $400, and the sum of his personal exemptions ($700 x 2 = $1,400) was considered in determining employer withholding taxes, S is required to file a declaration of estimated tax for calendar year 1983 by April 15, 1983, unless the amount of tax remitted with his 1983 annual return will be $200 or less. Alternatively, S can avoid filing a declaration of estimated tax by increasing the amount being withheld for West Virginia personal income taxes by his employer in order to pay the amount of estimated tax that otherwise would be due in installment payments.

Example (5). -- T, a married person, lives in Jefferson County, West Virginia but works in Pennsylvania at an annual salary of $20,000. Pursuant to West Virginia's reciprocal exchange agreement with Pennsylvania, T's salary is exempt from Pennsylvania income tax and taxable by West Virginia. T's employer does not withhold West Virginia taxes from T's biweekly paycheck. Since T's West Virginia adjusted gross income is from salary not subject to West Virginia withholding, and will be in excess of $1,800 ($700 x 2 + $400) for calendar year 1983, he is required to file a declaration of estimated tax on or before April 15, 1983, unless T's tax liability will be $200 or less.

Example (6). -- H is a married individual with three dependent children. H is employed at an annual salary of $18,000. His spouse, W, is employed at an annual salary of $16,000. Both salaries are subject to this State's withholding taxes, which are based on joint return rates. They have additional income of $15,000 from investments. H and W will file a joint personal income tax return for calendar year 1983. Since the amount of West Virginia adjusted gross income from sources not subject to withholding taxes is in excess of $400 and the estimated tax thereon exceeds $200, a declaration of estimated tax is required for the 1983 calendar year. Additionally, this declaration must reflect the additional taxes due on their salary income due to the higher primary tax rate on their combined West Virginia taxable incomes and the temporary surtax imposed on West Virginia taxable income in excess of $20,000 (based on the filing of a joint return.) Alternatively, and in lieu of filing a declaration estimated tax, H & W can adjust the amount of West Virginia personal income taxes being withheld by their employers so that the required amount of tax is prepaid.

Example (7). -- Same fact as in example (6). However, in July 20, 1983, W is the grand prize winner in a contest sponsored by a national magazine. The prize is an initial $5,000 plus $1,000 each month for the rest of W's life. An amended declaration of estimated tax must be filed by W (or a joint amended declaration by H and W) on or before September 15, 1983.

(c) Exemption of Spouse. -- For the purpose of determining whether a declaration of estimated tax is required under the provisions of paragraph (a) of this subsection, a married taxpayer filing a separate declaration may not take into account the exemption of his spouse, if his spouse has, or is reasonably expected to have, West Virginia adjusted gross income, or is reasonably expected to be the dependent of another taxpayer for the taxable year.

(d) Income of Child. -- In estimating the amount of West Virginia adjusted gross income for the taxable year, a parent should not include the income of his or her minor child. Such income is not includible in the gross income of the parent. See I.R.C. § 73 and Treas. Reg. § 1.73-1.

~~(b)~~ (e) Partnerships~~, trusts and estates~~. -- A partnership is not subject to tax under the West Virginia Personal Income Tax Act. See W. Va. Code § 11-21-3(b). However, partners ~~and beneficiaries~~ must file declarations of estimated income tax in their individual capacity, taking into consideration their estimated distributive shares of income from the partnership, ~~trusts or estates~~.

(f) Estates and Trusts. -- An estate or trust is generally taxed as an individual. However, it is not required to file a declaration of estimated tax, or remit estimated tax in installment payments during the taxable year. Beneficiaries of estates and trusts must file declarations of estimated tax in their individual capacities and must taken into consideration their estimated distributive shares of income from estates and trusts.

~~(e)~~ (g) Death of Taxpayer. -- No declaration of estimated income tax is required to be filed subsequent to the date of his or her death. However, a short year tax return may need to be filed and interest and additions to tax may be due for any failure of the decedent to (1) timely file a declaration of estimated tax required by W. Va. Code § 11-21-55; (2) to timely pay any installment of estimated tax required by W. Va. Code § 11-21-56; or (3) to properly estimate his or her tax. See Section 56.03 of these regulations relative to the making of an amended declaration by a surviving spouse if a joint declaration had been made before the death of the decedent.

~~(d)~~ (h) Fiscal Year Taxpayers. -- The provisons of this regulation are equally applicable to fiscal year taxpayers. See Section 55.10.

(i) Declaration for Taxable Year of 52-53 Weeks. -- No declaration may be made for a period of more than 12 months. For purposes of this subsection, a taxable year of 52 or 53 weeks, in the case of a taxpayer who computes his or her taxable income for federal income tax purposes in accordance with the election permitted by 26 U.S.C. § 441(f) shall be deemed a period of 12 months. A separate declaration for a fractional part of a year is required where the taxpayer has a short taxable year for federal income tax purposes.

(j) When Preceding Year Was A Loss Year.

(1) In General. -- If an individual had zero or negative West Virginia taxable income for the preceding taxable year, a declaration of estimated tax is not required to be filed for the current taxable year until such time as the individual can reasonably estimate that his or her West Virginia adjusted gross income for the current tax year will exceed the amount of his or her allowable exemptions plus $400 unless the zero or negative West Virginia taxable income in the preceding taxable year was due

to:

(A) the carry forward of a loss from a preceding taxable year unless the loss will also be carried forward to the current taxable year with like effect; or

(B) unusual events or occurances not reasonably expected to effect the current taxable year with like effect.

(2) Notwithstanding the provisions of paragraph (1), above, a declaration of estimated tax is required for the current taxable year if the amount remitted or that should be remitted with the annual return for that year is:

(A) $200 or less; or

(B) Twenty percent (20%) or less of the tax liability for the taxable year (determined before application of any credits for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax.

55.02 Contents of Declaration.

(a) In General.

(1) The declaration of estimated tax by an individual shall be made on Form 140-ES.

(2) For the purpose of making the declaration, the amount of West Virginia adjusted gross income which the taxpayer can reasonably be expected to receive or accrue, depending upon the method of accounting upon which his or her taxable income is computed, and the sum of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated income tax shall be determined upon the basis of the facts and circumstances existing at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for filing his or her declaration at a given wage or salary, it should, in the absence of circumstances indicating the contrary, be presumed by him or her for purposes of the declaration that such employment will continue to the end of the taxable year at the wage or salary received by him or her as of such date. In the

case of income other than wages and salary, the expected regularity with regard to the payment of income, such as dividends, interest, rents, royalties, and estate and trust distributions, it is ~~to be taken into consideration.~~ the responsibility of the taxpayer to estimate correctly or comply with provisions of these regulations allowing the timely filing of an annual return to be accepted as a declaration of estimated tax. ~~Thus, if the taxpayer owns shares of stock in a corporation and dividends have been paid regularly for several years upon such stock, the taxpayer in the preparation of his declaration should, in the absence of information indicating a change in the dividend policy, include the prospective dividends from the corporation for the taxable year as well as those actually received in such year prior to the filing of the declaration.~~ In the case of a taxpayer engaged in a trade, business or profession on his own account, there shall be made an estimate of gross income, deductions and credits in the light of the best available information affecting the trade, business and profession.

(3) In determining whether or when the filing

of a declaration of estimated tax is required by law and these regulations, and in determining the amount of estimated tax, the burden is on the taxpayer to show he or she complied with the law and these regulations. If upon filing of the annual return more than twenty percent (20%) of the taxpayer's liability is remitted, or should have been remitted, with the return it will be presumed that there was noncompliance. Similarly, a taxpayer's total West Virginia personal income tax liability for the taxable year, as shown on his or her annual return for that year, will be divided by five (5) to determine whether tax was timely remitted in equal installment payments in compliance with the law and these regulations.

(b) Computation of Estimated Tax. -- In computing the amount of estimated tax, the taxpayer should take into account the following:

(1) The amount estimated to be the primary tax imposed by W. Va. Code § 11-21-3(a)(1) for the taxable year on the West Virginia taxable income of every individual, whether resident or nonresident, after application of any allowable amounts estimated as:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax of another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40, and

(E) Credit for overpayments of State personal income tax.

No consideration shall be given at this point in the computation to the credit under W. Va. Code § 11-21-73 for tax withheld on wages.

(2) The amount estimated to be the temporary surtax imposed by W. Va. Code § 11-21-3(a)(2) for the taxable year, on the amount estimated in subparagraph (1), above, to be the gross primary tax for the taxable year (determined prior to and without regard to any credits reducing the gross primary tax).

(3) The amount estimated to be the minimum tax imposed by W. Va. Code § 11-21-3(a)(3) for the taxable year. The West Virginia minimum tax is twenty-five percent of the taxpayer's federal minimum or alternative minimum tax for the taxable year minus the sum of paragraphs (1) and (2).

(4) The amounts estimated by the taxpayer as the credits under W. Va. Code § 11-21-73 for tax with-

held on wages.

(5) The excess, if any, of the sum of the amounts shown under subparagraphs (1), (2) and (3) of this paragraph over the amount shown under subparagraph (4) of this paragraph, which excess shall be the amount of estimated tax for the taxable year.

(c) Use of Prescribed Form. -- Copies of Form 140-ES will, so far as possible, be furnished to taxpayer by the Tax Commissioner. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished to him or her. Taxpayers not supplied with the proper form should make application therefor to the Director of Personal Income Tax Division in ample time to have their declarations prepared, verified, and filed with the Tax Commissioner on or before the date prescribed for filing the declaration. If the prescribed form is not available, a statement disclosing the amount estimated as the tax, the estimated credits, and the estimated tax after deducting such credits should be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form.

~~55.02.~~ 55.03. Definition of Estimated Tax.

(a) In General. -- In the case of an individual, the term "estimated tax" means:

(1) The amount which an individual estimates to be his or her West Virginia primary income tax liability for the taxable year (determined before any credits) in accordance with subsection 55.01 of this regulation, plus

(2) The amount which an individual estimates to be his West Virginia surtax for the taxable year, plus

(3) The amount estimated to be the minimum income tax liability for the taxable year, less

(4) The amount which he or she estimates to be the sum of any credits allowable against the West Virginia income tax, including but not limited to:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax as paid another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40,

(E) Credit for West Virginia income withheld from wages under W. Va. Code § 11-21-71, and

(F) Credit for overpayment of State personal income tax.

(b) Example. -- The application of the provisions of this subsection may be illustrated by the following examples. Applicability of any safety zones is not considered in these examples. See Section 56a.05 for discussion of safety zones.

Example (1). -- B is a taxpayer with two exemptions including himself. He is a salaried employee of a corporation at an annual salary of ~~$6,000~~ $16,000, and West Virginia income tax is withheld from his salary. B expects ~~$50~~ $314.86 to be withheld from his wages during the taxable year ~~1963~~ 1983. B is also a partner in the XY Partnership. B expects, based on prior year's earnings, that his distributive share of partnership profits will be $5,000. The business and occupation tax is imposed against the partnership; therefore, B can reasonably anticipate a business and occupation tax credit of $50.00 against his West Virginia income tax. B will complete a West Virginia declaration of estimated tax similar to the following:

WEST VIRGINIA ESTIMATED TAX COMPUTATION SCHEDULE

1.	Enter total amount of income expected in current year	$21,000.00
2.	Itemized deductions or standard deduction	1,000.00
3.	Subtract line 2 from line 1	$20,000.00
4.	Enter your exemptions ($700.00 for each exemption)	1,400.00
5.	Subtract line 4 from line 3. This is your WV taxable income ...	$18,600.00
6.	Tax on amount of line 5. See tax rate schedule	507.00
*7.	Surtax is 9% of your tax liability	-0-
8.	Add line 6 to line 7. This is your WV tax liability	$ 507.03
9.	Tax expected to be withheld from wages and other credits	364.86
10.	Subtract line 9 from line 8. This is your WV estimated tax	$ 142.14

*Surtax is 9% of your tax liability beginning with taxable income in excess of 10,000 for single and unmarried heads of household and taxable income in excess of 20,000 for joint returns.

Example (2). -- B, a self employed individual, estimates that his liability for income tax for 1983 will be $1,600. B is required to make and file a declaration of estimated tax for 1983 and pay tax in four equal installments. The declaration and first installment of $400 are due on April 15, 1983. The second, third and fourth installments are due on June 15, 1983, September 15, 1983 and January 15, 1984 respectively.

Example (3). -- B, a self employed individual, estimates that his liability for income tax for 1983 will be $1,600. B files a declaration of estimated tax for 1983 on April 15, 1983. B pays four installments of $400 on or before the following dates: Apirl 15, 1983; June 15, 1983; September 15, 1983; and January 15, 1984. B's actual West Virginia tax liability for 1983 is $1,900. B does not fall within the $200 safety zone. However, since B preparid in installment payments at least 80% of his 1983 tax liability, he will not penalized for under estimating. ($1,900 X 80% = $1,520 X 1/4 = $380)

B falls within the 80% safety zone since he prepaid in quarterly installments of $400 each. Therefore, no additions to tax or interest is due on the amount of tax paid with B's annual return filed April 15, 1984.

Example (4). -- C, a self employed individual, estimates that his liability for West Virginia personal income tax for 1983 will be $1,200. C files a declaration of estimated tax for 1983 on April 15, 1983. C also pays four installments of $300 each. However, C's actual West Virginia tax liability for 1983 is $1,600. Since C did not prepay at least 80% of his tax liability, interest and additions to tax will be due on the amount remitted with his annual return on April 15, 1984.

(1)	Total tax due for the year	$1,600
(2)	80% of (1)	$1,280
(3)	(2) ÷ number of installments	$ 320
(4)	The quarterly underpayment is the excess of (3) over the actual amount paid or credited toward that installment. ($320 - 300 = $20 each installment X 4 = $80)	

Therefore, C can be assessed penalty and interest for underpayment of estimated tax. ($1,600 X 80% = $1,280 x 1/4 = $320) Interest and additions to tax are calculated base on the date the tax should have been remitted. In this example only $300 was paid each quarter instead of the $320 that was actually due, and the balance due with the annual return was more than both $200 and 20% of his total tax for the year.

~~55.03.~~ 55.04. Joint Declaration of Husband and Wife.

(a) In General. -- A husband and wife may make a joint declaration of estimated income tax as if they are one taxpayer, even though they are not living together, except as provided in paragraph (b). A joint declaration may be made even though one spouse is expected to have no income during the taxable year. If a husband and wife make a joint declaration, their liability with respect to the estimated tax shall be joint and several.

(b) Exceptions. -- ~~However, no~~ A joint declaration of estimated income tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. Also, joint declaration of estimated tax may not be filed if the husband and wife do not have the same residence status unless both elect to determine their joint West Virginia taxable incomes as if both were residents. See W. Va. Code § 11-21-11(b)(3).

(c) Application to Separate Returns. -- ~~If~~ The fact that a joint declaration of estimated income tax is made by a husband and wife ~~but they elect~~ will not preclude them from electing to determine their West Virginia income taxes ~~separately~~ on separate returns. In case a joint declaration is made but a joint return is not made for the same taxable year, the installment payments of ~~the~~ estimated tax for such year may be treated as payments on account of the tax liability of either the husband or wife for the taxable year or may be divided between them in ~~any~~ such manner as they may ~~so elect one~~ agree. One spouse may claim the entire amount of estimated tax paid during the year. If the husband and wife do file separate returns, the spouse claiming the estimated tax paid, or each spouse if each claims a portion of the estimated tax paid, must make a notation on his or her West Virginia income tax return to the effect that the estimated tax paid was by was of a joint delcaration. In the event the husband and wife fail to agree to a division, such payments shall be allowed between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the taxpayer bears to the sum of the taxes imposed by § 11-21-3 shown on the separate returns of both the taxpayer and his or her spouse.

For example, assume that for calendar year 1982 H and his spouse W make a joint return of estimated tax and pursuant thereto, pay a total of $900 of estimated tax. H and W subsequently file separate returns for 1982 showing tax imposed by W. Va. Code § 11-21-3 in the amount of $548 and $450 respectively. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is computed as follows:

(1) Amount of tax imposed by W. Va. Code § 11-21-3 as shown on H's return....... $548

(2) Total taxes imposed by W. Va. Code § 11-21-3 as shown on W's return........$450

(3) Total taxes imposed as shown on both H's and W's returns....................$998

(4) Proportion of taxes on H's return to the total amount of taxes shown on both returns. ($548 ÷ 998).............54.90%

(5) Amount of estimated tax payments allocated to H.........................$494.10

Accordingly, H's return would show remaining tax liability in the amount of $53.90 ($548 taxes shown less than $494.10 estimated tax allocated.)

(d) Death of Spouse.

(1) A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the decease

spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of tax imposed by W. Va. Code § 11-21-3 on his and his spouse's taxable income on an aggregate basis and compute his estimated tax in the same matter as though a joint declaration had been filed.

(2) If a joint declaration is made by a husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of the joint declaration are required from of the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the separate estimated tax for the taxable year is made by the surviving spouse. Such separate estimated tax shall be paid at the times and in the amounts determined under the rules prescribed in Section 56 of these regulations. For the

purposes of making the amended declaration by the surviving spouse, and for the allocation of payments made pursuant to a joint declaration between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payments made pursuant to the joint declaration may be divided between the decedent and the surviving spouse in such porportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the surviving spouse bears to the sum of the taxes imposed by W. Va. Code § 11-21-3 shown on the separate returns of the surviving spouse and of the decedent; and the balance of such of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (c) of this subsection and the decedent in this rule to W in that example.

(e) Signing of Joint Declaration. -- A joint declaration of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of Section 55.12, relating to returns made by agents, shall apply where one spouse signs a declaration as agent for the other or where a third party signs a declaration as agent for both spouses.

~~55.04.~~ 55.05. Time for Filing Declaration.

(a) In General. -- A declaration of estimated income tax of an individual, other than a farmer, shall be filed on or before April 15th of the taxable year, except that if the requirements of subsection 55.01 are first met:

~~(a)~~ (1) After April 1st and before June 2nd of the taxable year, the declaration shall be filed on or before June 15th, or

~~(b)~~ (2) After June 1st and before September 2nd of the taxable year, the declaration shall be filed on or before September 15th, or

~~(c)~~ (3) After September 1st of the taxable year, the declaration shall be filed on or before January 15th of the succeeding year.

(b) Exceptions. -- A declaration of estimated tax need not be filed for the taxable year if:

(1) At least eighty percent (80%) of the annual tax liability is satisfied by withholding; or

(2) The amount of taxes due for the taxable year that will be remitted (or should be remitted) with the annual return is two hundred dollars ($200) or less.

See Section 55.07.

(c) Optional Rule for Farmers. See Section 55.06 of this section.

(d) Fiscal Year Taxpayers. -- An individual's tax year for purposes of this tax shall be the same as his or her taxable year for federal income tax purposes. See W. Va. Code § 11-21-6(a). Fiscal year taxpayers, except farmers, shall file declarations of estimated tax in accordance with Section 55.10 of this section.

~~55.05~~ 55.06. Declarations of Estimated Tax by Farmers.

(a) In General.

(1) In the case of an individual on a calendar year basis, if ~~an~~ that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income from farming, he or she may file a declaration of estimated income tax at any time on or before January 15th of the succeeding year in lieu of the time for filing set forth in W. Va. Code § 11-21-55(d).

~~(b)~~ (2) "Farming" Defined. -- Income is attributable to farming if it is obtained from cultivation of the soil, the raising or harvesting of any agricultural or horticultural commodities, the raising, etc., of livestock, bees, poultry, fur-bearing animals, or wildlife. In other words, the requisite percentage of West Virginia adjusted gross income must be derived from the operation of a stock, dairy, poultry, fruit or truck farm. If an individual receives for the use of his or her land income in the form of a share of the crops produced thereon, such income is from farming.

(b) Fiscal Year. -- In the case of an individual on a fiscal year basis, if that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income from farming, he or she may file a declaration of estimated income tax at any time on or before the 15th of the 1st month of the succeeding year.

(c) Joint Return. --If a joint declaration of estimated tax will be filed by a husband and wife, at least two-thirds of their combined estimated West Virginia adjusted gross income must be from farming before that declaration may be filed under paragraph (a) or (b). Otherwise, the rules of Section 55.05 of this section shall be followed.

~~55-06-~~ 55.07 Automatic Extension of Time for Filing Declarations of Estimated Tax.

(a) In General. -- If an individual determines that his or her estimated income tax, as defined in Section 55.03, for the taxable year is ~~$40~~ two hundred dollars ($200) or less, or that the amount of tax to be remitted with his or her annual return for the taxable year will be twenty percent (20%) or less of the amount of tax shown (or that should have been shown) to be due on the annual return for the taxable year determined before application of credits for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax, whichever is greater, he or she ~~may file a declaration of estimated tax at any time on or before January 15~~ is only required to file an annual return for the taxable year and pay the amount of tax shown thereon to be due, on or before April 15th of the succeeding tax year. For this purpose, all eligible taxpayers are granted an automatic extension of time from the date when the declaration of estimated tax and installment payments would otherwise be lawfully due until April 15th of the next tax year. See W. Va. Code §§ 11-21-55 and 11-21-57.

(1) A husband and wife who file a joint declaration of estimated tax or a joint annual return are treated as one individual for pur-

poses of paragraph (a).

(2) An individual with estimated tax in excess of $40 would in the absence of paragraph (a) be required to file his or her declaration of estimated tax a provided in Section 55.05.

(3) An individual with estimated tax of $40 or less would in the absence of paragraph (a) be required to file his or her declaration of estimated tax on or before January 15th of the succeeding tax year. W. Va.Code § 11-21-55(h).

(b) Interest and Additions to Tax.

(1) If the amount remitted with the annual return is two hundred dollars ($200) or less, or if one of the safety zones applies (See Section 56a.05) no interest or additions will begin to accrue on the amount due until April 16th of the succeeding tax year (16th day of the 4th month of the succeeding tax year).

(2) If the amount remitted with the annual return exceeds two hundred dollars ($200) and if none of the safety zones apply (See Section 56a.), interest and additions shall be imposed and shall be calculated from the date when the declaration of estimated tax and the first installment pay-

ment should have been remitted. Interest and additions to tax shall similarly be applied to any subsequent installment payments that should have been remitted, calculated from the date such installments should have been paid.

(3) See Sections 56a.01, 56a.03, 56.a.04 and 56a.05 for application and computation of interest and additions to tax and application of safety zones.

~~55.07.~~ 55.08. Amendment of Declaration.

(a) In General. -- In making a declaration of estimated income tax, the taxpayer is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective West Virginia adjusted gross income, allowable deductions and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the taxpayer estimates that his or her West Virginia adjusted gross income, deductions or credits will differ from the West Virginia adjusted gross income, deductions or credits reflected in the previous declaration. An amended declaration may also be made based upon a change in the number of exemptions to which the taxpayer may be entitled for the current taxable year. However, only one ~~an~~ amended declaration may be filed during the interval between ~~made only as of an~~ installment ~~date~~ dates and no further amendment may be made until a succeeding installment date. An amended declaration may be filed jointly by husband and wife even though separate declarations have previously been filed.

(b) Payments. -- Subsequent installment payments shall be proportionally increased or decreased based on the amended declaration. No refund will be issued due to the filing of an amended declaration. ~~, as c~~Consideration will be given to a refund only in connection with a completed annual return filed by a taxpayer for the taxable year covered by his or her declaration, and/or amended declaration.

(c) Time for Filing Amended Declaration. -- An amended declaration of estimated income tax may be filed ~~only~~ on or after an installment date prescribed for the taxable year. However, no amended declaration may be filed until after the original declaration has been filed, and only one amended declaration may be filed during any interval between installment due dates.

(d) Forms. --An amended declaration shall be made on Form 140-ES clearly marked "AMENDED". If the proper form is not available, the procedure outlined in subsection 55.01 must be followed.

~~55.08.~~ 55.09. Return as Declaration or Amendment.

(a) In General. --If the annual return of the taxpayer is filed as hereinafter provided, the annual return may be treated as the declaration or amended declaration of estimated tax.

(b) Time for Filing Return.

(1) Return as declaration; February 15th. If the taxpayer files his or her return for the calendar year on or before Februrary 15th of the succeeding calendar year (or if the taxpayer is on a fiscal year basis, the ~~date corresponding thereto~~ 15th day of the 2nd month) and pays therewith the full amount of the tax shown to be due on the return, then such return shall be considered as the taxpayer's declaration ~~(a)~~ if the declaration is not required to be filed during the taxable year, but is otherwise required to be filed on or before January 15th of the succeeding year (or the ~~date corresponding thereto~~ 15th day of the 1st month in the case of a fiscal year). ~~such return shall be considered as such declaration; or~~

(2) Return as amendment of declaration; January 15th. If the taxpayer files his or her return for the calendar year on or before January 15th

of the succeeding calendar year (or if on a fiscal year basis, the 15th day of the 1st month), and pays therewith the full amount of the tax shown to be due on the return, then ~~(b)~~ if a declaration was filed during the taxable year, such return shall be considered as the amendment of the declaration ~~permitted to be filed on or before January 15th of thesucceeding year (or the date corresponding thereto in the case of a fiscal year),~~ if the tax shown on the return is greater than the estimated income tax shown in the declaration.

(3) Examples.

Example (1) An individual taxpayer on the calendar year basis who, subsequent to September 1, ~~1962~~ 1982, first meets the requirements of ~~section (a)~~ subsection 55.01 of these regulations for filing a declartion of ~~1962~~ 1982, may satisfy such requirements by filing his return for ~~1962~~ 1982 on or before February 15, ~~1963~~ 1983, and paying in full at the time of such filing the tax shown thereon to be payable.

Example (2) Similarly, if a taxpayer files on or before September 15, ~~1962~~ 1982, a timely declaration for such year and on or before ~~February~~ January 15, ~~1963~~ 1983, files a ~~1962~~ 1982 return on which the tax shown is greater than the estimated income tax shown on such declaration, and pays at the time of such filing the tax shown by the return to be payable, such return shall be treated as the amended declaraton permitted to be filed on or before January 15, ~~1963~~ 1983. See also ~~sections~~ subsections 55.05 and 55.06 of these regulations regarding the time for filing a declaration of estimated tax by a farmer and by an individual having total West Virginia estimated income tax of ~~$40~~ $200 or less.

(c) Interest and Additions to Tax.

(1) Compliance with the provisions of W. Va. Code § 11-21-55(h) will enable a taxpayer to avoid paying interest and additions to tax with respect to an underpayment of the installment not required to be paid until January 15th of the succeeding calendar year.

(2) With respect to an underpayment of any earlier installment, compliance with section

11-21-55(h) will not relieve the taxpayer from the interest imposed by W. Va. Code § 11-21-16 and the additions to tax imposed by section 11-10-18. However, the period of the underpayment with respect to an earlier installment will terminate on January 15th of the succeeding calendar year.

(3) Example No. 1. --A taxpayer discovers on January 10, 1984, that he underpaid his estimated tax for the calendar year 1983. He may in lieu of filing the amended declaration on January 15, 1984, file his annual return on Janaury 15th, and pay in full the amount computed thereon as payable. By so doing he will avoid the interest and additions to tax with respect to the installment payment that was due January 15, 1984. The periods of underpayment of the installments due April 15, 1983, June 15, 1983, and September 15, 1983, will also terminate on January 15, 1984.

(4) See Section 56a.05 for application of safety zones.

~~55.09.~~ 55.10 Fiscal Year Taxpayers. -- In the case of individuals on a fiscal year basis, other than those referred to in Sections ~~55.05 and~~ 55.06 and 55.07 of this regulation, the declaration must be filed on or before the 15th day of the fourth month of the taxable year. The provisions of this section and of section 56 of these regulations shall apply to a taxable year other than a calendar year by the substitution of the corresponding fiscal year months for the calendar year months referred to in this section. See W. Va. Code § 11-21-6 relating to accounting periods and tax years.

~~55.10.~~ 55.11 Short Taxable Periods.

(a) In General. -- If a taxpayer is required to make a declaration of estimated income tax pursuant to section (a) of this regulation, and a short taxable year is involved, a separate declaration for such fractional part of the year is required, except as hereinafter noted.

(b) Income and Income Tax Placed on Annual Basis.

(1) In order to determine whether a declaration of estimated tax needs to be filed for a short taxable year, West Virginia adjusted gross income and the taxes imposed by W. Va. Code § 11-21-3 shall be placed on an annual basis in the manner prescribed in 26 U.S.C. § 443(b)(1).

(2) Example. -- A taxpayer changes from a calendar year to a fiscal year basis beginning July 1st. The taxpayer will have a short taxable year beginning January 1st, and ending June 30th. The anticipated West Virginia adjusted gross income (excluding wages on which tax is withheld) for such short taxable year is $3,000. His West Virginia adjusted gross income for the purpose of determining whether a declaration is required is $6,000, which is the amount obtained by placing the anticipated income of $3,000 upon an annual

basis ($3,000 multiplied by 12 and divided by 6).

~~(b)~~ (c) Four Months or Less. -- No declaration is required if the short taxable year is a period of less than ~~six~~ four months or the estimated tax liability for the year is $200 or less or one of the safety zones applies.

(d) Time for Filing.

(1) General. -- In the case of a short taxable year, the declaration shall be filed by individuals (other than those referred to in ~~sections~~ subsection 55.05 and 55.06 of this regulation) on or before the 15th day of the fourth month of such taxable year. If the requirements prescribed in ~~section~~ subsection 55.01 of this regulation are first met after the first day of the fourth month but before the second day of the sixth month, the declaration must be filed on or before the 15th day of the sixth month. If the requirements of subsection 55.01 are first met after the first day of the sixth month but before second day of the ninth month, the declaration must be filed on or before the 15th day of the ninth month.

(2) Short Year of More Than Six but Less Than Nine Months. -- If, however, the period for which the declaration is filed is at least six months

but less than nine months and the requirements of ~~section~~ subsection 55.01 of this regulation are not met until after the first day of the fourth month, ~~or~~ the declaration may be filed on or before the 15th day of the succeeding taxable year.

(3) Short Year of More Than Nine Months. -- If, however, the period for which the declaration is filed is for nine months or more and such requirements are not met until after the first day of the sixth month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

~~55.11.~~ 55.12. Declaration Made by Agent for Individual Under Disability.

(a) In General. -- The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority, disease, injury, or other disability may be made and filed by his or her guardian, committee, fiduciary or other person charged with care of the individual or his property (other than a receiver in possession of only a part of his property), or by his or her duly authorized agent in accordance with subsection (b).

(b) Procedure.

(1) General. -- Whenever a declaration is made by a duly authorized agent, it must be accompanied by a power of attorney (or copy thereof) authorizing the agent to represent his or her principal in making, executing, or filing the declaration. A copy of Federal Form 2848, when properly completed, is sufficient.

(2) Diasabled Spouse. -- Where one spouse is physically unable by reason of disease or injury to sign a joint declaration, the other spouse may, with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place in the declaration

followed by the words "By.............Husband (or Wife)," and by the signature of the signing spouse in his or her own right, provided that a dated statement signed by the spouse who is signing the declaration is attached to and made a part of the declaration stating:

(A) The name of the declaration being filed,

(B) The taxable year,

(C) The reason for the inability of the spouse who is incapacitated to sign the declaration and

(D) That the spouse who is incapacitated consented to the signing of the declaration.

(c) Liability Taxpayer and Agent.

(1) The taxpayer and his or her agent, if any, are responsible for the declaration as filed and incur liability for any penalties for erroneous, false, or fraudulent declarations.

(2) "Agent" defined. For purposes of this section, the term "agent" includes guardian, committee, fiduciary or other person charged with care of the individual under a disability, and a duly authorized agent of the taxpayer.

(d) Example. -- X, a calendar year taxpayer, leaves for Europe on February 1, 1983, and expects to return to the United sometime in June. Since X will be out of the country on April 15th, his or her declaration of estimated tax for the 1983 taxable year may be filed by an authorized agent.

Section 56. Payment of Estimated Tax.

56.01 General.

(a) The amount of estimated income tax due as shown on a declaration of estimated income tax may be paid in installments or, at the election of the taxpayer, may be paid in full at the time of filing the declaration. If the estimated income tax is paid in installments, the first payment must accompany the declaration. Special rules regarding payment of 1983 estimated taxes are provided in Section 56.09.

(b) In the case of a declaration of estimated income tax for a calendar year, the initial payment date and the subsequent installment payment dates are set forth in the following table:

(SEE FOLLOWING PAGE FOR TABLE)

Date of Filing Declaration	Dates of Installment Payments
~~(a)~~ (1) On or before April 15th	In four equal installments - one at time of filing declaration (on or before April 15), one on or before June 15, one on or before September 15, and one on or before January 15 of the succeeding taxable year.
~~(b)~~ (2) After April 15 and before June ~~15~~ 16, if not required to be filed on or before April 15	In three equal installments - one at time of filing declaration (on or before June 15), one on or before September 15, and one on or before January 15 of the succeeding taxable year.
~~(c)~~ (3) After June 15 and before September ~~15~~ 16, if not required to be filed on or before June 15	In two equal installments - one at time of filing declaration (one on or before September 15), and the other on or before January 15 of the succeeding taxable year.
~~(d)~~ (4) After September 15, if not required to be filed on or before September 15.	In full at time of filing declaration.

~~(e)~~ (c) If a declaration is filed after the time prescribed in Section 55 of these regulations, or after the expiration of ~~without consideration to~~ any extension of time, paragraphs ~~(b)~~ (2), ~~(c)~~ (3) and ~~(d)~~ (4) of this subsection shall not apply, and there shall be paid at ~~such~~ ~~case~~ the time of filing the declaration of estimated tax all installments of the estimated tax which would have been payable on or before such date of filing if the declaration had been ~~timely~~ filed on or before its due date, determined without regard to any extension of time. The remaining installments shall be paid at the time and in the amounts in which they would have been payable if the declaration had been ~~timely~~ filed when originally due. Thus, for example, B, who was required to file a declaration of estimated income tax on or before April 15, ~~1962~~ 1984, files his declaration for ~~1962~~ 1984 on September 15, ~~1962~~ 1984. In such case, at the time of filing his declaration, B was delinquent in the payment of two installments of his estimated income tax for the taxable year of ~~1962~~ 1984, three-fourths of the estimated tax shown thereon must be paid. Special rules apply for 1983 estimated tax. See Section 56.09.

56.02. Estimated Income Tax Payments by Farmers. Special provisions are made with respect to the filing of the declaration and the payments of the tax by an individual whose estimated West Virginia adjusted gross income for the taxable year is at least two-thirds from farming. (See Section 55.05 of these regulations). The declaration of such an individual may be filed on or before January 15th of the succeeding taxable year, in lieu of the time prescriebed for taxpayers generally. Where such an individual makes a declaration of estimated income tax after September 15th of the taxable year, the estimated income tax shall be paid in full at the time of the filing of the declaration.

56.03. Amendments of Declaration.

(a) In General. -- If any ~~amendment~~- ~~of~~ a amended declaration of estimated tax is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated income tax by reason of the amendment.

(b) Amendment after 15th Day of 9th Month. -- If any amendment is made by a calendar year taxpayer after September 15th of the taxable year, any increase in the estimated income tax by reason thereof shall be paid in full at that time. The amount of the last installment payment due on January 15th of the succeeding taxable year is not to be ratably increased. If the amendment shows a decrease in the amount of estimated tax, the last installment payment may be reduced. If the difference between the declaration of estimated tax and amended estimated tax liability is greater than the January installment payment, a claim for refund cannot be filed until the annual return for the taxable year is filed.

(c) Exception. -- The filing of an amended declaration will not be necessary if the safety zones apply. See Section 56a.05.

56.04. Short Taxable Years. -- In the case of a short taxable year of an individual for whom a declaration is required to be filed, the estimated income tax may be paid in equal installments, one at the time of filing the declaration, one on or before the 15th day of the sixth month of the taxable year and another on or before the 15th day of the ninth month of such year (unless the short taxable year closed prior to such sixth or ninth month, in which case the respective installment will be eliminated) and one on or before the 15th day of the first month of the succeeding taxable year. For example, if the short taxable year is the period of ten months from January 1, ~~1962~~ 1983 to October 31, ~~1962~~ 1983 and the declaration is required to be filed on or before April 15, ~~1962~~ 1983, the estimated income tax is payable in four equal installments: one on the date of filing the declaration, and one each on June 15, September 15 and November 15, ~~1962~~ 1983. If, in such case, the declaration is required to be filed after April 15th but on or before June 15, the tax will be payable in three equal installments, one on the date of filing the declaration, and one each on September 15 and November 15, ~~1962~~ 1983.

56.05. Fiscal Year Taxpayers. -- In the case of individuals on a fiscal year basis, other than those referred to in Sections 55.05 and 55.06 of regulation 55, the declaration must be filed on or before the 15th day of the fourth month of the taxable year. The provisions of this section and of section 55 of these regulations shall apply to a taxable year other than a calendar year by the substitution of the corresponding fiscal year months for the calendar year months referred to in this section.

56.06. Installments Paid in Advance. -- At the election of the taxpayer, any installment of the estimated income tax may be paid prior to the date prescribed for its payment.

56.07. Death of Taxpayer. -- In the case of a decedent, payments of estimated income tax are not required subsequent to the death. However, see ~~subsection~~ Section 55.01~~(e)~~(g) relating to the making of an amended declaration by a surviving spouse if a joint declaration had been made before the death of the decedent. See also Section 56.03.

56.08. Application of Installment Payments. -- The payment of any installment of estimated income tax shall be considered payment on account of the income tax for the taxable year for which the declaration is made. The aggregate amount of the payments of estimated income tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return.

56.09. Special Rule for 1983 Taxes.

(a) Personal income tax taxpayers were given an automatic extension of time from April 15, 1983 until September 15, 1983 in which to file their declaration of estimated tax for the 1983 calendar year. Upon filing, one-half of the estimated tax liability is due and payable; the second one-half of the liability is due and payable January 15, 1984.

(b) Out-of-State Withholding. -- With respectto 1983 estimated tax only, withholding by neighboring states will be treated as withholding for West Virginia tax purposes for the sole purpose of determining whether interest and additions to tax will apply to an under payment of 1983 West Virginia estimated tax. This treatment of withholding by neighboring states in 1983 is being permited in order to avoid hardship on affected individuals during the first year of the estimated tax program that might occur if one-half of their West Virginia estimated tax was required to be remitted on September 15, 1983. By January 1984, all West Virginia personal income tax payers who are employed in one of our boarder states (Kentucky, Maryland, Ohio, Pennsylvania or Virginia) are expected to file declarations of estimated tax and remit tax in installment payments in accordance with Sections 55 and 56 of these regulations.

Section 56a. Interest and Additions to Tax.

56a.01. Applicability. The interest and additions to tax provisions of W. Va. Code §§ 11-10-17 and 11-10-18 are applicable to underpayments of estimated personal income tax. They will be applicable regardless of whether there is a failure to pay the entire amount of any installment of estimated tax on or before its due date (See W. Va. Code § 11-21-56), or the amount of estimated tax (employer withholding tax plus installment payments) paid during the taxable year was less than eighty percent (80%) of the tax due for the taxable year. Two exceptions to this rule are as follows:

(1) Where the amount of tax due with the annual return is two hundred dollars ($200) or less; and

(2) Where the taxpayer qualifies under one of the safety zones described in Section 56a.05.

56a.02. How Underpayment of Estimated Tax Is Measured.

(a) In General. To see whether an individual's estimated tax payments for the taxable year equal at least eighty percent (80%) of his or her actual liability for the primary tax, surtax and minimum tax imposed by W. Va. Code § 11-21-3, the following procedure shall be applied. The term "estimated tax payments includes both the amount of installment payments remitted under W. Va. Code § 11-21-56, and the amount taxes withheld from wages under W. Va. Code § 11-21-73.

(1) Determine the sum of the individual's primary income tax shown on his or her return for the taxable year (as reduced by the amount of allowable credits) plus his or her surtax and minimun tax for the taxable year. If no annual return was filed, take one hundred percent (100%) of the total tax determined to be due for the taxable year.

(2) Take eighty percent (80%) of the above amount.

(3) Divide the amount of (2), above, by the number of installments required for the year. Generally, this will require dividing by four, but may be three, two or one. See Section 56.01 of

these regulations.

(4) For each installment as computed in (3), above, find the excess, if any, over the amount actually paid or credited toward that installment payment. (Add in any overpayments available from a previous installment.) If there is no excess, no further computation is necessary for that installment.

(b) Any excess computed in (4), above, for any installment is the amount of underpayment of that installment. If the actual payment made for the underpaid installment does not meet at least one of the available safety zone tests, additions to tax must be paid in addition to interest on the amount of that underpayment of estimated tax. <u>See</u>

(1) Section 56a.03 for Computing Interest.

(2) Section 56a.03 for Computing Additions to Tax.

(3) Section 56a.05 for Safety Zones.

56a.03. Computing Interest.

(a) In General. Nonwaivable simple interest calculated at the rate of eight percent (8%) per year (3/4% per month) shall be imposed for the number of days from the due date of the installment payment to the earlier of:

(1) the fifteenth day of the fourth month after the close of the taxable year, or

(2) the date on which the tax or the underpayment of the installment is paid. An overpayment of a subsequent installment stops the running of the interest to the extent that it wipes out the previous underpayment. For this purpose, the fifteenth day of the fourth month after the end of the taxable year is taken as the day to which the interest is computed even through that is a Saturday, Sunday or legal holiday.

(b) The due date of an installment is determined with regard to any authorized extension of time for paying the installment. If the amount to be remitted with the annual return for the taxable year is two hundred dollars ($200) or less, or is twenty percent (20%) or less of the total tax shown to be on the annual return, an automatic extension of time is granted so that only the annual return needs to be filed. See Section 55.07.

(c) A payment that is not in excess of the amount due for that installment period applies to it, and cannot be used to credit an earlier period.

> For example, a calendar year taxpayer receives most of its income during the last six months of the taxable year. He makes only a timely fourth quarter installment payment on January 15th, equal to 25% of 80% of its ultimate tax liability for the year. The taxpayer will not be deemed to have underpaid the installment due for the fourth quarter. However, interest and additions will apply to the other installments.

(d) If an installment payment exceeds the amount due for that installment, the excess is applied to the amount delinquent from any earlier installment period. The excess is applied first to satisfy the delinquent tax for the earliest installment period and then to interest and additions to tax for that deficiency. Any excess is applied to the next earliest installment period in the same fashion. (Any excess remaining after all delinquent installments plus interest and additions to tax are satisfied is credited to subsequent installments.) If the next installment payment also exceeds the amount due, the excess is similarly applied, first to tax and then to interest and additions to tax. The oldest delinquency is satisfied first.

(e) A prior year's overpayment of tax can be credited against the current year's estimated tax. Only if the annual return for the preceding year and the declaration of estimated tax for the current tax year are filed at the same time. If it is subsequently determined that the taxpayer was not entitled to the amount of credit claimed on his or her annual return for the preceding year, an amended return and an amended declaration must be filed together.

(f) Application of Safety Zone. -- If one of the safety zones applies to the under payment of estimated tax, no interest will begin to accrue on the amount of the underpayment until the day after the day the annual return should have been filed (generally April 15th of the succeeding tax year) and the remaining amount of tax due paid.

56a.04. <u>Computing Additions to Tax.</u>

(a) <u>General.</u> In addition to interest calculated and applied as provided in Section 56a.03 of these regulations, additions to tax shall be imposed as provided in this Section.

(b) <u>Additions to tax.</u> The additions to tax provisions of W. Va. Code § 11-10-18 apply to any underpayment of estimated personal income tax, regardless of whether such underpayment is because of a failure to pay the entire installment payment when due (determined with regard to any authorized extension of time), or because of under-estimation, unless one of the safety zones apply. <u>See</u> Section 56a.05.

(1) <u>Failure to timely file declaration of estimated tax.</u> In the case of failure to make and file a declaration of estimated tax (or amended declaration) on or before the date prescribed by law, there shall be added to the amount of estimated tax shown on the declaration 5% of the amount thereof if the failure is for more than 30 days plus an additional 5% for each month or faction thereof during which there is a failure to file the declaration. This addition to tax may not exceed 25% of the estimated tax liability. It

is waivable by the Tax Commissioner where the taxpayer shows that its failure to timely file the declaration is due to reasonable cause and not due to willful neglect. In the case of an amended declaration, this penalty applies only to the net amount of the additional estimated tax. The following examples illustrates application of this penalty.

Example (1). X reports on a calendar year basis. He failed to file his declaration of 1984 estimated tax that was due April 15, 1984. If that return had been filed, it would have showed estimated tax of $20,000. A penalty of 25% is imposed ($5,000) for the failure to timely file the declaration of estimated tax. This penalty is waivable if the taxpayer presents cogent evidence that his failure to timely file the declaration was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

Example (2). X reports on a calendar year basis. He timely obtains from the Tax Commissioner an extension of time for filing his declaration of 1984 estimated tax from April 15, 1984 to June 15, 1984. X does not file his declaration until July 20, 1984. The estimated tax shown on the declaration is $20,000. A penalty of 10% is imposed for failure to file the declaration on June 15, 1984 (5% because the failure was for more than one month plus 5% for the succeeding month or fraction thereof during which the failure continued). This penalty is waivable if the taxpayer presents cogent evidence that his failure to timely file the declaration (determined with regard to any authorized extension of time) was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

<u>Example (3).</u> X reports on a calendar year basis. He timely files his declaration of estimated 1984 tax on April 15, 1984, and remits 25% of the estimated tax. On August

20, 1984, X accepts an unanticipated offer from a purchaser resulting in the sale of some capital assets. X's declaration showed estimated 1984 tax of $20,000. Capital gain from the sale results in additional taxes of $10,000. X was required to file an amended declaration of 1984 estimated tax on or before September 15, 1984, which he did not do. X files his 1984 annual return on April 15, 1985. A penalty equal to 25% of the additional tax that should have been shown on the amended declaration is imposed for failure to file the amended declaration. Because taxpayer's actual 1984 tax was $30,000 and its declaration showed $20,000 of estimated tax the penalty assessed will be 25% of $4,000 or $1,000. The penalty computation is ($30,000 x 80% = $24,000 -$20,000 = 4,000 x 25% = $1,000). This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

(2) <u>Failure to timely pay an installment of estimated tax.</u> In the case of failure to pay the

entire amount of any installment payment of estimated tax, on or before its due date, there shall be added to the amount due 0.5% thereof if the failure is for one month or less plus an additional 0.5% for each month or fraction thereof during which there was a failure to pay the installment or any part of the installment then due. This addition to tax may not exceed 25% of the installment payment that is delinquent. This addition to tax is waivable by the Tax Commissioner where the taxpayer shows that its failure to timely pay is due to reasonable cause and not due to willful neglect.

(3) <u>Application of paragraph (1) and (2).</u> In computing additions to tax, paragraph (1) applies to any failure to file the declaration of estimated tax. Paragraph (2) applies where:

(A) The declaration of estimated tax was timely filed but the taxpayer failed to remit, in whole or in part, the amount of the installment payment which was due on the date the declaration was required to be filed, determined without regard to any extension of time for filing the declaration unless an extension of time for paying the installment was also granted.

(B) An extension of time for filing the declaration of estimated tax is granted without a concomitant extension of time for remitting the installment payment due on the day the declaration was originally due, e.g., 15th day of fourth month of the tax year, and any subsequent installment payments that became due and are not timely remitted.

(C) Any subsequent installment payment is not paid on or before its due date. The due date of each installment payment is a separate event.

(D) The taxpayer receives an extension of time to file its declaration of estimated tax, but does not obtain a concomitant extension of time for paying the first installment payment and any subsequent installment payment that becomes due during the extension period granted for filing the declaration.

(e) Negligence or intentional disregard of rules and regulations. In the case of any underestimating of estimated tax, except as provided in subsection 56a.05(d), which is due to negligence or intentional disregard of rules and regulations, (but without intent to defraud), there shall be added to the amount of tax underestimated, (determined after multiplying the actual tax liability for the taxable year by 80%), divided by the number of installment payments due 5% for each month of the deficiency up to 25% of the deficiency until it is paid.

56a.05. "Safety Zones" Bar Imposition of Interest and Additions to Tax for Underpayment of Estimated Tax.

(a) In General. -- Interest and additions to tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment (determined with regard to any authorized extension of time for payment) the total amount of all payments of estimated tax made equals or exceeds the least of the amounts due under the following "Safety Zones:"

(1) Safety Zone No. 1 . -- The amount of "tax shown" on the previous year's West Virginia personal income tax return, if such preceding year began after December 31, 1982, and was a taxable year of twelve (12) months reduced by the amount of West Virginia withholding taxes for the current year. Safety zone no. 1 avoids interest and additions to tax if the total payments of estimated tax made by the installment date are at least equal to the amount which would have been required on that installment date if the estimated tax was the amount of "tax shown" on the previous year's West Virginia personal

income tax return reduced by the amount of West Virginia withholding taxes for the current year. In applying safety zone no. 1 the following rules apply:

(A) An individual that did not file a West Virginia personal income tax return for the preceding year cannot use safety zone no. 1.

(B) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 1.

(C) Safety zone no. 1 cannot be used when the preceding tax year was a tax year that began prior to January 1, 1983.

(D) The applicable tax credits are those allowed on the annual return for the preceding tax year.

(E) If the annual return for the preceding year is not filed on or before the due date of the declaration of estimated tax for the taxable year, the declaration of estimated tax for the current tax year cannot be based on last year's tax.

(2) Safety Zone No. 2. -- The amount of tax which would be due if computed based on the facts and law applicable to the West Virginia personal income tax return for the preceding year, but using current year rates, personal exemptions and credits. This safety zone avoids interest and additions to tax if the total payments of estimated tax already made by the installment date are at least equal to an amount which would have been required on that installment date if the estimated tax was a tax based on the facts shown on the previous year's return and the previous year's law, but using current year rates, personal exemptions and credits.

(A) Nonrecurring items of income and deductions are not to be excluded.

(B) An individual that did not file a West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 2.

(C) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 2.

(b) Safety zone requirements must be satisfied on each installment date to avoid the imposition of interest and additions to tax on an underpayment of estimated tax as of the installment date. For purposes of paragraph (b), it is presumed that a taxpayer's West Virginia taxable income is received in equal installments throughout the taxable year. The taxpayer bears the burden of proof to establish that the West Virginia taxable income was received during the taxable year in some other manner.

(c) Return for the preceding taxable year.--The term "return for the preceding taxable year means the West Virginia personal income tax return required to be filed for the taxable year immediately preceding the current taxable year by W. Va. Code § 11-21-51. If an amended return was filed for the preceding taxable year before the due date of the declaration of estimated tax for the current taxable year (determined with regard to any extension of time for filing), then it constitutes the return for the preceding taxable year, if it is a reasonable estimate of the amount of tax due for the current taxable year.

(d) "Facts shown on the preceding year's return." The facts shown on the preceding year's return include:

(A) A net operating loss deduction properly claimed on the preceding year's return.

(B) The facts shown on a West Virginia joint personal income tax return for the preceding taxable year where the individual no longer qualifies to file a joint return.

(C) Tax credits claimed on the return for the previous year even though allowable credits for the current taxable year are reasonably expected to be greater than or less than those allowed for the preceding year.

(e) <u>Short tax years.</u>

(1) Interest and additions to tax for underpayment of estimated tax apply equally to short tax years where a declaration of estimated tax is required to be filed.

(2) <u>Safety zones</u>

(1) In computing the safety zones for short taxable years, the estimated tax (whether based on that shown on the previous year's return, based on the previous year's facts, or annualized current income) is reduced by multiplying the estimated tax for a full year by the percentage which the number of months in the short tax year bears to twelve. For safety zone (3), the precentage figure will

be applied to reduce the tax.

(B) If the preceding taxable year was a short year, estimated tax for the current year (for purposes of safety zone 2) will be computed on an annual basis (income x 12 ÷ number of months in the short year). The tax will not be reduced because of the short year.

(C) If the tax rates for the year of underpayment have changed from the preceding year, the estimated tax must be computed using current rates.

(f) <u>Safety zones for "52-53 week" years.</u>

(1) If a taxpayer has a 52-53 week taxable year, the rules on 52-53 week years are applied in determining whether a taxable year was a year of 12 months, and in determining the commencement of the 3-month period, or the 3- or 5-month period, or the 6- or 8-month period, or the 9- or 11-month period, whichever is applicable. If a 52-53 week year begins on December 26, 1981, taxable income for the first six months in computing safety zone (3), will be the taxable income for the period beginning on December 26, 1982 and ending on

June 30, 1983. The reason is that the taxable year for a 52-53 week year is deemed to begin on January 1, 1983.

(2) If the end of any accounting period employed by the corporation (e.g., any of either thirteen 4-week periods, or four 13-week periods) doesn't correspond with the end of the applicable period used in annualizing, the taxable income is determined as follows:

(A) Determine the taxable income from the beginning of the taxable year to the close of the accounting period ending immediately before the end of the period used in annualizing.

(B) Determine the taxable income from the beginning of the taxable year to the close of the accounting period which straddles the end of the 6, 8, 9 or 11-month period.

(C) The difference in taxable income between that in paragraphs (A) and that in (B) is multiplied by the number of days from the close of the first accounting period to the end of the period used in annualizing and divided by the number of days between the termination dates of the two accounting periods.

(D) The amount computed under paragraph (C) is added to (or subtracted from)paragraph (A) to determine the taxable income for the period.

(3) Illustration: A 52-53 week year individual has a taxable year beginning on December 26, 1982 and uses thirteen 4-week accounting periods in determining taxable income. Taxable income from December 26, 1982 to the close of the 4-week period ending on June 11, 1983 is $200,000; to the end of the 4-week accounting period ending on July 9, 1983 is $228,000. Taxable income for the 6-month period ending on June 30, 1983 is $219,000 computed as follows:

Taxable income for period ending before June 30		\$200,000
Taxable income for period stradding June 30		228,000
Difference		\$ 28,000

Days from end of first accounting period to June 30	19	
Days from end of first accounting period to end of second accounting period	28	
19/28 of \$28,000		\$ 19,000
Taxable income for period ending June 11		200,000
Taxable income for period ending June 30		\$219,000

TEMPORARY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
Series XXI
(1983)

Subject: Personal Income Tax

INDEX

Section

Section 57. Extensions of time.

57.01. General.

(a) The tax commissioner may grant an extension of time for filing any return or any document required to be filed under the West Virginia Income Tax Act or for the payment of any tax due under the Act. Except for taxpayers who are outside the United States, no extension shall exceed six months.

(b) If a taxpayer feels that an extension of time is necessary, he should not make his request for an extension of time to the West Virgina Income Tax Division except in rare cases. In order to obtain an extension of time to file a West Virginia annual return, a taxpayer must only obtain an extension of time from the District Director of the Internal Revenue Service.

(c) If the taxpayer obtains an extension of time federally, he must make a notation on his West Virginia return of the date to which the extension was issued and by what District Director's office the extension was granted. Most West Virginia taxpayers would obtain an extension from the District Director, Parkersburg, West Virginia. For example, a taxpayer needed an extension for 30 days. The taxpayer applied to the District Director for the extension and it was granted. The taxpayer then has an automatic extension with the State Income Tax Division and need only note in a conspicuous manner on his West Viriginia return that an extension was granted to May 15 by the District Director, Parkersburg, West Virginia.

(d) Should the District Director deny an extension request and require the taxpayer to file his return in a certain number of days, this should also be noted conspicuously on the return.

(e) West Virginia extensions of time. In rare cases, where an extension of time is not needed federally, but is felt, by the taxpayer, that it is needed for West Virginia income tax purposes, a specific request should be made to the Income Tax Division. This type of request will be considered and a prompt reply made to the taxpayer. Generally, an extension of time to file a return on an original application will be limited to a period of time not in excess of sixty (60) days. Longer periods of time will not be granted by the tax commissioner unless sufficient need for such extended period is clearly shown. In no event will an extension of time to file a West Virginia return be granted in excess of six months for taxpayers within the United States.

(1) If an additional extension of time is required by a taxpayer, a copy of the last extension granted to him must be attached to the new request in every instance.

(f) Prescribed form of application for West Virginia extension. A taxpayer, who desires an extension of time for West Virginia purposes but not for federal purposes, including an estate, a trust or partnership, must make such request by a written application setting forth all reasons and pertinent data therefor. The application must be submitted in sufficient time to enable the Income Tax Division to consider action on the application before the regular due date of the return.

(g) Automatic extensions.

(1) Although the due date for filing income tax return is the 15th day of the fourth month following the close of the taxable year, an automatic extension of time for filing income tax returns will be granted to taxpayers residing or traveling abroad. The automatic extension is granted up to and including the 15th day of the sixth month following the close of the taxable year (June 15 for a calendar year taxpayer).

(2) For these automatic extensions of time, a statement must be attached to the West Virginia return showing that the taxpayer was residing or traveling abroad outside the United States on the due date (April 15, for calendar year taxpayers) of the return, and he must pay interest at the rate of six (6) percent per annum on the unpaid tax, if any, from the original due date of the return until paid.

(3) The term "United States" does not include the State of Alaska; therefore, a West Virginia taxpayer residing or traveling in Alaska on the due date of the return qualifies for the automatic extension.

(h) Members of the Armed Forces. A member of the Armed Forces of the United States is required to file his West Virginia income tax return at the same time as prescribed for any other taxpayer. However, if such a person is abroad or in Alaska on the due date of his return, he is granted an automatic extension of two months as stated in paragraph (3) above. Also, in the case of a taxpayer serving in the Armed Forces of the United States in an area designated by the President of the United States as a "combat zone", at any time during the period designated by the President as the period of combatant activities in such zone, or hospitalized outside the state as a result of injuries received while serving in such area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injuries, and the next six months thereafter, shall be disregarded in determining whether the taxpayer has filed his return within the prescribed time.

57.02. Amount determined as deficiency.

(a) An extension of time for filing the return automatically extends the time for payment of the tax. In addition, the Tax Commissioner may separately grant an extension up to eighteen months for the payment of the tax, upon a written request from the taxpayer setting forth complete information as to the reasons for his inability to make payment of the tax due on his return. If the taxpayer feels he cannot make payment of the tax due within the prescribed period of extension, he may make a request for further extension to the tax commissioner. Such further extension may not exceed twelve months and may be granted only if it is established to the satisfaction of the tax commissioner that exceptional circumstances exist and that to require payment within the time prescribed by the first extension would work an undue hardship on the taxpayer.

(b) No extension for payment of taxes will be granted if any part of the deficiency is due to a disregard of rules and regulations or to fraud.

(c) Except where specifically provided otherwise, if the time for payment of tax is extended, interest at the rate of six per centum per annum from the original due date of the return until paid shall be added to such tax. The preceding sentence also applies to the automatic extensions referred to in subsection (a)(3) of this regulation.

57.03. Claims in bankruptcy or receivership proceedings. Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax. See subsection (b) of this regulation.

57.04. Furnishing of security. As a prerequisite to granting an extension of time for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond or other security. Such bond or other security shall be in an amount not exceeding twice the amount for which the extension of time for payment is granted.

Section 58. Requirement concerning returns, notices, records and statements.

58.01. General.

(a) Every person subject to tax under the West Virginia Income Tax Act or for the collection of such tax, and any person required to file a return of information with respect to income, shall keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of such tax or information. The tax commissioner is authorized to prescribe the content and form of returns and statements and may require the inclusion in a return, document, or statement of any information he deems necessary for the proper enforcement of the West Virginia Personal Income Tax Act. For purposes of this section the word "person" includes but is not limited to any individual, partnership, association or corporation, estate or trust.

(b) If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, then the computation of taxable income is made under such a method as, in the opinion of the tax commissioner, does clearly reflect income.

(c) Bookkeeping entries of themselves are not conclusive of the amount of income. The actual facts rather than the book entries control. Also, entries on another individuals books are not conclusive against a taxpayer.

(d) Retention of records. The books or records required by this section shall be kept at all times available for inspection by authorized representatives of the tax commissioner.

(e) Farmers and wage earners. Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages or similar compensation for personal services rendered, are required with respect to such income to keep such records (including duplicate copies of the wage and tax deduction statements furnished by their employers) as will enable the tax commissioner to determine the correct amount of income subject to tax.

(f) Form of records. The records required in this regulation shall be kept accurately, but no particular form is required for keeping the records. Such methods of accounting shall be used as will enable the tax commissioner to ascertain whether liability for tax has been incurred, and, if so, the correctness of the amounts required to be reported in any return of tax or information.

(g) Employer's records.

(1) Every employer or withholding agent, as defined for federal withholding tax purposes, required under the West Virginia Income Tax Act to deduct and withhold state income taxes upon the wages of employees, and every person, firm, organization or corporation required to file information returns

as described below in subsection 58.03, shall keep all records pertinent to these taxes and information reports available for examination and inspection by the tax commissioner, or his authorized representatives. Such records shall be retained and preserved for a period of four years following the close of the calendar year to which they relate.

(2) No particular form is prescribed for such records, but the records shall include the amounts and dates of all wage payments subject to West Virginia income tax, the names, addresses and occupations of employees receiving such payments, the periods of their employment, the periods for which they are paid by the employer while absent due to sickness or personal injuries and the amount and weekly rate of such payments, their social security account numbers, their income tax withholding exemption certificates, the employer's identification number, records of monthly or quarterly and annual withholding returns and reports filed, and the dates and amounts of withholding tax payments made.

(3) For nonresidents, performing services partly within and partly without the state, a record of

the allocation used for withholding purposes must be kept.

(h) Notice by Tax Commissioner requiring returns, statements, or the keeping of records. The tax commissioner may require any person, by notice served upon him, to make such returns, render such statements, furnish such copies of federal income tax returns and of federal audit determinations, or keep such specific records as the tax commissioner may deem necessary to verify whether or not such person is complying or has complied with applicable provisions of the West Virginia Personal Income Tax Act.

(i) Copies of returns, schedules and statements. Every person who is required in these regulations or by instructions applicable to any form prescribed thereunder to keep a copy of any return, schedule, statement or other document, shall keep such copy as a part of his record.

(j) Place for keeping records. All records prescribed by these regulations shall be kept, by the person required to keep them at one or more convenient safe locations accessible to the authorized representatives of the tax commissioner, and shall at all times be available for inspection by such representatives.

58.02. Partnerships.

(a) Every partnership having a resident partner or having any income derived from West Virginia sources shall file a partnership return for the taxable year. The partnership shall file a return regardless of the amount of its income and regardless of the taxable years of the partners. Such partnership return shall set forth all items of income, gain, loss and deduction. The return shall also set forth the names, addresses, social security numbers, and amount of distributive shares of income deduction of all partners, and such other information or schedules which the tax commissioner may prescribe on income tax forms and instructions.

(b) Under certain prescribed circumstances, the Internal Revenue Service does not require the execution and filing of a federal partnership return of information. Where a federal partnership return is not required for a taxable year, a West Virginia partnership return is not required for such taxable year.

58.03. Information at source. See section 72 of these regulations.

58.04. Notice of qualification as receiver etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary required under the Internal Revenue Code of 1954 and its applicable regulations to give notice of his qualification to act in such capacity shall give like written notice to the State Tax Commissioner, Charleston, West Virginia 25305.

58.05. Employers with nonresident employees working both within and without the state. If an employer has nonresident individuals as employees and these individuals work both within and without West Virginia, the employer is required to keep records which clearly reflect the amount of income earned within West Virginia and the number of days worked therein.

Section 59. Report of change in federal taxable income.

59.01. General. If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. When making such report, the taxpayer shall disclose to the tax commissioner the full particulars of such federal tax change or correction.

59.02. Any taxpayer who files an amended federal income tax return must also file within ninety days thereafter an amended West Virginia income tax return, and shall in addition provide the tax commissioner such further information as he may require.

Section 60. Change of election.

60.01. General. Unless otherwise provided herein, any change of election made by a taxpayer for federal income tax purposes pursuant to the provisions of the Internal Revenue Code and its applicable regulations, which increases or decreases his federal taxable income for a taxable year, must be made similarly for West Virginia income tax purposes, except to the extent that such federal provisions are inconsistent with the West Virginia Personal Income Tax Act. A taxpayer making such a change of election for federal income tax purposes shall file an amended West Virginia return within ninety days thereafter. Any change of election shall be subject to the approval of the tax commissioner and, for this purpose, he may require such information, records or evidence that he deems necessary and may attach such conditions or limitations to his approval of such a change of election as he may consider advisable.

60.02. Husband and wife.

(a) Change from separate to joint return.

(1) A husband and wife can file separate West Virginia returns, and then after the time for filing returns (April 15th, for calendar year taxpayers) has passed they may elect to file a joint West Virginia return. This election may be made within three years after the date the original return was first due, without regard to any extension of

time. However, this election to change from separate to joint may be made only if the taxpayer has made the same election federally. See section 11 of these regulations.

(2) If a husband and wife determine their federal taxable income on a joint federal return, they may elect to determine their West Virginia taxable income on a joint West Virginia return. If the taxpayers elect to change from a joint return to separate returns federally, within the prescribed time period, the taxpayers must also make the same election for West Virginia purposes. See section 11 of these regulations. An election to file a joint West Virginia return is binding and may not be changed after the due date of the original West Virginia return. A different election may be made each year.

(b) Husband and wife with different resident status. Sections 11 and 31 of these regulations provide that, where either husband or wife is a resident and the other is a nonresident, they shall file separate returns unless they were otherwise entitled to file a joint federal return and both elect to file a joint West Virginia return for the taxable year as if both were residents. A husband and wife may elect to file a joint West Virginia return only if one spouse was a resident for the entire taxable year and the other spouse was a nonresident for the entire taxable year. If they exercise such election they will be permitted to change their original election to file separate state returns and to make, instead, a joint return as if both were residents in accordance with section (1) above, provided that the tax due on such joint return is paid in full at the time it is filed.

(c) Approval for change of election. Elections to make the changes as hereinbefore described and to file amended returns shall be subject to the tax commissioner's approval and discretion. No amended return filed with the tax commissioner shall be valid unless the amount of tax due on such amended return is or has been paid in full at the time of the filing of the amended return.

60.03. Use of standard or itemized deduction. Where the taxable income of an individual taxpayer is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct the West Virginia itemized deduction in lieu of the West Virginia standard deduction. Such election may be changed in accordance with section 60.01 above.

60.04. Penalties and interest. The filing or acceptance of an amended return pursuant to this regulation shall not prevent the assessment of any penalty, additions to tax or interest to which the taxpayer may be subject prior to the filing of such amended return, except that the amount thereof shall be computed upon the amount of tax due after giving effect to any change of election made in such amended return.

PART V. WITHHOLDING OF TAX

Section 71. Requirements of withholding tax from wages.

71.01. General. Every employer maintaining an office or transacting business within West Virginia and making payment of any wages taxable under the West Virginia Income Tax Act to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period such amount of tax as will result in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due as the result of the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. For this purpose, the provisions of the Federal Internal Revenue Code and its applicable regulations, with respect to deducting and withholding of federal income tax by employers from wages, including the meaning of the various federal terms (such as "employer", "employee", "wages", "payroll period", "withholding exemptions") shall apply for West Virginia income tax purposes except as otherwise specifically provided herein or where such federal rules and definitions are clearly inconsistent with and inapplicable to the provisions of this part.

(a) Employer.

(1) The term employer means any person for whom an individual performs or performed any service, of

whatever nature, as the employee of such person. An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting on behalf of the trust or estate, is generally the employer.

(2) The term employer embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax; such as, charitable organizations and educational institutions.

(3) The term employer shall also mean any person or organization qualifying as an employer for federal income tax withholding purposes and maintaining an office or transacting business within West Virginia, whether or not a paying agency is maintained within this state.

(b) Wages. Payments which are considered wages for federal income tax withholding purposes are also considered wages for purposes of West Virginia income tax withholding. However, the term wages in respect to withholding for West Virginia income tax shall not include:

(1) payments made to members of the Armed Forces of the United States, including Reserve and National Guard components, and

(2) payments made to seamen who are members of the crew on a vessel engaged in foreign, coastwise, intercoastal, interstate or noncontiguous trade.

(c) Employer relieved from withholding.

(1) A determination by the Internal Revenue Service which relieves an employer from withholding responsibility with respect to payments to an employee shall also apply for West Virginia income tax withholding purposes; however, the employer who is granted such relief by the Internal Revenue Service must notify and provide the tax commissioner with all particulars concerning the granting of such relief by the Internal Revenue Service.

(2) Where an employer is required to reinstate withholding of federal income tax with respect to an employee, such reinstatement is equally applicable for West Virginia withholding purposes.

71.02. Withholding exemptions.

(a) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes.

(b) Notwithstanding the foregoing, in determining the proper tax to be deducted and withheld from an employee's wages, the employer shall allow the number of exemptions claimed by the employee on his withholding exemption certificate. However, since the number of exemptions for federal and West Virginia income withholding purposes is generally the same, the employer may accept the federal form W-4 filed by the employee, unless such employee elects to file a West Virginia withholding exemption certificate. Once filed with the employer, a withholding exemption certificate will remain in effect until an amended certificate is furnished.

The "withholding exemptions", in general, correspond with the exemptions to be allowed the employee in computing his income tax on his West Virginia annual return. The employer is not required to determine whether the employee has claimed the correct number of exemptions. However, if it is believed that the employee has claimed an excessive number of exemptions, the West Virginia Income Tax Division should be so advised.

(c) The amount of each West Virginia exemption shall be six hundred dollars whether the individual is a resident or a nonresident.

71.03. Exemption for certain nonresidents.

(a) Normally every employer maintaining an office or transacting business in this state and making payment of wages taxable in West Virginia shall withhold from such wages in accordance with the state tax commissioner's regulations. Certain nonresidents of this state whose income from salaries and wages earned in this state would otherwise be subject to withholding are excepted from this requirement. If such employees are residents of another state of the United States having an income tax law, the credit provisions of which result in its residents being allowed a credit against the West Virginia tax sufficient to offset all taxes required to be withheld, the employer of such employee is relieved from the wihholding requirements of the West Virginia Personal Income Tax Act in accordance with the following paragraph.

(b) Employers of resident individuals of Maryland and Virginia who are nonresident employees of West Virginia firms, need not withhold from wages and salaries of said individuals, even though such nonresident employees are required to file annual returns for the taxable year with this state. The preceding sentence shall apply only if the nonresident employee properly executes and files a West Virginia exemption certificate with his employer.

71.04. Wages paid to a nonresident.

(a) General.

(1) An employer shall deduct and withhold on all wages paid to a nonresident employee for services performed in West Virginia. For an exception, see the preceding subsection 71.03 of this regulation.

If such services are performed entirely within West Virginia, the employer shall withhold the tax from all wages paid to such employee.

(2) The compensation paid to a nonresident employee for services rendered entirely without the state is not considered West Virginia wages and therefore is not subject to West Virginia withholding, whether payment is made from within or without the state.

(b) Wages of a nonresident for services performed partly within and partly without the State.

(1) If a nonresident employee performs services for his employer partly within and partly without West Virginia, the employer may require him to execute an employee's certificate of nonresidence for the purposes indicated below.

(2) The employer may withhold on the basis of the apportionment shown by the nonresident employee on the above certificate but must nevertheless make necessary adjustments during the year so that the proper amount of tax is withheld from the employee's wages. For the purpose of making these adjustments, the proportion of renumeration which is paid for services rendered within West Virginia is determined as follows:

(A) If the services are rendered by a traveling salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the amount attributable to services in West Virginia is that proportion of the compensation received which the volume of business transacted by the employee within the State of West Virginia bears to the volume of business transacted by him both within and without the State of West Virginia.

(B) With respect to all other employees, the amount of wages attributable to services within West Virginia is that proportion of the total compensation which the total number of working days employed within West Virginia bears to the total number of working days employed both within and without West Virginia, exclusive of nonworking days, such as Saturdays, Sundays, holidays, and days of absence because of illness, personal injury, vacation or leave with or without pay.

(3) The portion of wages allocable to West Virginia may be determined by the employer on the basis of

the preceding year's experience, except that the employer shall make any necessary adjustments during the year to insure that the required tax is withheld for the current year. If the employee reasonably expects that the preceding year's experience will not be applicable to the current year, he may furnish to his employer a statement estimating the proportion of his wages allocable to West Virginia, or the employer himself may make such estimate and may then withhold on the basis thereof; in either case, however, the employer is required to make the necessary adjustments during the year so that the proper amount is withheld from the employee's salary for the current year.

(4) Where a nonresident employee will work only a short period of time within West Virginia and it is reasonably expected that the total wages of such nonresident employee for services rendered within West Virginia will not exceed his personal exemptions, the employer need not withhold or deduct any amount from his wages until the aggregate amount paid to him exceeds his exemptions.

(5) An employer is required to withhold on all wages paid to a nonresident who works partly within and partly without West Virginia unless there is filed

with him the statement referred to above or unless the employer maintains adequate current records to determine accurately the amount of wages from West Virginia sources. As to maintaining records, see section 58.05 of these regulations. The mere filing of such form does not, however, relieve the employer from the duty of withholding the proper amount of tax from wages paid to an employee. The form is to be retained by the employer but is to be available for inspection by representatives of the tax commissioner.

71.05. Wages paid to a resident. Wages paid to a resident of West Virginia are fully subject to withholding even though some or all of the services may have been rendered without West Virginia, for a resident's wages are taxable under the West Virginia Income Tax Act regardless of where earned.

71.06. Determining tax to be withheld. The West Virginia income tax to be withheld by an employer must be determined in accordance with one of the following income tax withholding methods:

Method I	Wage Bracket Method
Method II	Percentage Method
Method III	Computer Method

In cases of special situations, an employer may apply to the tax commissioner for permission to use another method. The methods set out above are obtainable in booklet form and may be obtained by requesting same from the Income Tax Division.

Section 72. Information statement for employees.

72.01. General. Every employer required to deduct and withhold tax under the West Virginia Income Tax Act from the wages of an employee shall furnish to each such employee on or before February 15 of the year succeeding the taxable year a West Virginia withholding tax statement. If such individual's employment is terminated before the close of the taxable year, the employer is required to furnish such employee a West Virginia withholding statement on the date of the last payment of wages to such employee.

72.02. Information required on withholding statement. The West Virginia withholding tax statement must contain the following information:

(a) The employer's name, address, and identification number.

(b) The employee's name, complete address and social security account number.

(c) The employee's total West Virginia wages before payroll deductions, i.e., all wages paid residents, or all wages earned in West Virginia by nonresidents.

(d) The total amount of West Virginia income tax withheld, if any, from the employee's wages.

(e) The employee's total wages for federal tax purposes, if different from wages for West Virginia tax purposes.

(f) The total amount of federal income tax withheld, if any, from the employee's wages.

Section 73. Credit for tax withheld.

73.01. General. The West Virginia income tax deducted and withheld from an individual's wages in any calendar year shall be allowed as a credit against the West Virginia income tax imposed on such individual. If the tax has actually been withheld by the employer, such credit shall be allowed to the person from whose wages the tax was withheld, even though such tax has not been paid over to the tax commissioner. However, the taxpayer will not be granted credit for West Virginia income taxes withheld from wages unless the taxpayer attaches a withholding tax statement to his annual return to substantiate such claimed credit.

73.02. Year of credit. The tax withheld during any calendar year shall be allowed as a credit in accordance with the above paragraph against the tax imposed for the taxable year which begins in such calendar year. Since most employees file returns on the calendar year basis, they receive credit for the tax withheld during their entire reporting year. However, in the case of a taxpayer who files his returns on a fiscal year basis and who is required to include in a return for such fiscal year the income from wages received during such fiscal year (cash basis taxpayer), credit must be claimed for the entire tax withheld in the calendar year during which such fiscal year began. This is true even though the withholding tax statement furnished by the employer shows wages paid and tax withheld for the calendar year.

<u>Example</u>: A files on a fiscal year basis beginning June 1, 1962, and ending May 31, 1963. The full amount of tax withheld during the calendar year 1962 must be claimed as a credit on such fiscal year return and it may not be prorated to reflect the portion withheld from June 1 to December 31, 1962. The withholding tax statement for 1962 must be attached to the return filed for such fiscal year ending May 31, 1963.

Section 74. Employer's return and payment of withheld taxes.

74.01. General. Every employer required to deduct and withhold West Virginia income tax shall, on or before the last day of the month following the close of each calendar quarter, file with the Income Tax Division, State Tax Commissioner, Charleston, West Virginia 25305, an employer's return of personal income tax withheld and remit with such return the full amount of taxes withheld during such calendar quarter. The due dates of the four quarterly returns are as follows:

Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

Returns and payments must be made quarterly as stated above. Once a quarterly return is required to be filed, an employer must continue to file quarterly returns thereafter until he has permanently ceased to pay wages under his current identification number. For exceptions to the preceding sentence, see subsections (a) and (b) below. Accordingly, such quarterly returns are required to be filed even though, in a specific quarter, no wages are paid or tax withheld. On such returns, the employer should state the reason why no West Virginia income tax was withheld on the quarterly return.

(a) Annual returns. Where the aggregate amount of West Virginia income tax withheld by the employer is less than $25.00 in a calendar quarter and the total amount can reasonably be expected to be less than $100.00 for the entire calendar year, the employer may be granted permission to file his withholding returns annually instead of quarterly. However, an employer may not withhold on an annual basis unless he has obtained permission to do so from the Income Tax Division.

(b) Monthly returns.

(1) If in the discretion of the tax commissioner it is deemed advisable, monthly payments may be required to be made to the tax commissioner, or to a designated depository, by employers withholding amounts in excess of $100.00 in any month.

(2) If an employer's withholding account is delinquent, he may be required to withhold on a monthly basis at the discretion of the tax commissioner.

(c) Correcting mistakes.

(1) Any mistakes in withholding shall be corrected in the same manner as provided for federal withholding tax purposes. However, if a mistake in income tax withholding cannot be adjusted on a return for a subsequent return period of the same calendar year, the Income Tax Division must be consulted as to the proper method of correction.

(2) Where an overpayment results solely from computation errors made by an employer in the preparation of the return or remittance, such employer may apply for a refund of such overpayment.

(d) Annual reconciliation of tax withheld.

(1) The annual reconciliation of West Virginia income tax withheld must be submitted by the employer on or before February 28 following the close of the calendar year, together with the Income Tax Division's copies of all withholding tax statements for the year. These forms must be accompanied by a list, preferably in the form of an adding machine tape or accounting machine listing of the amounts of income tax withheld. These forms are to be submitted separately from the employer's quarterly return.

(2) Where the number of withholding statements is substantial, they may be forwarded to the Income Tax Division in packages of convenient size. When this procedure is followed, the packages should be identified with the name and account number of the employer and consecutively numbered and the annual reconciliation placed in package number one. The number of packages should be indicated on the annual reconciliation.

(3) If an employer's total payroll consists of a number of separate establishments, the withholding statements may be assembled accordingly and a separate list submitted for each establishment. In such case, a summary list should be submitted, the total of which must agree with the corresponding entry made on the annual reconciliation.

(e) Termination of business. If an employer permanently discontinues or sells his business or permanently ceases to pay wages under his current identification number, withholding returns shall be filed simultaneously with or within 30 days after the filing of the final quarterly return and shall be accompanied by the adding machine tape or accounting machine listing referred to above. Such last return must be marked "Final Return".

(f) Use of pre-addressed forms. If pre-addressed forms are mailed to the employer by the Income Tax Division for use in filing the employer's withholding returns, such pre-addressed forms shall be used by the employer in filing these reports. Where use of such forms is impracticable, the employer must exercise extreme care to show the employer's name and identification number exactly as such appear on previously filed returns.

(g) West Virginia employer's identification number.

(1) Each employer will be identified by a West Virginia employer's identification number. This identification number will be the same as the

federal identification number in every case where the employer has been assigned such a number by the District Director of Internal Revenue.

(2) In any instance where an employer has not been assigned an identification number for federal purposes and is not required to obtain such a federal number, the employer must notify the Income Tax Division which will assign a West Virginia number for his use. If an employer has been assigned an identification number by the Income Tax Division and later obtains a federal number, he must notify the Income Tax Division of the federal number and he will be notified to discontinue using the West Virginia identification number.

(3) Each employer must have only one identification number. If an employer has been assigned more than one federal number and has not been advised which one to use, he should notify the District Director of Internal Revenue of the numbers he has, the name and address to which each number was assigned and the address of his principal place of business. The District Director will then advise him which number to use.

(4) An employer who has acquired the business of another employer must not use any identification number assigned to the original employer, but must obtain a new identification number in accordance with this regulation.

74.02. Deposit in trust for tax commissioner.

(a) Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required by the West Virginia Income Tax Act, the tax commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes within the time specified in such notice 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 such tax in such account until payment over to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served by the tax commissioner. Any employer, who, after service of such notice by the tax commissioner, fails to comply with the instructions contained therein shall be liable for criminal and civil penalties.

(b) In lieu of the requirement referred to in the preceding paragraph to deposit the taxes on a separate bank account and trust for and payable to the tax commissioner, the notice may require the employer to remit such taxes to a designated officer or employee of the State Tax Commissioner.

Section 75. Employer's liability for withheld taxes.

75.01. Every employer required to deduct and withhold West Virginia income tax from wages of an employee is liable for the payment of such tax, whether or not it is collected from the employee by the employer.

(a) If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of tax. See, however, section 76. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid over to the tax commissioner, and no employee shall have any right of action against his employer in respect to any monies deducted and withheld from his wages and paid over to the tax commissioner in compliance or in intended compliance with the West Virginia Income Tax Act.

(b) Any amount of tax withheld shall, with respect to the recipient of the wages, be deemed to have been paid by him and shall, in the hands of the employer or withholding agent, constitute a special fund in trust for the tax commissioner.

(c) All the provisions of sections 80 through 93 of the West Virginia Income Tax Act, relating to assessment and collection of taxes, and to penalties, additions to tax, interest and crimes in respect thereto, shall apply to every employer required to withhold West Virginia Income Tax.

Section 76. Employer's failure to withhold.

76.01. General. If an employer fails to deduct and withhold tax as required, and thereafter the income tax against which such tax may be credited is paid by the employee, the tax required to be deducted and withheld shall not be collected from the employer. However, the preceding sentence shall not relieve the employer from any liability for any penalties, interest, additions to tax, or crimes otherwise applicable in respect of such failure to deduct and withhold.

76.02. Example: An employer fails to deduct and withhold West Virginia income tax from an employee's wages (on whose wages he is required to withhold). Thereafter, the employee files his West Virginia Personal Income Tax Return and pays the income tax shown on the return to be due. Since the tax was paid by the employee, the Income Tax Division is precluded from collecting the tax which the employer should have withheld from the employee; however, the payment of the tax by the employee does not relieve the employer from penalties, interest, additions to tax and crimes in respect to his failure to withhold.