

WEST VIRGINIA STATE TAX DEPARTMENT

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Virtual

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Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Department policy.

LEGISLATIVE,
REGULATORY AND
TAX POLICY
DEVELOPMENTS

Update bills

HB 2358

PIT Update

SB 697

PIT Update of the Update, taking into account changes to federal law in the American Rescue Plan Act of 2021.

HB 2359

CNIT Update

HB 2581

(Affects various code sections in articles 1C, 3, and 10A of chapter 11)

- Starting with the 2022 tax year, abolishes the October Board of Assessment Appeals. All property tax appeals now go through the Office of Tax Appeals, even if they first go to the County Commission sitting as a Board of Equalization and Review.
- Starting with the 2022 tax year, all property tax rulings by the Tax Commissioner addressing taxability or classification are appealable to the Office of Tax Appeals, rather than the Circuit Court.
- Standard of proof before OTA will be simple preponderance, a change from the former “clear and convincing” recently affirmed by Syl. Pt. 5, *In re Tax Assessment of Foster Foundation*, 672 S.E.2d 150 (2008).

HB 2581 (part 2)

- Mandates that the Tax Department develop a new valuation process for oil, natural gas and natural gas liquids.
- Timing of the effective date required filing of an emergency rule.
- Proposed permanent legislative rule (110 C.S.R. 1J) is now before the Legislature, with multiple parties expressing concerns.

HB 2499

(Amends W. Va. Code §§11-6F-2 and 11-13S-4; creates W. Va. Code §11-13KK-1, *et seq.*; creates W. Va. Code §11-15-9t)

- Small arms and ammunition trifecta:
- PIT or CNIT credit in amount of federal excise tax.
- Manufacturing credit expanded to include manufacturers of small arms (including “ordnance”) and small arms ammunition. NAICS 332992 and 332994.
- Sales tax exemption for sales of small arms and ammunition.
- Proposed rule (110 C.S.R. 13KK) is currently before the Legislature.

SB 532 (Creates W. Va. Code §11-10-5ee)

- A capital investment cannot be used for more than one credit or rebate.
- If a taxpayer attempts to apply a single capital investment toward multiple credits or rebates, application will be limited to the most favorable.
- Applies to investments made after January 1, 2022.

SB 718 (Amends W. Va. Code §§11-13EE-2, 3, 5, and 16)

- Numerous changes to the Coal Severance Tax Rebate.
- Changes base period from 2018 to average production over 5 years.
- Now includes infrastructure improvements to real property.
- Now includes both new and used machinery and equipment.

SB 305

(Creates W. Va. Code §11-15-9t)

- Sales tax exemption for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft.
- Due to time constraints inherent in the immediate applicability of the exemption, an emergency rule (110 C.S.R. 15L) has been filed with the Secretary of State.

SB 270

(Amends W. Va. Code §§7-18-3 and 4)

- Clarifies application of the hotel occupancy tax when a marketplace facilitator is involved.
- If the marketplace facilitator has nexus with West Virginia (determined via economic nexus of either 200 or more separate transactions or more than \$100,000 of gross revenue attributable to transactions in the state), then the marketplace facilitator must collect and remit the hotel occupancy tax.
- Collected taxes are to be remitted to the municipality or county imposing the tax.
- Effective January 1, 2022.

HB 3301

(Amends W. Va. Code §§7-11B-3, 7, 9, 10, 18, and 22)

- Authorizes municipalities and county commissions to extend property tax increment financing districts beyond 30 years.
- Modifies the revenue sources for a TIF district.
- Removes certain limitations on the terms of financing obligations.

HB 2001

(Creates W. Va. Code §§11-21-12m, 11-21-25, 11-24-10a; Creates W. Va. Code §18-30A-1, *et seq.*)

- Creates the West Virginia Jumpstart Savings Board, which oversees the Jumpstart Savings Program Trust and the Jumpstart Saving Program Trust Fund Account.
- Anyone can contribute to a jumpstart account, with contributions up to \$25,000 per taxable year allowed as a reducing modification against federal AGI when calculating WV PIT.
- Employers can make matching contributions and claim a nonrefundable credit up to \$5,000 per employee per year.
- Reducing modifications allowed for rollover from a jumpstart account into a WV ABLE account or from a WV prepaid college tuition plan to a jumpstart account.

HB 2001 (part 2)

- Reducing modification allowed up to \$25,000 per year for qualified distributions from a jumpstart account.
- Qualified expenses include: tools, equipment or supplies required to (1) complete certain apprenticeship programs, (2) earn a license or certification from an Advanced Career Education career center, or (3) earn an associate degree or certification from a community and technical college.
- Qualified expenses also include fees for required certification or licensure to practice certain trades or occupations, and costs necessary to establish a business in WV in such a trade or occupation.

SB 437 (Amends W. Va. Code §11-27-38)

- W. Va. Code §11-27-38 is the Acute Care Hospital Tax.
- SB 437 clarifies the definition of “eligible acute care hospital” by removing facilities “designated pursuant to §16-5B-14 of this code” (i.e., “critical access hospital[s]”).
- Ergo, critical access hospitals are not subject to the 0.75% Acute Care Hospital Tax.
- SB 437 also eliminates the sunset provision for the Acute Care Hospital Tax, which had been scheduled to expire July 1, 2021.

SB 397 (Amends W. Va. Code §11-27-39)

- W. Va. Code §11-27-39 is the Practitioner Acute Care Hospital Tax.
- SB 397 clarifies the definition of “eligible acute care hospital” by removing facilities “designated pursuant to §16-5B-14 of this code” (i.e., “critical access hospital[s]”).
- Ergo, critical access hospitals are not subject to the 0.13% Practitioner Acute Care Hospital Tax.
- SB 397 also eliminates the sunset provision for the Practitioner Acute Care Hospital Tax, which had been scheduled to expire July 1, 2021.

SB 34 (Amends W. Va. Code §11-15-9(a)(23))

- Current 11-15-9(a)(23) exempts from sales tax services performed by one corporation or entity to another entity when the entities are members of the same controlled group or are related taxpayers per IRC §267.
- SB 34 expands the exemption to apply to leases of heavy equipment or machinery among those same related entities.

HB 2025

(Amends several sections in chapter 60; Creates W. Va. Code §§19-2-12, 19-2-13, and 60-8A-1, *et seq.*, totalling 140 pages)

- New article 60-8A creates a tax on the manufacture and sale of hard cider. Formerly, ciders were subject to the wine liter tax.
- Revenue from the cider tax is deposited in the Agriculture Development Fund, to be used to foster agricultural development.
- Wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in WV against the tax on hard cider.
- If property qualifies as agricultural use for property tax purposes, it does not lose that classification by the “mere addition” of a distillery, mini-distillery, micro-distillery, winery or farm winery on the property.

HB 2025 (part 2)

- The bill creates numerous permanent and temporary licenses, many of which are variations on “private clubs,” such as “private caterer,” “private club bar,” “private club restaurant,” “private manufacturer club,” “private tennis club,” “private wedding venue and barn,” etc.
- Delivery licenses for nonintoxicating beer and nonintoxicating craft beer. Also third party delivery licenses.
- Temporary licenses for unlicensed brewers and unlicensed home brewers to offer samples and sales at a licensed fair or festival.
- Sunday sales of alcohol can now start at 6:00 a.m.
- The prohibition against serving nonintoxicating beer to “any person known to be insane or known to be a habitual drunkard” remains.

HB 2794 (Amends W. Va. Code §11-13J-12)

- Extends the Neighborhood Investment Program Act to July 1, 2026. The program had been set to terminate on July 1, 2021.

SB 344 (Amends W. Va. Code §§11-21-8a and 11-24-23a)

- The bill eliminates the sunset provision for the Qualified Rehabilitated Buildings Investment Credit. The credit was formerly set to expire after December 31, 2022.

HB 2026

(Amends W. Va. Code §11-24-7 and creates W. Va. Code §11-21-31)

- Starting January 1, 2022, new section 11-21-31 excludes the income of non-resident “mobile” employees from state source income for purposes of WV PIT. An employer is not required to withhold taxes for “mobile” employees.
- Starting January 1, 2022, WV apportions corporate income using a single sales factor, in place of the current four factor formula.
- Starting January 1, 2022, WV adopts the “no throw” rule, in place of the current “throw out” rule for purposes of determining sales in the apportionment formula.
- Starting January 1, 2022, WV adopts market-based sourcing for services and intangible property, joining the current market-based sourcing for sales of tangible personal property.

HB 2760

(Amends W. Va. Code §§11-13Q-9, 10, 10a, and 22)

- Effective for taxable years beginning on and after January 1, 2022, the Credit for Small Business (W. Va. Code §11-13Q-10) is terminated and essentially absorbed into the Economic Opportunity Tax Credit.
- Credits gained under the Credit for Small Business prior to January 1, 2022 retain their status and may be taken in due course.
- The definition of “high technology manufacturing business” is expanded to include manufacturing of drones, target drones, unmanned aircraft, autonomous motor vehicles, robots, robotic medical or surgical machines or equipment, biotechnology products, medical devices, and machines, equipment and products predominantly operated by and incorporating artificial intelligence.

HB 2997

(Amends W. Va. Code §11-14C-34)

- The bill deletes all mention of bulk plants in section 11-14C-34, effectively removing those entities from the requirement to generate and maintain shipping documents that allow the Tax Commissioner to administer and enforce the motor fuel excise tax. Transporters of motor fuel are now not required to hold a shipping document when fuel is loaded at a bulk plant.

HB 3010

(Amends W. Va. Code §§11-6L-2 and 4)

- The special valuation method (salvage value) for cell towers now extends to towers owned by persons not subject to regulation by the Board of Public Works.
- Applies to all towers constructed and erected on and after July 1, 2019.

HB 2808

(Amends W. Va. Code §11-13A-2)

- Changes the definition of “mineral” so that salt produced for human consumption is no longer subject to severance tax.

SB 263

(Amends W. Va. Code §§47-20-2, 47-20-15, 47-21-2, and 47-21-15)

- Allows charitable organizations to conduct charitable bingo and raffles online.
- Also increases the cap for payment of “reasonable, necessary and actual expenses” for both raffles and bingo from 25 percent of the gross proceeds collected during the license period to 40 percent of the gross proceeds collected during the license period.
- A proposed rule (110 C.S.R. 16A) is currently before the Legislature.

SB 661 (Repeals W. Va. Code §11-9-7; amends W. Va. Code §§11-15-3, 11-15-4, 11-15-4a, 11-15-4b, 11-15-13, 11-15A-5, 11-15A-6, and 11-15A-8.

- Effective July 1, 2021, retailers may assume or absorb any sales tax or use tax assessed on tangible personal property.
- The full amount of the sales tax must appear on the invoice or receipt, and must be remitted to the Tax Department by the retailer.
- A proposed rule (110 C.S.R. 15M) is currently before the Legislature.

Rules

- SB 160 authorized four rules drafted by the Tax Department:
- 110 C.S.R. 1A was amended pursuant to direction by the Legislature so that “high tunnels” are now not considered “farm buildings” for purposes of ad valorem property taxation.
- 110 C.S.R. 13FF was created to set forth procedures for claiming the tax credit for donating or providing vehicles to low-income workers.
- 110 C.S.R. 13GG was created to set forth procedures for claiming the downstream natural gas manufacturing investment tax credit.
- 110 C.S.R. 13II was created to set forth procedures for claiming the high-wage growth business tax credit.