

WEST VIRGINIA TAX INSTITUTE
30 OCTOBER 2018

I. **LEGISLATIVE**

Tax bills passed in the 2018 legislative regular session and signed by the Governor:

SB 237 Effective February 26, 2018

Rules authorization bill. The Legislature authorized the State Tax Department's legislative rules regarding: (1) farm-to-food bank tax credit, (2) payment of taxes by electronic funds transfer, (3) property transfer tax, (4) municipal sales and service and use tax administration, and (5) a personnel rule for the Tax Division.

SB 263 Effective January 26, 2018

Eliminates the film tax credit, W. Va. Code §11-13X-1, *et seq.* for periods on and after July 1, 2018. Credits granted prior to July 1, 2018 are grandfathered. The West Virginia Film Office ceases to exist, and wrapping up the grandfathered credits falls to the Division of Tourism.

SB 275 Effective June 8, 2018

Amends W. Va. Code §§11-10-5d, 60-3-9d, and 60-3A-21 regarding tax on "intoxicating liquors." The major change was that the "one mile rule" is abolished. The new determinant for whether the tax gets distributed to the city or the county is the city limits, and not some ephemeral line one mile from the city limits.

SB 298 Effective June 6, 2018

Amends W. Va. Code §11-4-2 to allow split listing for properties used partly for exempt purposes and partly for nonexempt purposes.

SB 338 Effective June 1, 2018

Amends W. Va. Code §11-21-74 to change the date for employers to file annual reconciliation and withholding statements. Annual reconciliation and withholding statements are now due January 31 (starting in 2019), which is consistent with the date by which employers must file withholding reconciliation statements with the I.R.S.

SB 415 Effective March 3, 2018 (became law without Governor's signature)

Creates new article, W. Va. Code §29-22D-1, *et seq.*, permitting wagering on certain professional or collegiate sports events authorized as WV Lottery sports wagering activities.

SB 427 Effective June 5, 2018

Amends W. Va. Code §11-6-23 to modify the form of notice for certain tax delinquencies. Final written notice for any delinquency of less than \$1,000.00 may now be made by first class mail sent to the taxpayer's last known address.

SB 441 Effective July 1, 2018

Amends W. Va. Code §11-27-38, extending the Acute Care Hospital Tax from its former expiration date of June 30, 2018 to June 30, 2021.

SB 461 Effective June 6, 2018

Amends W. Va. Code 11-14C-31 to extend the time to file a petition for a motor fuel excise tax refund. The former protocol was to file refund petitions on a quarterly basis. The new protocol provides for annual filing for the refund. The amendments also provide that “[t]he Tax Commissioner shall allocate the aggregate amount of the \$4,300,000 refundable exemption according to the order in which the refund claim forms are received.”

SB 522 Effective June 4, 2018

Amends W. Va. Code §29A-1-3b to void a rule when a statute that provided authority for the rule is repealed or eliminated. Also amends W. Va. Code §29A-3-8 to provide that an agency may repeal a legislative exempt, procedural, or interpretive rule by filing a notice of repeal with the Secretary of State. Also amends W. Va. Code §29A-3-12 to change the deadline for filing agency-approved rules. Also amends W. Va. Code §29A-3-19 to provide a procedure for agencies to seek renewal of a legislative rule (necessary now because of the five-year sunset provision for all rules).

HB 2843 Effective May 31, 2018

Amending W. Va. Code §§7-11B-3, 7-11B-4, 7-11B-7 and 7-11-8 to permit Class III municipalities to be included in the West Virginia Tax Increment Act.

HB 4022 Effective May 31, 2018

Creating W. Va. Code §11-15-9p to exempt services for the repair, remodeling and maintenance of certain aircraft from the sales and use tax.

HB 4135 Effective February 9, 2018

Amending W. Va. Code §11-24-3 to update the meaning of federal taxable income and other terms used in the West Virginia Corporation Net Income Tax Act.

HB 4146 Effective February 9, 2018

Amending W. Va. Code §11-21-9 to update the meaning of federal adjusted gross income and other terms used in the West Virginia Personal Income Tax Act.

HB 4157 Effective March 9, 2018

Amending W. Va. Code §11-15-9 by deleting 11-15-9(b)(6) to eliminate the refundable exemption for road construction contractors.

HB 4522 Effective June 7, 2018

Creating W. Va. Code §11-10-5dd, allowing the sharing of certain tax information (essentially, whether a particular taxpayer is in “good standing”) with the Purchasing Division, Department of Administration, and the State Auditor.

HB 4626 Effective June 8, 2018

Amending W. Va. Code §§11-13BB-3, 11-13BB-4 and 11-13BB-14, relating to the innovative mine safety technology tax credit act. Proximity detection systems, cameras and underground safety shelters (and the refurbishing thereof) are now required to be on the list of approved

“innovative mine safety technology.” Furthermore, the credit, which was set to expire on December 31, 2018, is now set to expire on December 31, 2025.

II. REGULATORY

Fractional ownership of aircraft 110 CSR 15K Emergency rule, effective August 7, 2018.

New rule, addressing administrative and procedural requirements for the sales tax exemption for purchases of services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program as set forth in W. Va. Code §11-15-9p.

Tax credit for property taxes paid 110 CSR 21B Legislative rule, in progress.

The rule provides guidance on implementing W. Va. Code §11-21-21, which provides a refundable tax credit against personal income taxes for low-income individuals who are allowed the homestead exemption under W. Va. Code §11-6B-3. The refundable tax credit is equal to the amount of *ad valorem* property taxes paid up to the first \$20,000 of taxable assessed value of the homestead. Currently, “low-income” is defined as 150% or less of the federal poverty guideline determined by the United States Secretary of Health and Human Services and based upon the number of individuals living in the household.

Municipal wine and liquor tax 110 CSR 49 Legislative rule, in progress

New rule, clarifying implementation of collection procedures for the tax on purchases of intoxicating liquor and wine inside and outside municipal boundaries under W. Va. Code §60-3-9d. The rule defines terms, identifies the tax base and who must pay the tax, and addresses the logistics of collection, remittance and distribution of the tax.

Exchange of information 110 CSR 50C Legislative rule, in progress

Authorized by W. Va. Code §11-10-5s(b)(4), the rule addresses written exchange of information agreements with other State agencies when the purpose of agreement is to facilitate premium collection, tax collection or licensure requirements directly enforced, administered or collected by the other State agency or the Tax Commissioner. The rule lists the State agencies with which the Tax Commissioner may enter into agreements, and consolidates previously promulgated rules set forth in Series 50A, 50B, 50D, 50E and 50F of Title 110.

Rehabilitated building investment credit 110 CSR 21C Procedural rule

Amendments to the existing rule include definitions for “operating agreement” and “taxpayer.” The amendments also clarify the method for selling, assigning or transferring the credit; the method required to show good standing with state, local, municipal and county taxing authorities; and limitations on claiming the credit.

Railroad diesel locomotive exemption from fuel excise tax 110 CSR 41 Procedural rule

New rule, setting forth the procedure to be used in administering W. Va. Code §11-14C-9(d)(10), and addressing how to apply for the refundable exemption. The rule also addresses the requirements for claiming the credit available under W. Va. Code §11-15A-10a, in the context of the refundable exemption.

III. POLICY

Administrative Notice 2018-18

Regarding West Virginia State Tax Department adoption of sales and use tax collection responsibilities consistent with the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc., et al.*, 585 U.S. ____ (June 21, 2018).