

Who Must Pay the Underpayment Penalty

You may be charged a penalty if you did not have enough West Virginia state income tax withheld from your income or pay enough estimated tax by any of the due dates. This may be true even if you are due a refund when you file your return. The penalty is computed separately for each due date (quarter). You may owe a penalty for an earlier due date (quarter) even if you make large enough payments later to make up the underpayment.

You may owe the penalty if you did not pay at least the smaller of:

1. 90% of your 2008 tax liability; or
2. 100% of your 2007 tax liability (if you filed a 2007 return that covered a full 12 months).

Exceptions to the Penalty You will not have to pay any penalty if either of these exceptions apply:

1. You had no tax liability for 2007 and you meet ALL the following conditions:
 - your 2007 tax return was (or would have been had you been required to file) for a taxable year of twelve months;
 - you were a citizen or resident of the United States throughout the preceding taxable year;
 - your tax liability for 2008 is less than \$5,000.
2. The total tax shown on your 2008 return minus the tax you paid through West Virginia withholding is less than \$600. To determine if you meet this exception, complete lines 1 through 5, PART I. If you meet this exception, you do not have to file Form IT-210.

If you file your tax return and pay any tax due on or before January 31, 2009, no fourth quarter penalty is due. Include the tax paid with your return in column (d) of line 2, PART IV; this will result in no penalty due for the January 15, 2009 installment.

Special Rules for Farmers

If at least two-thirds of your gross income for 2008 was from farming sources, the following special rules apply:

1. You are only required to make one payment for the taxable year (due January 15, 2009); and
2. The amount of estimated tax required to be paid (line 6) is sixty-six and two-thirds percent (66-2/3%) instead of ninety percent (90%);
3. If you fail to pay your estimated tax by January 15, but you file your return and pay the tax due on or before the first day of March, 2009, no penalty is due.

Mark box 10 in PART I and complete PART III or only column (d) of PART IV to figure your penalty. Be sure to use .02340 instead of .06312 when calculating line 6 of PART III. When using PART IV, carry the entire figure shown on line 8 of PART I to column (d), line 1.

Waiver of Penalty

If you are subject to underpayment penalty, all or part of the penalty will be waived if the West Virginia State Tax Department determines that:

1. The penalty was caused by reason of casualty or disaster;
2. The penalty was caused by unusual circumstances which makes imposing the penalty unfair or inequitable.

To request a waiver of the penalty, check the box for line 9 in PART I and enclose a signed statement explaining the reasons you believe the penalty should be waived (see page 27 of the return). If you have documentation substantiating your statement, enclose a copy. The Department will notify you if your request for waiver is not approved.

PART I - FOR ALL FILERS

- Line 1** Enter the amount from line 8 of Form IT-140.
- Line 2** Enter the amount shown on line 9 plus line 15 of Form IT-140.
- Line 3** Subtract line 2 from line 1 and enter the result.
- Line 4** Enter the amount of withholding tax shown on line 13 of Form IT-140.
- Line 5** Subtract line 4 from line 3 and enter the result. ***IF LINE 5 IS LESS THAN \$600, YOU ARE NOT SUBJECT TO THE PENALTY AND NEED NOT FILE FORM IT-210.***
- Line 6** Multiply line 3 by ninety percent (90%) and enter the result.
- Line 7** Enter your tax after credits from your 2007 West Virginia return. Your tax after credits will be line 10 reduced by the sum of line 15.
- Line 8** Compare the amounts shown on lines 6 and 7. If line 7 is zero and line 3 is more than \$5,000, enter the amount shown on line 6. Otherwise, enter the smaller of line 6 or line 7.

IT-210 - Instructions (continued)

PART III - SHORT METHOD

You may use the short method to figure your penalty only if:

1. You made no estimated tax payments (or your only payments were West Virginia income tax withheld); or
2. You paid estimated tax and the payments were made in four equal installments on the due dates.

NOTE: If any of your payments were made earlier than the due date, you may use the short method to calculate your penalty; however, using the short method may cause you to pay a higher penalty (if the payments were only a few days early, the difference is likely to be very small).

You may not use the short method if:

1. You made any estimated tax payments late; or
2. You checked the box on line 11 in PART I, or used PART II (Annualized Income Worksheet).

If you can use the short method, complete lines 1 through 5 to compute your total underpayment for the year and lines 6 through 8 to compute your penalty due. If you checked the box for line 10 in PART I because you are a farmer, the figure to use on line 6 is .02340 instead of .06312.

In certain instances, the penalty due may be waived. See Waiver of Penalty (page 35) for more details.

PART IV - REGULAR METHOD

Use the regular method to compute your penalty if you are not eligible to use the short method.

Section A - Compute Your Underpayment

Line 1 Enter in columns (a) through (d) the amount of your required installment for the due date shown in each column heading. For most taxpayers, this is the amount shown on line 8 of PART I divided by four. If you used PART II, enter the amounts from line 19 of the Annualized Income Worksheet in the appropriate columns.

Line 2 Enter the estimated tax payments you made plus any West Virginia income tax withheld from your income. In column (a), enter the tax payments you made by April 15, 2008, for the 2008 tax year; in column (b), enter payments you made after April 15, and on or before June 16, 2008; in column (c), enter payments you made after June 16, and on or before September 15, 2008; and in column (d), enter payments you made after September 15, and on or before January 15, 2009.

When calculating your payment dates and the amounts to enter on line 2 of each column, apply the following rules:

1. For West Virginia income tax withheld, you are considered to have paid one-fourth of these amounts on each payment due date, unless you check the box on line 11 in Part 1 and show otherwise.
2. Include in your estimated tax payments any overpayment from your 2007 West Virginia tax return that you elected to apply to your 2008 estimated tax. If you filed your return by the due date (including extensions), treat the overpayment as a payment made on April 15, 2008.
3. If you file your return and pay the tax due on or before January 31, 2009, include the tax you pay with your return in column (d) of line 2. In this case, you will not owe a penalty for the payment due January 15, 2009.

Line 3 Enter any overpayment from the previous column on line 3.

Line 4 Add lines 2 and 3 in each column and enter the result on line 4.

Line 5 Add lines 7 and 8 from the previous column and enter the result in each column.

Line 6 Subtract line 5 from line 4 in each column and enter the result on line 6. If line 6 is equal to or more than line 4 in any column, enter zero on line 6 in that column.

Line 7 Subtract line 4 from line 5 for any column where line 5 is more than line 4; otherwise, enter zero.

Line 8 Subtract line 6 from line 1 for any column where line 1 is more than line 6; otherwise, enter zero. If line 8 is zero for all payment periods, you do not owe a penalty. However, if you checked any box in PART I, you must file Form IT-210 with your return.

Line 9 Subtract line 1 from line 6 for any column for which line 6 is more than line 1; otherwise, enter zero. Be sure to enter the amount from line 9 on line 3 of the next column.

Section B - Compute Your Penalty

Caution: Read the following instructions before completing Section B.

Compute the penalty by applying the appropriate rate against each underpayment on line 8. The penalty is computed for the number of days that the underpayment remains unpaid.

The rates are established twice during each calendar year, on January 1 and July 1. If an underpayment remains unpaid for more than one rate period, the penalty for that underpayment may be computed using more than one rate. The annual rate is nine and one-half percent (9.5%) from January 1, 2008 through June 30, 2009 and will require only one rate for all underpayments.

Use line 10 to compute the number of days the underpayment remains unpaid. Use line 12 to compute the actual penalty amount by applying the proper rate to the underpayment for the number of days it was unpaid.

Each payment must be applied to the oldest outstanding underpayment. It does not matter if you designate a payment for a later period. For example, if you have an underpayment for the April 15 installment period, the payment you make June 16 will first be applied to pay off the April 15 underpayment; any remaining portion of the payment will be applied to the June 16 installment.

Also, apply the following rules:

1. Show the West Virginia withholding tax attributable to each installment due date; do not list the withholding attributable on or after January 1, 2009.
2. Any balance due paid on or before April 15, 2009 with your personal income tax return is considered a payment and should be listed on line 2, column (d). For the payment date, use the date you file your return, or April 15, 2009, whichever is earlier.

Chart of Total Days Per Rate Period

Rate Period	Line 10
(a)	365
(b)	303
(c)	212
(d)	90

For example, if you have an underpayment on line 8, column (a), you would enter 365 in column (a) of line 10.

The following line-by-line instructions apply only to column (a) of Section B. If there is an underpayment shown in any other column on line 8, complete lines 10 and 12 in a similar fashion.

Line 10 Enter in column (a) the total number of days from April 15, 2008 to the date of the first payment. If no payments enter 365.

Line 11 The daily penalty rate is equal to the annual interest rate applied to tax underpayments divided by 365. **The annual interest rate for underpayments is nine and one-half percent (9.5%) through June 30, 2009, resulting in a daily rate of .000260.**

Line 12 Make the computation requested and enter the result. Note that the computation calls for the "underpayment on line 8". The amount to use as the "underpayment" depends on whether or not a payment is listed.

If There Is A Payment - If the payment is more than the underpayment, apply only an amount equal to the underpayment and apply the remainder to the tax due for the next quarter. If the payment is less than your underpayment, the penalty for the remaining underpayment will require a separate computation. Use a separate sheet of paper to show any additional computations. **If There Are No Payments** - The "underpayment" is the entire amount shown on line 8.

The Following Conditions Determine If Additional Computations Are Needed For Column (a):

1. The first payment was enough to reduce the underpayment to zero. There are no further computations for column (a).
2. No payments. Only one computation is needed. The penalty for column (a) is line 8 multiplied by the number of days in the chart above multiplied by line 11.
3. The payment did not reduce the underpayment to zero. Compute the penalty on the remaining underpayment on a separate sheet of paper. If additional payments apply, reduce the underpayment for each installment and compute the penalty on the remainder of tax due until paid or April 15, 2009, whichever is earlier.

Enter the total penalty calculation on line 12 and proceed to the next column.

Columns (b) through (d)

To complete columns (b) through (d), use the same procedures as for column (a). However, apply only those payments in each column which have not been used in a previous column.

Line 13 Add all figures from line 12. Enter the sum on line 13 and on the appropriate PENALTY DUE line of your personal income tax return.