

Senate Bill No. 1004

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

[Introduced April 17, 2013.]

9 A BILL to amend the Code of West Virginia, 1931, as amended, by
10 adding thereto a new section, designated §11-10-11c, relating
11 to local sales and use taxes and local excise taxes; granting
12 the Tax Commissioner exclusive responsibility for
13 administering, collecting and enforcing specified local sales
14 and use taxes and excise taxes; specifying jurisdiction and
15 standing before the Office of Tax Appeals; permitting fees for
16 collection of local sales and use taxes and excise taxes;
17 providing a special fund for deposit of fees for collection of
18 specified local sales and use taxes and excise taxes;
19 providing that notwithstanding specified provisions, the Tax
20 Commissioner may prescribe by rule the schedule and manner for
21 deposit of moneys into the special fund for deposit of fees
22 for collection of local sales and use taxes and excise taxes,
23 and such other administrative and procedural requirements as

1 may be useful or necessary for the management and handling of
2 the fund; authorizing the Tax Commissioner to promulgate
3 ordinary and emergency rules; declaring that such rules may
4 provide for administration, collection and enforcement of
5 local sales and use taxes and excise taxes, assessment of a
6 fee for the Tax Commissioner's services, authority for
7 resolution of disputes, the schedule and manner for deposit of
8 fees for collection of local sales and use taxes and excise
9 taxes, and such other purposes as the Tax Commissioner may
10 find useful or necessary; and specifying an effective date.

11 *Be it enacted by the Legislature of West Virginia:*

12 That the Code of West Virginia, 1931, as amended, be amended
13 by adding thereto a new section, designated §11-10-11c, to read as
14 follows:

15 **ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.**

16 **§11-10-11c. State administration of local sales and use taxes and**
17 **excise taxes; jurisdiction and standing before the**
18 **office of tax appeals; rule-making authority;**
19 **emergency rules.**

20 (a) The Tax Commissioner has exclusive responsibility for
21 administering, collecting and enforcing all local sales and use
22 taxes and excise taxes imposed pursuant to article twenty-two,
23 chapter seven of this code, section five-a, article one, chapter

1 eight of this code, article thirteen-c, chapter eight of this code
2 and article thirty-eight, chapter eight of this code.

3 (b) Pursuant to, and limited by, the provisions of section
4 eight, article ten-a of this chapter, the Office of Tax Appeals has
5 exclusive and original jurisdiction to hear disputes arising from
6 any local sales and use taxes and excise taxes for which the Tax
7 Commissioner has exclusive administration, enforcement and
8 collection responsibility. No municipality or county has standing
9 before the Office of Tax Appeals in any dispute arising under any
10 local sales and use tax and excise tax upon which the Tax
11 Commissioner has exclusive responsibility for administration,
12 enforcement and collection.

13 (c) Notwithstanding any other provision of this code to the
14 contrary, the Tax Commissioner may deduct and retain a fee for the
15 benefit of his or her office for expenditure from all local sales
16 and use taxes and excise taxes collected by the Tax Commissioner
17 upon which he or she has exclusive responsibility for
18 administering, collecting and enforcing: *Provided*, That such fee
19 may exceed any fee otherwise authorized by this code or any duly
20 enacted ordinance.

21 (d) Establishment of special revenue account.

22 (1) There is created in the State Treasury a special revenue
23 revolving fund account known as the "Local Sales Tax and Excise Tax

1 Administration Fund," which shall be an interest-bearing account
2 and expenditures are authorized from collections. The fund shall
3 consist of:

4 (A) Any funds received on and after July 1, 2013, from fees
5 charged by the Tax Commissioner pursuant to section six, article
6 thirteen-c, chapter eight of this code; and

7 (B) Amounts deducted and retained by the Tax Commissioner
8 under subsection (e), section eleven-a of this article; and

9 (C) Any future funds appropriated by the Legislature or
10 transferred by any public agency as contemplated or permitted by
11 applicable federal or state law; and

12 (D) Any accrued interest or other return on the moneys in the
13 fund.

14 The balance remaining in the fund at the end of each fiscal
15 year shall remain in the fund and not revert to the State General
16 Revenue Fund.

17 (2) On July 1, 2013, all moneys in the Tax Department
18 "Municipal Sales and Use Tax Operations Fund" established under
19 section six, article thirteen-c, chapter eight of this code shall
20 be transferred to the Local Sales Tax and Excise Tax Administration
21 Fund established in this section.

22 (3) On July 1, 2013, all moneys in the "Special District
23 Excise Tax Administration Fund" established under section eleven-b

1 of this article shall be transferred to the "Local Sales Tax and
2 Excise Tax Administration Fund" established in this section.

3 (4) Amounts deposited in the "Local Sales Tax and Excise Tax
4 Administration Fund" may be expended by the Tax Commissioner for
5 the general administration, collection and enforcement of all local
6 sales and use taxes and excise taxes imposed pursuant to article
7 twenty-two, chapter seven of this code, section five-a, article
8 one, chapter eight of this code, article thirteen-c, chapter eight
9 of this code and article thirty-eight, chapter eight of this code.

10 (e) Notwithstanding the provisions of section eleven-b of this
11 article, The Tax Commissioner may prescribe by rule the schedule
12 and manner for deposits of moneys into the "Local Sales Tax and
13 Excise Tax Administration Fund" and such other administrative and
14 procedural requirements as may be useful or necessary for the
15 management and handling of the fund.

16 (f) The Tax Commissioner is hereby authorized to promulgate
17 legislative rules pursuant to the provisions of article three,
18 chapter twenty nine-a of this code: *Provided*, That notwithstanding
19 the provisions of article three, chapter twenty-nine-a of this code
20 relating to the promulgation, disapproval and amendment of rules ,
21 the Tax Commissioner has authority to promulgate emergency rules
22 pursuant to the Tax Commissioner's finding that an emergency exists
23 concerning the administration, assessment and collection of local

1 taxes and levies requiring that emergency rules be promulgated, and
2 may promulgate the same to accomplish the following purposes:

3 (1) Provide rules for administering, collecting and enforcing
4 all local sales and use taxes and excise taxes.

5 (2) Provide for and impose a fee for the Tax Commissioner's
6 services: *Provided*, That such fee may exceed any fee otherwise
7 authorized by this code or any duly enacted ordinance for
8 enforcement, administration and collection of any local sales and
9 use taxes and excise taxes for which the Tax Commissioner has
10 exclusive administration, enforcement and collection
11 responsibility.

12 (3) Provide sole authority for resolution of disputes
13 pertaining to the administration, enforcement and collection of the
14 local taxes administered by the Tax Commissioner.

15 (4) Prescribe the schedule and manner of deposits of moneys
16 into the "Local Sales Tax and Excise Tax Administration Fund" and
17 such other administrative and procedural requirements as may be
18 useful or necessary for the management and handling of the fund.

19 (5) Such other purpose the Tax Commissioner finds useful or
20 necessary.

21 (g) Effective Date - The provisions of this section adopted in
22 2013 are effective on and after July 1, 2013.

NOTE: The purpose of this bill is to grant the Tax Commissioner exclusive responsibility for administering, collecting and enforcing specified local sales and use taxes and excise taxes.

§11-10-11c is new; therefore, strike-throughs and underscoring have been omitted.