

## CHAPTER 10

### MISCELLANEOUS TAXES

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## ¶ 1001 Business Registration Tax

*Law: W. Va. Code § 11-12-1 et seq.*

*Taxpayers subject to tax:* Every person engaging in or prosecuting any business activity in the State of West Virginia must first obtain a Business Registration Certificate from the State Tax Commissioner and pay the Business Registration Tax.

A certificate must be obtained for each fixed location from which property or services are offered for sale or lease to the public or at which customer accounts may be opened, closed or serviced. A separate certificate is required for each location from which coin-operated machines are available to the public, but not for each machine. A business which sells tangible personal property or services from vehicles needs a certificate for each fixed location and must carry a copy of the certificate in each vehicle.

A transient vendor must carry and publicly display the certificate when doing business in this State, and must post a \$500 bond with the Tax Commissioner to ensure payment of taxes.

Contractors must keep a copy of the business registration certificate available at every construction site in this State until the work at such site is completed.

*Exemptions from registration and payment of tax:* Persons engaging in business activities in this State who are not required to collect or withhold a tax administered under the Tax Procedures and Administration Act, who do not claim an exemption from the sales or use tax, and whose gross income is \$4,000 or less during the tax year preceding the year of registration are exempt from registration. Additionally, organizations which qualify for exemption from federal income taxes under IRC § 501, political subdivisions of this State, the United States and its agencies, persons engaged in agriculture and farming, and foreign retailers who are not engaging in business in this State, are exempt from payment of the tax. However, businesses exempt from payment of the tax must still register and obtain a registration certificate if doing business in this State.

*Registration certificates:* Upon receipt of an application, registration certificates are issued for a period of up to twenty-four months beginning with the first day of July of the fiscal year of the State during which the certificate is issued. However, a business registration certificate issued on or after July 1, 2010, will be valid until the business ceases doing business or the certificate is suspended, revoked or canceled by the State Tax Commissioner. The Commissioner may cancel or refuse to issue a new business registration certificate for failure to comply with State tax laws, including failure to pay

local property taxes on business tangible personal property. Certificates must be posted in a conspicuous position in the place of business. Contractors must post a copy of the certificate at every construction site in this State.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest are considered a cessation of the business and require a new certificate. Changes of partners or members of firms or officers of a corporation do not require a new certificate.

Persons selling cigarettes, other tobacco products or cigarette wrappers at wholesale or retail, must additionally obtain a license to sell cigarettes or other tobacco products or cigarette wrappers.

Transient vendors, collection agencies, employment agencies and persons selling drug paraphernalia must comply with their respective registration provision before beginning business in this State and these businesses must obtain a separate business registration certificate for any other business operation conducted on site.

*Rate of tax and due date:* The business registration tax is \$30 per certificate. The certificate issued to a business is permanent unless the business changes its location or changes its name or until it is suspended, revoked or cancelled by the Tax Commissioner. The tax is payable with the initial registration. New businesses are required to obtain a business registration certificate before commencing business.

An initial "Sparkler and Novelty Registration Fee" of \$15 is charged all businesses selling sparklers and novelties. If a business sells sparklers and novelties from multiple locations, each location must be registered and a \$15 registration fee paid for each location.

Municipalities now have two options for issuing business licenses. A municipality may require a municipal license for business activities in the municipality and may impose a reasonable tax that cannot exceed the amount of the State license tax. Alternatively, the municipality may enact an ordinance creating an annual General Municipal Business license for municipal purposes and assess a tax that may not exceed \$20 per license, except where a business license tax or fee is established elsewhere in the West Virginia Code.

*Penalties:* If a person engages in or prosecutes any business activity in this State before applying for a business registration certificate, or continues doing business in this State without timely renewing the certificate, the person is subject to a money penalty equal to \$50 per month for each month, or fraction thereof, the failure continues, except that when the failure is to renew a certificate, the penalty may not exceed \$50. (W. Va. Code § 11-12-9). This penalty is in addition to interest other additions to tax discussed in chapter 9.

*Cancellation or suspension of certificate:* The State Tax Commissioner may cancel or suspend a business registration certificate if a registrant files a false or fraudulent application, willfully refuses or neglects to file a tax return, willfully refuse or neglects to pay any tax, additions to tax, penalties or interest, when due, neglects to pay over any tax withheld from any person or held in trust for the State, abuses an exemption from sales or use tax, fails to pay use tax on taxable purchases for use in business, or fails to either pay the tax or give a properly executed exemption certificate to a vendor, or fails to pay in full delinquent personal property taxes owed for the calendar year. The State Tax Commissioner may revoke, cancel or suspend a business registration certificate when informed by a county sheriff that personal property taxes owed by the business are delinquent. Additionally, the Tax Commissioner may revoke, suspend, or refuse to issue or renew a business registration certificate for any business determined to be an alter ego, nominee or instrumentality of a business whose business registration certificate has been revoked or suspended. Rules have been established for such determinations. (W. Va. Code § 11-12-5.)

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## **¶ 1002 Corporate Tax On Excess Acreage**

*Law:* W. Va. Code § 11-12-75.

*Taxpayers subject to tax:* Corporations authorized to hold or holding more than 10,000 acres of land in this State are required to pay the corporate tax on excess acreage. The Attorney General has given an opinion that leasehold interests are not included within the meaning of land for purposes of the statute. (46 Op.Atty.Gen. 413 (1956)). A corporation created under West Virginia law is required to state in its agreement for incorporation and a foreign corporation applying for authority to transact business in this State is required state in its agreement or application the number of acres it desires to hold. Thereafter, if the corporation desires to hold additional acres it must apply to the Secretary of State for authorization to hold the additional acres.

*Rate of tax:* The tax is 5 cents per acre owned over 10,000 acres. The tax is paid to the Secretary of State when the agreement for incorporation or application for authority to do business is filed with the Secretary of State. Thereafter, the tax is paid with an application by the corporation to hold additional acreage. The application must be signed by the President, attested by the Secretary and under the corporate seal of the corporation. The Secretary of State then issues a certificate to the corporation showing the acreage the corporation is authorized to hold.

*Assignment of authority to hold excess acreage:* A corporation that paid this tax may assign, without further payment by the assignee of the tax, its license or authority to hold lands in excess of 10,000 acres provided the assignee is a corporation organized solely to conduct the same general business and with the same stock ownership as the original licensee and the assignment is accompanied by a conveyance and transfer to the assignee corporation of all the lands and other assets of the original licensee. The

assignment must be filed with the Secretary of State who, upon being satisfied that the assignee corporation has conformed to the preceding requirements, will issue a certificate authorizing the assignee corporation to hold the same number of acres the original licensee was authorized to hold.

*Penalties:* A corporation which fails to pay the tax is liable for a fine of from \$25 to \$500, a penalty of 10% of the amount of the tax due.

### **¶ 1003 Corporate License Tax**

*Law:* W. Va. Code § 11-12C-1 *et seq.*

The corporate license tax was repealed for license years beginning on and after July 1, 2008.

### **¶ 1004 Motor Carrier Road Tax**

*Law:* W. Va. Code § 11-14A-1 *et seq.*

*Introduction:* The Motor Carrier Road Tax is closely related to the Motor Fuel Excise Tax.

*Taxpayers subject to tax:* The Motor Carrier Road Tax is imposed on motor carriers, which are defined as any vehicle having two axles and a gross vehicle weight exceeding 26,000 pounds, or having 3 or more axles regardless of weight, except recreational vehicles. The tax is paid on each gallon of motor fuel used in motor carrier operations in the State.

*Rate and basis of tax:* The tax is the same rate as the Motor Fuel Excise Tax discussed at ¶ 1005.

*Exemptions:* Motor carriers operated by any agency of the federal and state governments, or political subdivisions, and school buses.

*Registration fee:* Non-International Fuel Tax Agreement vehicles pay a registration fee of \$5. A West Virginia identification marker is required on each vehicle.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

### **¶ 1005 Motor Fuel Excise Tax**

*Law:* W. Va. Code § 11-14C-1 *et seq.*

*Introduction:* The Motor Fuel Excise Tax replaced the Gasoline and Special Fuels Excise Tax, effective January 1, 2004.

*Taxpayers subject to tax:* Persons importing motor fuel into the State.

*Rate and basis of tax:* The Motor Fuel Excise Tax is a combination of a flat rate of 20.5 cents per gallon, plus a variable rate per gallon. The variable component is based on the average wholesale price of gasoline and special fuel as determined by the State Tax Commissioner on or before the first day of December each year and for 2011 is 12.9 cents per gallon. In no event may the variable rate be less than 4.85 cents per gallon. Any change in rate is effective each January 1. The aggregate motor fuel excise tax rate on conventional motor fuels, e.g., gasoline and diesel fuel is:

January 1, 2012 – December 31, 2012	33.4 cents per gallon
January 1, 2013 – December 31, 2013	34.7 cents per gallon
January 1, 2014 – December 31, 2014	35.7 cents per gallon
January 1, 2015 – December 31, 2015	34.6 cents per gallon

The tax also applies to compressed natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (propane) and field gas. The aggregate motor fuel excise tax on these products:

<u>Year ending December 31, 2015:</u>	
Compressed natural gas (CNG)	\$1.894 per 1,000 cubic feet
CNG – GGE Measure	\$0.240 per 126.67 cubic feet or per 5.66 pounds
Liquefied natural gas (LNG)	\$0.155 per gallon of LNG
Liquefied petroleum gas (propane)	\$0.211 per gallon of LPG
Field gas	\$1.731 per 1,000 cubic feet

The tax is imposed at the time motor fuel is imported into the State, other than by bulk transfer, and is measured by invoiced gallons received outside the State at a refinery, terminal or bulk plant for delivery into West Virginia. The tax does not apply to motor fuel imported into the State in the fuel tank of a motor vehicle, but the Motor Carrier Road Tax may still apply.

Effective July 1, 2014, transporters, importers and exporters of motor fuel will be required to use the FuelTrac System to register fuel diversions and imports involving West Virginia. Failure to register and keep adequate records may result in civil penalties. Information for using the FuelTrac System can be obtained at <http://www.fueltrac.us/fueltrac.us>.

Effective January 1, 2014, the motor fuel excise tax applies to alternative fuels, such as natural gas and hydrogen (except electricity), at rates equivalent to the gasoline tax and with a variable rate equal to 5% of the average wholesale price of the alternative fuel, all to be set by the Tax Commissioner. Alternative fuel bulk end users, providers and retailers must obtain the appropriate license from the Tax Commissioner.

*Exemptions:* The following sales of motor fuel are exempt from the flat rate component of the tax: motor fuel exported to another state, aviation fuel, dyed special fuel, and propane. Refundable exemptions are available for the following purchasers:

the U.S. Government, any county or municipal governmental agency, county boards of education, urban mass transportation authorities, civil defense or emergency service programs. Refunds are permitted for taxes paid on motor fuel: exported to another state or nation; consumed in stationary off-highway turbine engines, used for heating, used in boilers, used as a dry cleaning solvent or commercial or industrial solvent, used as lubricants, ingredients or components of any manufactured product or compound; used in commercial watercraft or locomotives; purchased in quantities of 25 gallons or more and used in engines not operated on State highways. Motor fuel exported from the State to another state or nation is exempt per se from the variable component of the tax, provided that the destination state tax is collected.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

### ¶ 1006 Telecommunications Tax

*Law:* W. Va. Code § 11-13B-1 *et seq.*

The telecommunications tax was repealed effective March 7, 2012.

### ¶ 1007 Business and Occupation Tax - Tax on Utilities

*Law:* W. Va. Code §§ 11-13-2d and 11-13-2e.

*Taxpayers subject to tax:* The business and occupation tax on utilities (W. Va. Code § 11-13-2d) is levied as an annual privilege tax on taxpayers engaged in public service or utility businesses, except railroad, express, pipeline, telephone and telegraph companies, water carriers, motor carriers. Taxpayers engaged in the business of generating or producing electric power, are taxed under W. Va. Code § 11-13-2o. The business of rendering gas storage services is subject to tax (W. Va. Code § 11-13-2e). Gas includes natural and artificial gas.

*Rates of tax on utility gross receipts:*

- (1) Street and interurban and electric railways are taxed at 1.4%.
- (2) Water companies are taxed at 4.4%, except for municipally owned water plants.
- (3) Natural gas companies are taxed at 4.29%, except that the sale of natural gas is exempt to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in the State and the benefit of the exemption is passed on to the purchaser of the natural gas.
- (4) Toll bridges are taxed at 4.29%.
- (5) All other public service or utility businesses are taxed at 2.86%.

The all other public service business classification does not apply to electric power generation, transmission or distribution businesses, which are taxed under W. Va. Code § 11-13-2o, or cable television companies (W. Va. Code § 24D-1-27).

*Basis of tax for utilities:* The measure of the tax does not include gross income derived from commerce between West Virginia and other states or between West Virginia and other countries. The gross income of the taxpayer from any other activity is taxed under the appropriate section of the West Virginia Code, so only income from business as a utility is subject to the business and occupation tax.

*Returns and payment of tax:* For taxpayers whose monthly estimated tax liability exceeds \$1,000, the business and occupation tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrues, except that the May installment is due June 15. A monthly estimated return is filed along with the tax payment. For tax liabilities of less than \$1,000 or per month, the tax is payable in quarterly installments on or before the last day of the fourth, seventh, and tenth months of the taxable year. Where the tax does not exceed \$200 per year, annual returns and payment within one month of the year-end are required.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

#### **¶ 1008 Business and Occupation Tax - Tax on Natural Gas Storage**

*Law:* W. Va. Code § 11-13-2e.

*Taxpayers subject to tax:* Every taxpayer engaged in storing natural gas in reservoirs which are first used for storage after March 1, 1989, is subject to the business and occupation tax on natural gas storage.

*Rate of tax:* The tax is five cents per dekatherm (generally 1,000 cubic feet) of natural gas injected into or removed from a storage field in West Virginia.

*Basis of tax:* The dekatherms of gas withdrawn and injected are netted on a monthly basis and the net dekatherms are subject to the tax. The Natural Gas Industry Jobs Retention Credit is available against the gas storage tax liability.

*Returns and payment of tax:* Returns are due monthly or quarterly on the 20th day of the month following the month or quarter in which the tax accrues.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

#### **¶ 1009 Business and Occupation Tax - Electricity**

*Law:* W. Va. Code § 11-13-2o.

*Taxpayers subject to tax:* Taxpayers who generate or produce electricity for sale, profit or commercial use, either directly or through the activity of others, or in the business of selling electricity to consumers, or in both businesses are subject to the business and occupation tax on the business of generating or producing or selling electricity.

*Rate of tax:* Generators or producers of electricity pay tax at the rate of \$22.78 multiplied by the taxable generating capacity of each generating unit in this State owned or leased by the taxpayer, subject to reductions for units which have installed a flue gas desulfurization system. For taxable periods beginning on and after July 1, 2008, the taxable generating capacity of generating units utilizing a turbine primarily generated by wind is equal to 12.5% of the official capability of the unit.

Taxpayers who sell electricity to consumers in this State which is not generated or produced in this State are taxed at 19/100 of one cent (\$0.0019) times the kilowatt hours of electricity sold, except that the rate is 5/100 of one cent (\$0.0005) if sold to manufacturing facilities where the demand exceeds 200,000 kilowatts per year.

*Returns and payment of tax:* For taxpayers whose monthly estimated tax liability exceeds \$1,000, the business and occupation tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrues, except that the May installment is due June 15. A monthly estimated return is filed along with the tax payment. For tax liabilities of less than \$1,000 or per month, the tax is payable in quarterly installments on or before the last day of the fourth, seventh, and tenth months of the taxable year. Where the tax does not exceed \$200 per year, annual returns and payment within one month of the year-end are required.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## ¶ 1010 Tobacco Excise Taxes

*Law:* W. Va. Code §§ 11-17-1 *et seq.*

*Introduction:* Cigarettes and other tobacco products are taxed under the tobacco products excise tax. The cigarette excise tax was imposed in 1947. The tax on other tobacco products took effect in 2002.

### *Cigarettes*

*Rate of tax:* Cigarettes are taxed at the rate of 55 cents on each twenty cigarettes and, on the sale of each fraction of twenty, at the same fractional part of 55 cents. Only one sale of the same article can be used in computing the amount of Cigarette Tax due.

*Definition of Cigarette:* The law provides a two-part definition of the term "cigarette." One part is narrow; the other is broad. The narrow part of the definition reads "any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether

or not such tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which consists of paper or any substance or material except tobacco (is a cigarette).” The broad part of the definition reads “any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling is likely to be offered to, or purchased by, consumers as a cigarette (is a cigarette).”

*Tax Indicia:* Revenue indicia, which are tax stamps, must be affixed to the bottom of each package of cigarettes sold and may only be purchased by (1) wholesalers who buy unstamped cigarettes directly from manufacturers, and (2) vending machines operators who, when they purchase cigarettes directly from manufacturers, are considered wholesalers even though they sell cigarettes at retail.

The stamp must be affixed to the bottom of the cellophane wrapper of every individual cigarette package or similar container before the cigarettes can be delivered for resale to other wholesalers, jobbers or retailers. Stamps are purchased from the State Tax Commissioner or from certain West Virginia banks or trust companies that the State Tax Commissioner has authorized to sell cigarette revenue indicia. The statute authorizes a discount of 4 percent from the face value of the indicia as a commission for affixing the stamps or impressions onto cigarette packages. Prepayment of this tax is possible when wholesalers are authorized by the State Tax Commissioner to use a metering device in affixing revenue indicia. The State Tax Commissioner may authorize wholesalers who file an appropriate surety bond to make conditional credit purchases of cigarette indicia.

#### *Other Tobacco Products*

*Rate of Tax:* Tobacco products other than cigarettes are taxed at the rate of 7 percent of the wholesale price.

*“Wholesale Price” defined:* “Wholesale price” is the gross invoice price, including all federal excise taxes, at which the tobacco products are sold to distributors or wholesalers. “Wholesale price” excludes all trade discounts and other reductions in the manufacturer’s price.

*Method of collecting tax:* This tax does not use tax stamps or other indicia to evidence payment of the tax. Tax is collected using the inventory method of taxation. No discount is allowed for the monthly remittance of the excise tax on other tobacco products.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 applies to this tax.

### **¶ 1011 Soft Drinks Excise Tax**

*Law:* W. Va. Code §§11-19-1 *et seq.*

*Introduction:* The soft drinks tax is an excise tax levied upon the sale, use, handling or distribution of bottled soft drinks, syrups and powder bases prepared for mixing soft drinks whether manufactured within or outside West Virginia. It is levied to provide revenue for the construction, maintenance and operation of the four-year school of medicine, dentistry and nursing at West Virginia University.

The term “bottled soft drinks” includes almost any soft drink-type of beverage provided in any type of container. However, fluid milk to which no flavoring has been added and natural undiluted fruit and vegetable juices are specifically exempt, as are coffees and tea to which no flavoring or sweetener has been added. The term “soft drink syrups and powders” is also interpreted quite broadly.

*Payment of tax:* The tax is paid through purchase of tax stamps or tax crowns by manufacturers, distributors, wholesale or retail dealers or any other person who is the original consignee of such soft drinks, syrups and powders and who brings such products into the State for the purposes described above. Crowns are tax symbols that are permanently applied by manufacturers to bottle caps, can lids, cartons or labels. The tax may be paid by invoice method in lieu of affixing stamps on certain grocery-type products, such as powders, ades, and punches, by remitting gross tax due. The tax shall not be collected more than once on any bottled soft drink, soft drinks syrup or powder manufactured, sold or distributed in the State of West Virginia.

*Rate of tax:* The rates of the tax are as follows:

On bottled soft drinks

1 cent on each 16.9 fluid ounces of any fraction of that amount, or

1 cent on each ½-liter or any fraction of that amount;

On soft drinks syrup

80 cents on each gallon and, on each fractional part of a gallon, the same fractional part of 80 cents, or

84 cents on each 4 liters and, on any fractional part of 4 liters, the same fractional part of 84 cents;

On dry mixture used for making soft drinks

1 cent on each ounce or any fraction of that amount,

1 cent on each 28.35 grams or any fraction of that amount.

*Bond:* Manufacturers and distributors of soft drinks are required to furnish an appropriate bond to insure their compliance with regulations.

*Tax stamps or crowns:* Persons who wish to buy tax stamps or crowns can do so only after authorization has been given by the State Tax Commissioner. Although the Commissioner may authorize any sheriff or any West Virginia bank or trust company to sell soft drinks tax stamps, no such authorization has been given. Consequently, the Commissioner is the only source of tax stamps.

Soft drinks tax must be paid in advance when the stamps are bought. Stamp discounts from the face value of the stamps are as follows:

- on sales under \$25, no discount;
- on sales from \$25 but less than \$50, 5%, and
- on sales of \$50 or more, 10%.

When crowns are bought, payment of tax may be made either in advance or on credit bound by the terms on appropriate surety bond. Both cash and credit buyers of tax crowns are granted a discount of 12.5 percent from the face value of the crowns. When either the stamps or crown discount is taken, no claim can be made for a tax refund because of the breakage or destruction of stamped or crowned containers, because of the spoilage of the product, or because of the loss or destruction of the tax stamps or crowns. However, if any of the tax stamps or crowns on soft drinks, soft drink powders or soft drink syrups on which a tax has been paid are destroyed by fire, lightning or flood or if any soft drinks, syrups or powders upon which the tax has been paid are exported from the State or are required to be destroyed pursuant to federal or State order, the taxpayer may file a claim for refund for an amount equal to the amount of tax actually paid for such stamps or crowns. This claim for refund must be filed within 180 days of the date the tax stamps or crowns were destroyed or the soft drink product upon which the tax was paid was destroyed or exported from the State.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## ¶ 1012 Excise Tax on Transfer Of Real Property

*Law:* W. Va. Code §§ 11-22-1 *et seq.* and § 8A-12-21.

*Introduction:* West Virginia imposes excise taxes on the transfer of real property. There are three taxes, which are paid to the county clerk when the deed transferring the property is recorded. The State tax is \$1.10 per \$500 of value (or fraction thereof) of the property transferred. The county tax is generally a like amount. In counties that adopted a farmland preservation plan, an additional tax of \$1.10 per \$500 of value (or fraction thereof) of the property transferred is imposed. There are limited exceptions to these taxes.

*Rate of tax:* The rate of the State tax is \$1.10 for each \$500 (or fraction thereof) of the value of the transferred property. The Legislature has also imposed a county excise tax on the transfer of real property. The county tax is \$0.55 for each \$500 (or fraction thereof) of the value of the transferred property. Each county commission may increase the rate of the county excise tax to \$1.10 for each \$500 (or fraction thereof) of the value of the transferred property. Almost all county commissions have increased the county excise tax. (See W. Va. Code § 11-22-2.) Consequently, the real estate transfer tax collected by the county clerk in most counties is \$2.20 per \$500 of value. Some counties have elected to impose an additional tax for farmland preservation. See discussion *infra*.

*Measure of tax:* "Value," which is the measure of tax means in the case of any document not a gift, the amount of the full actual consideration for the document, paid or to be paid, including the amount of any lien or liens assumed. In the case of a gift, or any other document without consideration, value is the actual monetary value of the property conveyed or transferred. In the event any document includes real property or any interest in real property lying outside the State of West Virginia or includes personal property, value is the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value is required to be stated in the declaration of consideration or value provided for in section 11-22-6. See W. Va. Code § 11-22-2(8).

*When tax is due:* Tax is due when the document transferring title to real property is presented to the county clerk for recording. The grantor is primarily liable for payment of the tax. However, the grantee becomes liable for payment of the tax when it is not paid by the grantor.

*Exemptions:* The recordation of some documents transferring real property is not subject to the excise tax on the transfer of real property. See W. Va. Code § 11-22-1(4) (defining "document" and excluding from its meaning certain transfers resulting in their being exempt from tax). Transfers exempt from tax include and are limited to the following:

- (1) The transfer of ownership of real property by operation of law, e.g., real property is jointly owned by two individuals with right of survivorship. Upon the death of one of the owners, the survivor owns the interest in the property possessed by the decedent at the time of his or her death.
- (2) The document transfers ownership of real property that has a value of \$100 or less.
- (3) The document transfers ownership of real property through a testamentary or inter vivos trust.
- (4) The document transfers ownership of real property through a deed of partition.
- (5) The transfer of ownership of real property is by deed(s) made pursuant to mergers of corporations, limited liability companies, partnerships, or limited partnerships.
- (6) The transfer of ownership of real property is made by deeds pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships or trusts.

- (7) The document transfers ownership of real property made by deed from a subsidiary corporation to its parent corporation for no consideration, other than the cancellation or surrender of the subsidiary's stock.
- (8) The document is a lease of real property.
- (9) The document transfers real property between husband and wife.
- (10) The document transfers real property between parent and child or transfers between parent and child and his or her spouse, without consideration.
- (11) The document transfers real property between grandparent and grandchild or transfers between grandparent and grandchild and his or her spouse, without consideration.
- (12) The document transfers real property without consideration between a principal and straw party for any purpose.
- (13) The document is a gift of real property to or transfers real property from or between voluntary charitable or educational associations or trustees of voluntary charitable or educational associations and like nonprofit corporations having the same or similar purposes.
- (14) The document transfers real property by quitclaim or corrective deed without consideration.
- (15) The document transfers real property to or from the United States.
- (16) The document transfers real property to or from the State of West Virginia.
- (17) The document transfers real property to or from any instrumentalities, agencies or political subdivisions of the United State or the State of West Virginia when the transfer is by gift, dedication, deed or condemnation proceeding.
- (18) The document is a mortgage or deed of trust given as security for a debt.

*Additional Tax – Farmland Preservation:* In addition to the transfer taxes impose in W. Va. Code § 11-22-2, article 22, chapter 11 of the Code, county commissions that have created a farmland protection program are authorized in W. Va. Code § 8A-12-21 to impose an additional county excise tax on the privilege of transferring title to real property. This additional tax may not exceed \$1.10 per \$500 of value (or fraction thereof). In counties that have exercised this option, the combined taxes on the privilege of transferring title to real property may be \$3.30 per \$500 of value or fraction thereof:

- \$1.10 State tax
- .55 County regular tax
- .55 County additional tax
- \$1.10 County additional tax for farmland preservation

**¶ 1013 Health Care Provider Taxes**

*Law:* W. Va. Code §§ 11-27-1 *et seq.*

*Introduction:* The health care provider taxes are imposed on the provision of sixteen different types of health care services in West Virginia. In 2001, legislation was enacted phasing out the tax on certain service over a 10-year period. Net collections of tax are deposited in the Medicaid State Share Fund and used to draw matching federal dollars.

*Measure of tax:* The health care provider taxes are measured by the application of a rate to the gross receipts received from providing the particular health care services. Gross receipts include all payments, in cash or in kind, from patients, third-party providers and others for the services rendered, including retroactive adjustments under reimbursement agreements with third-party providers. No expenses may be deducted. Gross receipts that are not related to providing of health care services (*i.e.*, fees received by health care providers for providing expert testimony) and charitable donations are not subject to the health care provider taxes.

*Deductions:* The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Health Care Provider Taxes were paid.
2. Accrual-based taxpayers, except nursing homes, can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid. Contractual allowances are the differences between revenue or gross receipts at established rates and the amounts realized from third-party providers under contractual agreements.

*Rates of tax:* The following is a list of health care services and their respective tax rates for periods beginning on and after July 1, 2010:

	<b>July 1, 2010</b>
Ambulatory Surgical Centers	1.75%
Chiropractic Services	0%
Dental Services	0%
Emergency Ambulance Services	0%
Independent Laboratory or X-ray Services	5.00%
Inpatient Hospital Services	2.50%
Intermediate Care Facility Services	

for the Mentally Retarded	5.50%
Nursing Facilities (other than IMCFMR)	5.50% Effective October 15, 2015, this rate temporarily increases to 5.75% until July 1, 2016 when it decreases to 5.50%
Nursing Services	0%
Opticians' Services	0%
Optometric Services	0%
Outpatient Hospital Services	2.50%
Physicians' Services (including Psychiatrists and Ophthalmologists)	0%
Podiatry Services	0%
Psychological Services	0%
Therapists' Services	0%

In addition to the healthcare provider tax imposed on providers of inpatient and outpatient hospital services at the rate of 2.5%, effective July 15, 2015, the acute care hospital tax is imposed on certain eligible acute care hospitals at the rate of 0.72% on the gross receipts received or receivable by the eligible acute care hospital that provides inpatient or outpatient hospital services in the State of West Virginia through a Medicaid upper payment limit program. This additional tax is now set to expire June 30, 2016. (W. Va. Code § 11-27-38).

*Returns:* Taxpayers that owe more than an average of \$50 a month are required to file monthly estimated tax returns and pay in equal installment at least eleven-twelfths of the tax due for their taxable year. Monthly estimate returns and payments are due the fifteenth day of the month following the month for which the tax accrued. All taxpayers are required to file an annual return. The taxable year is the same as the taxpayer's taxable year for federal income tax purposes. Annual returns are due the last day of the month following the end of the taxable year.

*Providers of behavioral health service:* See ¶ 1014, below.

*Procedures:* The Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

### **¶ 1014 Severance and Business Privilege Tax – Behavioral Health Service Providers**

*Law:* W. Va. Code §§ 11-13A-2(d) and 11-13A-3

*Taxable services:* "Behavioral health services" is defined in W Va. Code §11-13A-2(d) as "services provided for the care and treatment of persons with mental illness, mental retardation, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care.

*Measure of tax:* The measure of tax is gross receipts of the provider from providing behavioral health services. However, gross receipts that are included in the provider's measure of a health care provider tax under W. Va. Code § 11-27-1 *et seq.*, are not also included in the measure of tax under W. Va. Code § 11-13A-3.

#### ¶ *Accounting Periods and Methods*

A taxpayer's accounting period for severance tax return purposes must be the same as that used for federal income tax reporting purposes. If a taxpayer changes its tax year for federal income tax purposes, the taxpayer must conform for purposes of the severance tax and provide a copy of the authorization from the Internal Revenue Service for the change with its annual severance tax return. (W. Va. Code § 11-13A-7.)

The taxpayer's method of accounting for severance tax return purposes must be the same as the accounting method employed for federal income tax purposes. If the taxpayer's method of accounting is changed for federal income tax purposes, a conforming change must be made for the severance tax and a copy of the Internal Revenue Service's approval of the accounting change must be filed with the annual severance tax return.

#### *Returns and payment of tax*

*Monthly returns:* Monthly severance tax returns are required for taxpayers with estimated tax liability of more than \$1,000 per month. Each month's return is due on or before the last day of the following month, *except* the monthly return due by June 30 which is now required to be filed with the remittance on or before June 15.

*Quarterly returns:* If the monthly estimated tax is \$1,000 or less, a return is due quarterly within one month after the expiration of each quarter if any tax is due.

*Annual returns:* An annual tax return must be filed by the last day of the month following the close of the taxable year. The annual return is required by every taxpayer filing monthly or quarterly severance tax returns whether or not any tax is due.

*Procedures:* The Tax Procedure and Administration Act discussed in chapter 9 applies to this tax.

### ¶ **1015 Unemployment Compensation Tax**

*Law:* W. Va. Code §§ 21A-1-1 *et seq.*

*Introduction:* The West Virginia Unemployment Compensation tax was originally enacted in 1936 and has been substantially revised throughout its legislative history. The law is administered by WorkForce West Virginia, Division of Employment Service.

*Employers subject to the tax:* Employers subject to the West Virginia Unemployment Compensation tax include any employer liable under the Federal Unemployment Tax

Act; any employer who pays wages of \$1,500 or more in any calendar quarter in the current or preceding year; any employer who employed at least one individual (not necessarily the same person) for some portion of a day in each of 20 different calendar weeks, whether or not consecutive, in either the current or preceding calendar year; state and local governmental agencies; nonprofit educational institutions; or any employer of agricultural labor if wages of \$20,000 or more were paid in any calendar quarter or which employed 10 or more individuals in each of 20 different calendar weeks. There are numerous other specific provisions and exclusions applicable to particular employers. Employers not covered may elect to become covered for at least two years.

*Wages subject to tax:* "Wages" means all remuneration for personal services, commissions and bonuses. Wages in excess of \$8,000 for each individual employee, and payments on account of retirement, sickness or accident disability, medical expenses, or death are not considered wages. Gratuities customarily received by an individual in the course of employment from persons other than the employer are treated as wages as long as such gratuities are at least \$20 per month and are required to be reported to the employer by the employee. Beginning April 11, 2009, wages in excess of \$12,000 are exempt from the unemployment tax and the measure of the tax is the wages paid to the employee or \$12,000, whichever is less. When the moneys in the unemployment fund reach \$220 million on February 15 of any year, the threshold wage is thereafter reduced to \$9,000. W. Va. Code § 21A-1A-28(d) as amended by SB 246.

*Rate of tax:* For the first 36 months that an employer is subject to the tax, the rate is 2.7% of the first \$8,000 of each employee's wages paid during the calendar year, except that beginning April 11, 2009, the tax is computed on the first \$12,000 of wages until such time as that threshold automatically reduces to \$9,000. For foreign corporations or entities engaged in the construction trade, the rate is 7.5%. After 36 months the rate is adjusted, based on the experience ratings of the employer and the assets of the fund. The agency maintains a separate account for each employer to which contributions in excess of 0.4% are credited and against which unemployment benefits paid out are debited. Employers are classified in accordance with their actual experience as of July 1 of each year. If an employer fails to file returns the rate increases to 7.5%. If benefits paid out exceed contributions by an amount in excess of 5% of their average annual payroll, employers pay at the rate of 5.5%, and if the deficit is from 5% to 10%, the rate is 6.5%, and if the deficit is over 10%, the rate is 7.5%. Once a debit balance is established, the rate applies for the entire year.

*Returns:* The tax return is due quarterly and the tax is to be paid with the required return. Past due payments bear interest at the rate of 1% per month.

## ¶ 1016 Municipal Taxes

*Law:* W. Va. Code §§ 7-18-1 *et seq.* and 8-13-1 *et seq.*

*Introduction:* The West Virginia Constitution gives home rule authority to all municipalities. However, the extent of a municipality's authority is limited to those

powers expressly delegated to them by the Legislature and to those implied powers that are implied from the powers expressly delegated. The result is that municipalities have limited taxing authority, when compared to municipalities in other states. (W. Va. Const. Art. VI, § 39.)

Municipalities have plenary power and authority to levy taxes on real and personal property and may levy special assessments or other benefit taxes, and may levy the following taxes, explained in detail.

#### **¶ 1016.1. Hotel occupancy tax**

*Law:* W. Va. Code §§ 7-18-1 *et seq.*

*Imposition of tax:* Counties and municipalities may impose a privilege tax upon the occupancy of hotel rooms within the taxing jurisdiction. The tax is imposed upon the consumer and collected by the hotel operator as part of the charge for a room. It is not imposed upon persons who occupy a room for 30 or more consecutive days or on hotel rooms occupied by a government employee when the charge for the room is billed directly to government agency employer.

*Rate of tax:* The municipality may set the rate from 3% to 6% of the consideration paid for use of the hotel room, not including the West Virginia consumer sales and service tax, charges for meals, valet service, room service, telephone service or other such charges.

“Hotel” is defined as any facility or building, whether publicly or privately owned, including a governmental owned facility, in which the public may, for a consideration, obtain sleeping accommodations. The term includes boarding houses, condominiums, hotels, motels, inns, courts, lodges, cabins and tourist homes, parks and governmentally owned parks. Hospitals, sanitariums, extended care facilities, nursing homes, or universities or college housing units (except for sleeping accommodations for nonstudents), any facility providing fewer than three hotel rooms, and tent, trailer or camper campsites, are not considered hotels and are not subject to the tax. The rental of a banquet room, meeting room, or other rooms not primarily used for sleeping accommodations is not considered to be rental of a hotel room and is not subject to the tax. Hotel room occupancy billed directly to the federal or state government, or state agencies, is exempt.

#### **¶ 1016.2. Property taxes**

*Law:* W. Va. Code § 8-13-1

While municipalities have plenary power and authority to levy taxes on real and personal property, W. Va. Code § 8-13-1, the actual power and authority is fairly limited. Municipalities have no authority to determine the value of any property for property tax purposes. The assessed value of all property except public utility property is determined by the assessor of the county in which the municipality is located. Under the West Virginia Constitution, property is assessed at 60 percent of its value. The methods of

valuing property are prescribed by the Legislature. The Constitution divides all property into four classes and caps the maximum property tax levy rate that may be imposed on each class of property. W. Va. Const. Art. X, § 1. These maximum rates are allocated by the Legislature among county boards of education, county commissions, municipalities and the State. For discussion of the classes of property, the levy rates, excess levies and general obligation bond levies, see ¶ 606, *supra*. The municipal regular levy rate on owner-occupied residential property may not exceed 25 cents per \$100 of assessed value. The municipal regular levy rate on all other tangible property may not exceed 50 cents per \$100 of assessed value. Municipalities may impose voter-approved excess levies and general obligation bond levies. However, municipal excess levies may not be greater than 50 percent of the regular levy and must be approved by at least 60 percent of those voting on the question every five years. General obligation bond levies must be also be approved by at least 60 percent of those voting on the question. General obligation bonds may not be issued for more than 34 years and the aggregate amount of general obligation bonds issued by a municipality may not exceed five percent of the value of all taxable property in the municipality. (W. Va. Const. Art. X, § 8.)

### **¶ 1016.3. Municipal license taxes**

*Law:* W. Va. Code § 8-13-4

A municipality may impose a reasonable tax on anything for which a State license is currently required. Municipalities may also impose a license tax on any activity that was subject to a State license tax imposed by W. Va. Code § 11-12-1 *et seq.* prior to their repeal, or the chain store license tax imposed by W. Va. Code § 11-13A-1 *et seq.* prior to its repeal. The rate of these license taxes may not exceed the State rate in effect on January 1, 1970. (W. Va. Code § 11-12-4.)

In lieu of the myriad of license taxes that municipalities have been authorized to impose, municipalities may now impose a general municipal business license tax for multiple purposes at a rate not to exceed \$20 per year.

### **¶ 1016.4. Business and occupation or privilege taxes**

*Law:* W. Va. Code § 8-13-5

Any business or occupation on which the State imposed its business and occupation tax prior to July 1, 1987 may be subject to a similar municipal business and occupation or privilege tax if engaged in business within the corporate limits of a municipality. Approximately half of West Virginia's 234 municipalities impose a business and occupation tax.

*Measure of tax:* The measure of tax is gross proceeds of sales, gross income or gross value of production depending upon the classification of the activity being taxed.

*Tax rates:* The rates of tax may not exceed the rate formerly imposed by the State, exclusive of surtaxes, in effect on January 1, 1959. (W. Va. Code § 11-13-25.) Additionally, municipalities may impose their business and occupation tax on banks and

other financial business at a rate not to exceed one percent of gross income, on the privilege of generating electricity under a tax similar to that in W. Va. Code § 11-13-2m at a rate not to exceed 0.30%, and on the privilege of providing health maintenance organization services at a rate not to exceed 0.50% of gross income received from providing health care to Medicaid recipients, individuals covered by the Public Employees Insurance Agency and other federal programs. Additionally, beginning July 1, 2007, municipalities may tax the unrelated business income, determined under IRC § 511, of corporations and organizations otherwise exempt from business and occupation tax under the applicable classification of the municipal business and occupation tax. The maximum rates of tax are as follows:

<b>Classifications</b>	<b>Maximum Rates</b>
Production of natural resources (§11-13-2a)	
Coal	1%
Sand & gravel (not mined or quarried)	3%
Oil, blast furnace slag	3%
Natural gas in excess of \$5,000	6%
Limestone or sandstone quarried or mined	1.5%
Timber	1.5%
Other natural resource products	2%
Manufacturing (§11-13-2b)	0.30%
Business of selling tangible property (§11-13-2c)	
Retailers	0.50%
Wholesalers	0.15%
Public service or utility business (§11-13-2d)	
Electric light and power companies (sales & demand charges, domestic purposes & commercial lighting)	4%
Electric light and power companies (all other sales and demand charges)	3%
Water companies	4%
Natural gas companies	3%
Toll bridges	3%
All other taxable public service or utility business	2%
Contracting (§ 11-13-2e)	2%
Amusements (§ 11-13-2g)	0.50%
Service business or calling (§ 11-13-2h)	1%
Rentals and royalties, etc (§ 11-13-2i)	1%
Small loan and industrial loan businesses (§11-13-2j)	1%
Banking and other financial business (§ 11-13-2k)	1%
Electric power generation (§ 11-13-2m)	0.30%
Health maintenance organizations	0.50%

*Exemptions:* A municipality may not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of W. Va. Code § 11-13-3 prior to July 1, 1987. Exemption is determined without regard to any annual or monthly exemption allowed by the municipal business

and occupation tax ordinance. Exemptions are provided for certain insurance companies, nonprofit cemetery companies, fraternal organizations except for the sale of alcoholic beverages, religious and charitable organizations, credit unions, advertising services, nonprofit homeowners' associations, and nonprofit water and sewer companies governed by the West Virginia Public Service commission. (W. Va. Code § 8-13-5(d) and § 11-13-3.)

*Apportionment:* Whenever a business activity is carried on in two or more municipalities, the gross income taxable by each municipality is determined by regulations of the State Tax Commissioner, since the same gross income may not be taxed by two or more municipalities. Gross income from retail and wholesale sales and on service businesses not taxed by any other municipality may be taxed by a municipality from which the activity is directed or in which the principal office of the taxpayer is located.

*Tax credits:* A municipality imposing a business and occupation tax has the authority to offer tax credits against such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

*Procedures:* The municipal ordinance imposing a business and occupation or privilege tax must provide procedures for the assessment and collection of the tax that are similar to those procedures in State business and occupation tax law on June 30, 1978, or to those procedures in the West Virginia Tax Procedure and Administration Act, W. Va. Code § 11-10-1 *et seq.* Additionally, the ordinance must conform to provisions in those laws as they relate to waiver of penalties and additions to tax.

#### **¶ 1016.5. Public utilities tax**

*Law:* W. Va. Code § 8-13-5a.

Municipalities have the power to levy excise taxes on services and tangible personal property provided by utilities within their corporate limits. The tax rate may not exceed 2% of the gross amount of each periodic statement rendered to such purchasers or consumers by the public utility. The public utilities collect the tax and account to the municipalities for the taxes collected.

#### **¶ 1016.6. Amusement taxes**

*Law:* W. Va. Code § 8-13-6

Municipalities have the power to levy amusement or admission taxes upon any public amusement or entertainment conducted within the corporate limits for profit or gain. The maximum tax rate is 2% and is levied upon the purchaser and added to the price of admission.

#### **¶ 1016.7. Tax on purchases of intoxicating liquors and private club fees**

*Law:* W. Va. Code § 8-13-7

Municipalities have the power to levy a tax upon purchases of intoxicating liquors within the corporate limits from a retail liquor store licensed by the Alcohol Beverage Control Commissioner, from any person licensed to sell wine at retail and from distributors licensed to sell or distribute wine. The maximum tax rate is 5%, which is added to the purchase price. The taxes are collected by the Tax Commissioner, remitted to the State Treasurer and distributed quarterly to the municipalities. Additionally, municipalities may collect a fee from private liquor club licensees, not to exceed the state license fee.

**¶ 1016.8. License tax on horse and dog racing**

*Law: W. Va. Code § 813-8*

Municipalities have the power to levy a daily license tax upon the operator of a horse or dog racetrack located within the municipality. The tax may not exceed the state daily license tax. The tax is not applicable to any fair, horse show, agricultural or livestock exposition at which horse or dog racing is conducted for not more than six days. West Virginia has four tracks licensed to operate horse or dog races.

**¶ 1016.9. Motor vehicle operator's tax**

*Law: W. Va. Code § 8-13-9*

A municipality has the power to levy an annual motor vehicle operator's license tax not to exceed \$2. The tax applies only to inhabitants of the municipality.

**¶ 1016.10. Domestic animal tax**

*Law: W. Va. Code § 8-13-10*

A municipality has the power to levy an annual license tax upon the privilege of keeping domestic animals within the corporate limits.

**¶ 1016.11. User fees**

*Law: W. Va. Code § 8-13-13*

A municipality has the power to levy a reasonable user fee for furnishing police and fire protection, street maintenance, sewerage and garbage and other city services. Several West Virginia cities impose a weekly user fee on persons employed within the municipality. The fee is withheld from wages and paid by the employer to the municipality, on a quarterly basis, with the tax return required by the municipality.

The City of Charleston's user fee is \$2.00 per week. The fee increases to \$2.50 per week beginning January 1, 2016 and to \$3.00 per week beginning January 1, 2020.

The City of Fairmont's user fee is \$2.00 per week.

The City Huntington's user fee increased from \$3.00 per week to \$5.00 per week effective October 1, 2015.

The City of Morgantown's user fee is \$3.00 per week (adopted October 20, 2015).

The City of Parkersburg's user fee is \$2.50 per week.

The City of Weirton's user fee is \$2.00 per week.

#### **¶ 1016.12. Pension relief municipal occupation tax**

*Law: W. Va. Code § 8-13C-3.*

Each qualifying municipality has the plenary power and authority to impose, by ordinance, a pension relief municipal occupational tax on taxable employees. A "qualifying municipality" is any municipality:

(1) In which the weighted average of the percentages to which its policemen's and firemen's pension and relief funds are fully funded is three percent or less on the date of adoption of the ordinance imposing the tax; and

(2) That has satisfied the following requirements:

(a) The municipality wishing to impose the tax must present to the Legislature's Joint Committee on Government and Finance a plan to remove the unfunded liabilities of its policemen's and firemen's pension funds and the necessary changes in West Virginia law have been enacted to allow for implementation of the municipal plan; and

(b) No cost-of-living increases or other benefit increases, and no new benefits, may be granted to or received by any member or beneficiary of a policemen's and firemen's pension and relief funds of a municipality during any period that the municipality imposes a pension relief municipal occupational tax, a pension relief municipal sales and service tax, the pension relief municipal use tax or any combination thereof authorized under this chapter.

Any pension relief municipal occupational tax imposed must meet the following requirements:

(1) The tax must be imposed at a rate of one percent or less;

(2) The tax must be imposed at a uniform rate; and

(3) The tax rate must be applied only to salaries, wages, commissions and other earned income of taxable employees that would be included in federal adjusted gross income for the year. The tax rate may not be applied to other forms of income including, but not limited to, intangible income and net profit from a business.

Each employer with a taxable employee, during each pay period, must withhold from the taxable employee's salary the amount of the tax as computed by applying the appropriate tax rate to the taxable employee's salary during that pay period and remit the withholdings to the appropriate municipal taxing authority.

As of October 31, 2015, no West Virginia municipality imposes a pension relief occupation tax.

#### **¶ 1016.13. Pension relief municipal sales and use tax**

*Law: W. Va. Code §§ 8-13C-4(a) and 8-13C-5(a)*

Each qualifying municipality has the plenary power and authority to impose, by ordinance, a pension relief sales tax and a pension relief use tax. The rate of tax may not exceed one percent of price of the good or service purchased and used within the municipality that was not subject to the municipal sales and service tax. To prevent double taxation, credit is allowed for any sales tax lawfully paid to another municipality.

Exemptions from tax must conform to the State exemptions from tax. The tax must be collected by the State Tax Commissioner on behalf of the municipality. Currently, no municipality imposes this tax.

#### **¶ 1016.14. Alternative municipal sales and use tax.**

*Law: W. Va. Code § 8-13C-4 and 8-13C-5.*

Every municipality may impose a sales and use tax provided it does not impose a business and occupation tax. The rate of tax may not exceed 1% of the sales price of the good or service purchased or used within the municipality. To prevent double taxation, credit is allowed for any sales tax lawfully paid to another municipality. The tax bases and exemptions from tax must conform to the State tax base and the State exemptions from tax. Additionally, motor vehicles and motor fuels are excluded from the tax base. The municipal tax is collected by the State Tax Commissioner at the same time that the State tax is collected. State sales and use taxes are discussed in chapter 5 of this Guidebook.

Municipalities that impose sales and use taxes pursuant to W. Va. Code §§ 8-13C-4(b) and 8-13C-5(b) include Bolivar, Harrisville, Quinwood, Rupert and Williamstown, West Virginia. Each imposes a 1% sales and use tax that is collected by the State Tax Commissioner.

#### **¶ 1016.15. Pilot program to increase home rule powers of municipalities.**

*Law: W. Va. Code § 8-1-5a*

In 2007, the Legislature established the Municipal Home Rule Pilot Program pursuant to which municipalities participating in the program may adopt ordinances, acts, resolutions, rules and regulations they are otherwise prohibited from adopting. For example, municipalities that impose a business and occupation tax may not impose a

sales tax unless they repeal their business and occupation tax. Pursuant to W. Va. Code § 8-1-5a, the cities of Charleston, Huntington and Wheeling imposed sales and use taxes.

In 2013, the Legislature extended the Municipal Home Rule Pilot Program for another five years and allowed an additional 16 municipalities to participate in the Pilot Program. The 2013 legislation provided that municipalities participating in Phase II of the Pilot Program may impose no new taxes except that they may impose a sales tax, at a rate not to exceed 1%, if they reduce their business and occupation tax. Twenty-two municipalities submitted applications to participate in Phase II of the Pilot Program. On October 6, 2014, the Board announced that Bluefield, Buckhannon, Charles Town, Clarksburg, Dunbar, Fairmont, Martinsburg, Milton, Morgantown, Nitro, Parkersburg, Ranson, Shinnston, South Charleston, Vienna, and Weirton would also be participating in Phase II of the Pilot Program. In 2015, the Legislature amended the Municipal Home Rule Pilot Program to allow up to 34 municipalities to participate in the Program. On September 14, 2015, the Municipal Home Rule Board approved applications submitted by the cities of Beckley, Grafton and Moundsville to participate in the Pilot Program.

As of July 1, 2015, sixteen West Virginia municipalities impose 1% sales and use taxes either pursuant to W. Va. Code § 8-1-5a or W. Va. Code § 8-13C-14 and 15. These municipalities are Bolivar, Charles Town, Charleston, Harrisville, Huntington, Martinsburg, Milton, Nitro, Parkersburg, Quinwood, Ranson, Rupert, Thomas, Vienna, Wheeling and Williamstown.

The West Virginia Tax Commissioner has the exclusive responsibility for administering, collecting, and enforcing local sales and use taxes. The State Tax Department may assess a fee (not to exceed 5% of total collections) for its services. The tax base for state and municipal sales and use taxes must be identical to that of the State sales and use taxes except that municipal sales/use taxes may not be imposed on sales of motor fuel, motor vehicles and satellite television service.

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