

WEST VIRGINIA TAX INSTITUTE
29 OCTOBER 2019

I. LEGISLATIVE

A. Tax bills passed in the 2019 legislative regular session and signed by the Governor:

SB 3 Effective March 5, 2019

Creates new article (W. Va. Code §11-6L-1, *et seq.*) that establishes a special valuation method for cell towers constructed between July 1, 2019 and July 1, 2024. Towers constructed or erected between those dates will be valued at salvage value (5% of original cost) for five years. The valuation is made by the Board of Public Works, even if the tower is not owned by a public service business.

SB 30 Effective June 7, 2019

The “annuity tax” imposed under W. Va. Code §33-3-15 is discontinued for tax years beginning on or after January 1, 2021.

SB 36 Effective July 1, 2019

Amends W. Va. Code §11-21-12d to reinstate the personal income tax reducing modification for taxpayers receiving less-than-expected defined benefit pension plan payments due to the plan being terminated and benefit reduced. The reducing modification is effective for tax years beginning on January 1, 2020, and terminates for tax years on and after January 1, 2023.

SB 268 Effective February 5, 2019

Corporate Net Income Tax update bill, W. Va. Code §11-24-3.

SB 269 Effective February 5, 2019

Personal Income Tax update bill, W. Va. Code §11-21-9.

SB405 Effective June 7, 2019

Amends sections 23, 25, 56, 57, 58 and 59 in Article 3 (sale of tax liens), all related to increasing the limit on additional expenses a purchaser may recover in preparing the notice to redeem to \$500. Also, the title examinations associated with redemptions must be by a “licensed attorney.”

SB 461 Effective March 8, 2019

Amending W. Va. Code §11-27-77 and §29-22-15a to extend personal income tax withholding of lottery prizes and designating lottery winnings as source income.

SB 499 Effective July 1, 2019

Big bill, amending lots of Code sections, and creating new Article 21A to provide for administration, collection and enforcement of additional West Virginia income taxes attributable to federal audit adjustment regarding certain pass-through entities treated like partnerships for federal income tax purposes. *See* Administrative Notice 2019-22

SB 502 Effective July 1, 2019

New section W. Va. Code §11-15-9r exempts “investment metal bullion” and “investment coins” from sales tax. *See* Administrative Notice 2019-20.

SB 546 Effective July 1, 2019

New section W. Va. Code §11-27-39 creates a tax on certain acute care hospitals, “intended to maximize federal funding to increase practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.” Imposition and collection of the tax is delayed until the federal Centers for Medicare and Medicaid Services (“CMMS”) notifies WV DHHR that it is approved.

SB 656 Effective July 1, 2019

Amends W. Va. Code §11-10-5t to increase the threshold for required electronic filing and payment from a tax liability of \$25,000 to \$50,000. The change has also been reflected in an amendment to 110 CSR 10F.

HB 2001 Effective June 7, 2019

Amends W. Va. Code §11-21-12 by inserting a new subdivision (c)(8), which provides a decreasing modification in the amount of a taxpayer’s social security benefits. The modification is phased in over three years: 35% for tax year 2020, 65% for tax year 2021, and 100% for tax years 2022 and after. The modification is available only if federal AGI does not exceed \$100,000 for a married couple filing jointly, or \$50,000 for taxpayer who are single or a married couple filing separately. The bill also amended W. Va. Code §11-21-12(c)(7)(C) to expand the total reducing modification to retirement income from “the uniformed services,” which now explicitly includes retirement income from the Public Health Service and the National Oceanic Atmospheric Administration.

HB 2311 Effective June 4, 2019

New section W. Va. Code §11-1-9 exempts short-term license holders from having to submit information to the Tax Commissioner once the term of the permit has expired. Taxpayers will still need to file required returns and are subject to audit.

HB 2405 Effective June 4, 2019

Repeals Article 26 (the Health Care Provider Medicaid Tax). Also creates new section W. Va. Code §11-27-10a, a tax on managed care organizations. The tax on managed care organizations is imposed at different rates according to different “tiers” that reflect Medicaid membership in the plan. Imposition and collection of the tax is delayed until the federal Centers for Medicare and Medicaid Services (“CMMS”) notifies WV DHHR that it is approved.

HB 2515 Effective June 4, 2019

Amends W. Va. Code §11-15-9i to provide a sales tax exemption for the sale and installation of “mobility enhancing equipment” in a new or used vehicle for use by a person with physical disabilities. *See* Administrative Notice 2019-19; 110 CSR 15C.

HB 2813 Effective June 6, 2019

Creates new W. Va. Code §11-15A-6b to impose upon a “remote seller,” “marketplace facilitator” or “referrer” the duty to collect and remit West Virginia use tax on sales made to West Virginia purchasers on and after July 1, 2019. A marketplace facilitator, referrer or remote seller has economic nexus with West Virginia sufficient to justify the imposition of this duty if, in the current calendar year or an immediately preceding calendar year, they: (1) have sales of at least \$100,000 into West Virginia, or (2) have 200 or more sales into the state. *See* Administrative Notice 2019-21.

HB 2829 Effective May 30, 2019

Amends W. Va. Code §11-13A-3 to terminate the severance tax on limestone and sandstone for periods on and after July 1, 2019. *See* Administrative Notice 2019-23.

HB 2848 Effective May 30, 2019

Creates new W. Va. Code §11-21-12i, which provides for a decreasing modification in the amount of any contributions to an ABLÉ account (ABLE = Achieving a Better Life Experience, a federally-created (IRC § 529A) savings account to benefit blind or disabled persons), to the extent that such contribution is not allowed as a deduction when calculating federal AGI. Cannot reduce WV taxable income below zero; but can be carried forward up to five years.

HB 2854 Effective May 30, 2019

New section W. Va. Code §11-15-9q provides a sales tax exemption for fundraiser sales by not-for-profit volunteer school support groups (elementary or secondary schools), provided that the fundraisers last no more than 14 consecutive days and are held no more than 18 times during any twelve-month period. No requirement that the volunteer school support group must be a 501(c)(3) or (4) organization. *See* Administrative Notice 2019-18.

HB 3045 Effective June 3, 2019

Amends W. Va. Code §7-18-2 to clarify that “the [hotel occupancy] tax may not be imposed on complimentary hotel rooms provided without charge by a hotel operator to guests.”

HB 3142 Effective June 7, 2019

Amends W. Va. Code §11-13A-3 to reduce the severance tax on “thermal or steam coal” from 5% to 3%. The reduction is phased in over three years, so that the rate starting July 1, 2019 will be 4.3%, the rate starting July 1, 2020 will be 3.7%, and the rate starting July 1, 2021 will be 3%. The bill defines “thermal or steam coal” as “coal sold for the purpose of generating electricity.”

HB 3144 Effective June 7, 2019

Creates new Article 13EE in Chapter 11, providing a rebate of severance tax when the taxpayer makes a capital investment in new machinery, equipment, or improvements to real property directly used in severance of coal, and the machinery, equipment or improvement results in an increase of coal production. The maximum rebate available in any one year is 35% of the cost of the capital investment, so an investment of \$1 million will yield a maximum annual rebate of \$350,000. However, the total amount of rebate generated is calculated by multiplying the “state portion” of the increased severance tax paid attributable to the increased production by 80%. It’s complicated. There is a ten-year carryover period, and the rebate is exclusive; that is, if a taxpayer claims the rebate, then it cannot claim a credit under any other article in Chapter 11 attributable to the same capital investment.

B. Tax bills passed in the 2019 legislative special session and signed by the Governor:

HB 111 Effective May 20, 2019

Amends W. Va. Code §11-14C-30 to provide that the evaporation allowance when calculating motor fuel excise tax is increased from 0.5% to 1%.

HB 112 Effective May 20, 2019

Creates new W. Va. Code §11-21-12j, which provides reducing modification for taxpayers who are shareholders of an S corporation or a member of a LLC engaged in business as a financial organization. This reducing modification is substantially similar to the reducing modification available to C corporate entities in W. Va. Code §11-24-6f.

HB 113 Effective September 22, 2019

Creates new W. Va. Code §§11-21-12k and 11-24-6b, which provide reducing modifications in the amount of the portion of net income “directly derived” from a “qualified opportunity zone business,” which must be a “newly registered business” in a “qualified opportunity zone” in West Virginia.

HB 117 Effective August 18, 2019

Amends W. Va. Code §§11-13-3f, 11-13F-1, 11-13F-2, 11-13F-3, and 11-24-11 to include companies that provide sewer or combined water and sewer utilities among the taxpayers eligible to take the tax credit associated with providing reduced rates to qualified low-income residential customers.

HB 206 Effective June 24, 2019

The “omnibus” education bill amended multiple sections of the W. Va. Code, and created others, including new W. Va. Code §11-15-9s, which provides a sales tax holiday for purchases of clothing, school supplies, school instructional material, laptop and tablet computers, and sports equipment. The tax holiday portion of the omnibus bill is internally effective July 1, 2021, so the first scheduled tax holiday will be Thursday, July 30 through Monday, August 2, 2021 (as the bill states: “the first Sunday of August, or the previous Friday and Saturday, or the following Monday”).

SB 1037 Effective May 20, 2019

Amends Chapter 16A (the Medical Cannabis Act) in multiple ways. For tax purposes, the changes are found in Article 9. The former tax on growers and processors is replaced with a tax on medical cannabis dispensaries. The tax is denominated as a privilege tax, applied at the rate of 10% on the gross receipts the dispensary receives or accrues during the reporting period, depending on the dispensary’s method of accounting for federal tax purposes. The tax must be filed and paid electronically, “unless electronic payment is prohibited by state or federal law.” Payment of the tax results in the sales of medical cannabis being exempt from sales and use tax (both state and local), as well as any special district excise tax.

II. REGULATORY

A. Legislative Rules

110 CSR 10F Payment of Taxes by Electronic Funds Transfer.

Amended to reflect higher threshold for required electronic payment of tax. *See* SB 656, above.

110 CSR 15C Consumers Sales and Service Tax and Use Tax – Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles Per Se Exemption.

Amended to reflect new exemption for mobility enhancing equipment. *See* HB 2515, above.

B. Interpretive Rules

110 CSR 13AC Reduced Severance Tax Rates for Thermal or Steam Coal.

Effective October 11, 2019. New rule drafted to interpret the provisions of HB 3142 (see above), reducing the severance tax on thermal or steam coal.

110 CSR 21F The Coal Severance Tax Rebate.

New rule drafted to interpret the provisions of HB 3144 (see above), providing a coal severance tax rebate.

110 CSR 43 Special Valuation Method for Certain Wireless Technology Property.

New rule drafted to interpret the provisions of SB 3 (see above), providing a special valuation method for certain wireless technology property.